



Christopher Smart

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Overview

Chris Smart tries real estate, title insurance, and consumer finance cases. His clients are national title insurance companies, mortgage lenders, and real estate owners, developers, and investors.

For the last 16 years Chris has handled high-profile litigation involving title insurance coverage, closing protection letter claims, title agent defalcations, and insurance bad faith claims. He has tried lender liability, consumer protection, loan servicing, and mortgage foreclosure cases and defended real property developers.

His trials have involved litigation over the sale of real property, the authority of a limited liability company to sell real property, a buyer's status as a bona fide purchaser for value, condominium developments, restrictive covenants, easements, and Florida's Marketable Record Title Act. In one recent example, Chris led a team in a seven-day jury trial on the plaintiffs' claims seeking to rescind our real estate developer clients' purchase of valuable beachfront property, which resulted in a directed verdict confirming our clients' purchase and decisively defeating the claims of a disgruntled member of the seller.

As a complement to his substantial trial experience, Chris also has a comprehensive understanding of the real estate industry and title to real property, and serves as an expert witness on Florida's real estate industry practices and customs. Throughout his career, he has been a leader on the issues that matter to his clients and the real estate industry in Florida. He is the former longtime chair and continuing active member of the Real Property, Probate, and Trust Law Section of The Florida Bar's Title Issues and Standards Committee. This committee reviews, revises, maintains, and promotes Florida's Uniform Title Standards, an essential guide for real estate practitioners navigating difficult questions about marketability of title. In this role, he also works with the committee and the section to promote legislation necessary for or helpful to Florida's real estate industry. He is currently the vice chair of the section's Real Property Litigation Committee. He is also an active member of The Florida Bar's Code and Rules of Evidence Committee. Chris regularly presents at the biannual American Land Title Association's Title Counsel Committee meetings, contributes articles to ALTA's *TitleNews*, and has, for the last decade, presented the annual case law update to the Florida Land Title Association's Claims Prevention, Avoidance, and Education Committee Round Table.

Experience

- *Jockey Club Condo. Apartments, Inc. v. Apeiron Miami, LLC*, Nos. 3D17-1393, 3D17-1494 (Fla. 3d DCA June 3, 2020). Written opinion affirming developer client's victory at trial over adjacent property owner associations who had sued to stop the client's development and holding that (i) original developer's agreement was not a covenant running with the land or binding on a successor-in-title by virtue of its "successors and assigns" language and (ii) trial court did not abuse its discretion in granting rehearing in order to rule that developer was entitled to develop and maintain its property, without consent of adjacent owners, and to remove significant portions of that property from a stop-gap easement granted by agreement to those adjacent owners.
- *Rubinstein v. Keshet Inter Vivos Trust*, No. 0:17-cv-61019 (S.D. Fla. Aug. 13, 2019). Final judgment granting directed verdict after seven-day jury trial on the plaintiffs' claims for rescission and quieting title to property in our clients' name. Read Final Judgment.
- *Carson v. Wells Fargo Bank, N.A.*, No. 8:10-cv-02326, 2018 WL 4442275 (M.D. Fla. Jan. 24, 2018). Order dismissing plaintiff's TILA and RESPA claims with prejudice on finding of res judicata (both claim and issue preclusion). Read Order.
- *Nashagh v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 240 So. 3d 671 (Fla. 2d DCA 2017) (per curiam affirmed). Affirming order granting with prejudice motion to dismiss complaint seeking to block development of real property via injunctive and declaratory relief. Read Order.
- *Wells Fargo Bank, N.A. v. Melendez*, No. 2012-CA-006155 (Fla. Cir. Ct. Nov. 13, 2017). Uniform final judgment of foreclosure entered after trial. Read Order.
- *Wells Fargo Bank, N.A. v. Abner*, No. 2013-CA-001207 (Fla. Cir. Ct. Sept. 7, 2017). Findings of fact and conclusions of law entered after bench trial and prior to a judgment of foreclosure being entered. Read Order.
- *Jockey Club Condo. Apartments, Inc., v. Apeiron Miami, LLC*, No. 16-5957 (Fla. Cir. Ct. July 5, 2017). Final order granting developer's motion for rehearing, removing tennis courts from easement area, and suspending remaining common area easement during developer's maintenance, operation, and development of its property. Read Order.
- *Jockey Club Condo. Apartments, Inc., v. Apeiron Miami, LLC*, No. 16-5957 (Fla. Cir. Ct. May 26, 2017). Final order entered after a five-day bench trial ruling that recorded instruments relied on by plaintiffs to block our developer client from developing and even assuming maintenance of its own property are either barred by MRTA or do not preclude future development and do not preclude the developer from assuming maintenance. Read Order.
- *U.S. Bank, N.A. v. Adams*, 219 So. 3d 211 (Fla. 2d DCA 2017) (reversing summary judgment and denial of motion for rehearing on appeal). Section 559.715 does not create a condition precedent to foreclosure action. Read Opinion.
- *Wells Fargo Bank, N.A. v. Carson*, No. 53-2008-CA-009216 (Fla. Cir. Ct. May 11, 2017). Final judgment in favor of lender on mortgage foreclosure and borrower's TILA defenses after two-day bench trial. Read Order.
- *Jockey Club Condo. Apartments, Inc. v. Apeiron Miami, LLC*, No. 16-5957 CA 40 (Fla. Cir. Ct. Feb. 4, 2017). Order granting summary judgment based on MRTA and extinguishing a restrictive covenant entered into prior to root of title and belatedly recorded after root of title. Read Opinion. Order granting summary judgment on restrictive covenant recorded without specific legal

