



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending September 7, 2012**

*By the Carlton Fields Real Property Litigation Practice Group*

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### I. FLORIDA STATE CASES – BRIAN VAVRA

- **Foreclosure:** material issues of fact remained as to whether bank satisfied condition precedent where borrower specifically denied she had received notice of default and bank merely filed unsworn copies of letters allegedly sent to her – [Finnegan v. Deutsche Bank Nat'l Trust Co.](#), No. 4D11-939 (Fla. 4th DCA Sept. 5, 2012) (reversing final summary judgment of foreclosure)
- **Landlord-Tenant:** fully integrated lease stated that tenant accepted premises in “as is” condition and, thus, trial court erred by using parol evidence to determine date by which landlord was to complete repairs; tenant was not entitled to any damages incurred as a result of delayed opening – [ABGL Enterprises, LLC v. Girlcook, Inc.](#), No. 4D11-2082 (Fla. 4th DCA Sept. 5, 2012) (remanding and directing trial court to enter amended final judgment)

### II. 11TH CIRCUIT CASES – JIN LIU

- **TILA:** “creditor” of Plaintiffs' home mortgage as defined in TILA can be held vicariously liable for TILA damages arising out of the alleged failure of creditor's servicer to respond properly to Plaintiffs' request for information about the mortgage owner -- [Kissinger v. Wells Fargo Bank, N.A.](#), Case No. 12-60878-CIV (S.D. Fla. Aug. 30, 2012) (denying defendant's motion to dismiss)

### III. TITLE INSURANCE CASES - CHRIS SMART

- **Apparent Authority:** insurer gives agent apparent authority to issue policies on its behalf by entering issuing agent agreement with agent – [Fifth Third Mortgage Co. v. Chicago Title Ins. Co.](#), Case No. 11-3795 (6th Cir. Aug. 30, 2012) (affirming summary judgment)
- **Exclusion 3(a):** lender's shoddy loan underwriting is not an “other matter” that may give rise to an exclusion to coverage – [Fifth Third Mortgage Co. v. Chicago Title Ins. Co.](#), Case No.

11-3795 (6th Cir. Aug. 30, 2012) (affirming summary judgment)

- **Rescission: lender's shoddy loan underwriting is not a misrepresentation of material fact that would allow insurer to rescind policy** – [Fifth Third Mortgage Co. v. Chicago Title Ins. Co.](#), Case No. 11-3795 (6th Cir. Aug. 30, 2012) (affirming summary judgment)

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