



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending May 11, 2012**

*By the Carlton Fields Real Property Litigation Practice Group*

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## CONTENTS

Selection of Real Property Litigation Case Summaries

- I. Florida State Cases
- II. 11<sup>th</sup> Circuit Cases
- III. Title Insurance Cases
- IV. The Weekly Update Team

## I. FLORIDA STATE CASES – STEFANIE LINCOLN

- **Foreclosure: foreclosure judgment and sale set aside where substitute service on defendant's wife was not properly effected** - [Heck v. Bank Liberty](#), No. 1D11-5888 (Fla. 1st DCA May 10, 2012) (reversing order denying motion to set aside final judgment)
- **Foreclosure: evidentiary hearing on attorneys' fees was necessary where the court reserved judgment as to fees and defendants did not waive the hearing** - [Wavra v. Nat'l Credit Union Admin. Board](#), No. 2D10-2976 (Fla. 2d DCA May 9, 2012) (reversing award of attorneys' fees)
- **Tax Certificates: relief from tax deed sale may be proper where Clerk's attempted notice of pending deprivation of property is ineffective and additional reasonable steps might have provided notice** - [Horne v. Miami-Dade County](#), No. 3D11-1806 (Fla. 3d DCA May 9, 2012) (reversing summary judgment)
- **Tax Certificates: tax certificate sale proceeds were prematurely disbursed upon insufficient notice to interested parties** - [Velasquez v. Ettenheim](#) (Fla. 3d DCA May 9, 2012) (reversing order granting motion for disbursement)
- **Foreclosure: verification to complaint may start on separate page** - [Becker v. Deutsche Bank Nat'l Trust Co.](#), No. 4D11-1149 (Fla. 4th DCA May 9, 2012) (affirming summary judgment)
- **Recording Act (Fla. Stat. § 695.01): bank was a bona fide purchaser for value without notice and its mortgage was therefore entitled to priority over trustee's earlier recorded mortgage** - [Gary E. Susser v. OptimumBank](#), No. 4D10-4202 (Fla. 4th DCA May 2, 2012) (per curiam affirmed) ([read the trial court's order granting summary judgment here](#)) [**Congratulations to Carlton Fields Shareholder Marty Solomon, who represented OptimumBank**]

## II. 11<sup>TH</sup> CIRCUIT CASES – LAUREN SEMBLER

- **Dunning Letter: the fact that dunning letter and other documents relate to the enforcement of a security interest does not prevent them from also relating to the collection of a debt under Section 1692e of the Fair Debt Collection Practices Act – [Reese v. Ellis, Painter, Ratterree & Adams, LLP](#), No. 10-14366 (11th Cir. May 1, 2012) (reversing dismissal and remanding)**

## III. TITLE INSURANCE CASES – NONE

## THE WEEKLY UPDATE TEAM



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