



# Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending January 11, 2013**

*By the Carlton Fields Real Property Litigation Practice Group*

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- **Offer of Judgment: offer of judgment statute, Fla. Stat. § 768.79, and the requirements of Fla. R. Civ. P. 1.442, must be strictly construed** – [Diamond Aircraft Industries, Inc. v. Horowitch](#), No. SC11-1371 (Fla. Jan. 10, 2013) (answering certified questions and returning case to the Eleventh Circuit)
- **Foreclosure: borrowers who sign a loan application that falsely inflates their income are barred from raising the lender's fraudulent inflation of their income as an affirmative defense to foreclosure because they could not have reasonably relied upon a representation of their income they knew to be false** – [Vidal v. Liquidation Props., Inc.](#), No. 4D10-3358 (Fla. 4th DCA Jan. 9, 2013) (substitute opinion on rehearing) [Ed. Note: original opinion covered in Update for week ending Nov. 2, 2012]
- **Foreclosure: language contained in assignment of mortgage could lead to two inferences, one of which would result in assignee lacking standing on date complaint was filed, and thus proof as to the meaning of the assignment's language was required** – [Vidal v. Liquidation Props., Inc.](#), No. 4D10-3358 (Fla. 4th DCA Jan. 9, 2013) (substitute opinion on rehearing) [Ed. Note: original opinion covered in Update for week ending Nov. 2, 2012]
- **Truth in Lending Act: one-year statute of limitations for recoupment under TILA does not apply where recoupment and setoff are raised as an affirmative defense** – [Vidal v. Liquidation Props., Inc.](#), No. 4D10-3358 (Fla. 4th DCA Jan. 9, 2013) (substitute opinion on rehearing) [Ed. Note: original opinion covered in Update for week ending Nov. 2, 2012]

## II. 11TH CIRCUIT CASES – JIN LIU

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### III. TITLE INSURANCE CASES - CHRIS SMART

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