



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending October 19, 2012**

*By the Carlton Fields Real Property Litigation Practice Group*

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### I. FLORIDA STATE CASES – BRIAN VAVRA

- **Real Estate Settlement Procedures Act: plain language of RESPA provides no basis for successor liability; RESPA prohibitions apply only to the actual persons or entities who engage in such activities** – [Good v. Deutsche Bank Nat'l Trust Co.](#), No. 4D11-1167 (Fla. 4th DCA Oct. 17, 2012) (affirmed)
- **Foreclosure: evidence indicated that an equitable transfer had occurred prior to assignee filing foreclosure complaint, and thus dismissal for lack of standing without hearing was in error even if assignment was executed after complaint was filed** – [GMAC Mortgage, LLC v. Choengkroy](#), No. 4D11-3531 (Fla. 4th DCA Oct. 17, 2012) (reversing dismissal based on lack of standing)

### II. 11TH CIRCUIT CASES – NONE

### III. TITLE INSURANCE CASES - CHRIS SMART

- **Continuation of Coverage: policy continues to provide coverage to insured tenant who refuses to enter new lease after original insured lease is voided despite the fact that tenant no longer “retains an estate or interest in the land”** – [Commonwealth Land Title Ins. Co. v. OMG Americas, Inc.](#), Case No. 2:10-CV-1027 (D. Utah Oct. 12, 2012) (denying insurer's motion for summary judgment and granting insured's motion for summary judgment)
- **Condition 9(b): policy provision precluding liability until there has been a final determination of court does not preclude liability where insured voluntarily settles and dismisses appeal** – [Commonwealth Land Title Ins. Co. v. OMG Americas, Inc.](#), Case No. 2:10-CV-1027 (D. Utah Oct. 12, 2012) (denying insurer's motion for summary judgment and granting

insured's motion for summary judgment)

- **Condition 9(c): insurer's written acknowledgement of insured's plan to settle claims showed insurer was aware of the plan and was sufficient constitute written consent such that insurer was precluded from denying coverage due to lack of written consent to settlement** – [Commonwealth Land Title Ins. Co. v. OMG Americas, Inc.](#), Case No. 2:10-CV-1027 (D. Utah Oct. 12, 2012) (denying insurer's motion for summary judgment and granting insured's motion for summary judgment)
- **Title Agent: where agent has personal knowledge of properly recorded and indexed mortgage and performs title search and fails to identify that mortgage in a title insurance commitment, agent fails to act with the care of a reasonably prudent title agent and it liable under agency agreement** – [Mississippi Valley Title Ins. Co. v. Marion Bank and Trust Co.](#), Case No. 11-0538 (N.D. Ala. Oct. 12, 2012) (denying agent's motion for summary judgment and granting insurer's motion for summary judgment)
- **Title Agent: attorney title agent who performs title searches and issues title insurance commitments and policies is in not engaged in the practice of law for purposes of shorter Alabama statute of limitations** – [Mississippi Valley Title Ins. Co. v. Marion Bank and Trust Co.](#), Case No. 11-0538 (N.D. Ala. Oct. 12, 2012) (denying agent's motion for summary judgment and granting insurer's motion for summary judgment)

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