description of property. Read Opinion. Order granting summary judgment on claim to easements by prescription. Read Opinion.

- *Swan Landing Dev., LLC v. Encore Bank, N.A. & Stewart Title Guar. Co.*, 189 So. 3d 772 (Fla. 2d DCA 2016). PCA affirming final judgment after trial denying plaintiff's claims for reformation of a release based on alleged mutual mistake and for a declaration that the release does not apply to multimillion-dollar claims asserted against our client. Read Opinion.
- *Wells Fargo Bank, N.A. v. Hanzelka*, No. 13-CA-02068 (Fla. Cir. Ct. Jan. 7, 2016). Order granting final summary judgment of foreclosure. Read Order.
- *Schacher v. Wells Fargo Bank, N.A.*, 182 So. 3d 651 (Fla. 2d DCA 2015). PCA affirmance of final judgment of foreclosure in appeal challenging lender's standing based on a written assignment of the mortgage and all money due thereunder. Read Opinion.
- *Wells Fargo Bank, N.A. v. Armstrong*, No. 522013-CA-2378 (Fla. Cir. Ct. Sept. 4, 2015). Final judgment of foreclosure after trial. Read Order.
- *Gillis v. Deutsche Bank Tr. Co. Ams.*, No. 2:14-cv-00418, 2015 WL 2412722 (M.D. Fla. May 21, 2015). Order granting motions to dismiss FDCPA and RICO claims with prejudice. Read Order.
- *AHF-Bay Fund, LLC v. City of Largo*, 169 So. 3d 133 (Fla. 2d DCA 2015). Florida's Second District Court of Appeal reversed an order granting summary judgment in favor of the city of Largo based on a PILOT (payment in lieu of taxes) agreement. The court ruled that the payments called for by the PILOT agreement and sought to be enforced by the city against a not-for-profit, tax-exempt entity are the equivalent of ad valorem taxes that would otherwise be due but for the statutory tax exemption and, as a result, the city's PILOT agreement violates article VII, section 9(a) of the Florida Constitution (providing that municipalities shall impose taxes only as authorized by law) and the public policy of promoting affordable housing. The court ruled that the PILOT agreement is therefore void. Read Opinion.
- *Chicago Title Ins. Co. v. One W. Bank, F.S.B.*, No. 10-CA-18323 (Fla. Cir. Ct. Apr. 10, 2015). Order granting summary judgment and entering final judgment determining that a purported title insurance policy determined not to have been issued by the title insurance issuing agent is void. Read Order.
- *Wells Fargo Bank, N.A. v. Armstrong*, No. 13-CA-002662 (Fla. Cir. Ct. Jan. 9, 2015). Final judgment of foreclosure after trial. Read Order.
- *Encore Bank, N.A. v. Yazdani*, No. 12-CI-1811 (Fla. Cir. Ct. Nov. 17, 2014). Obtained a final judgment in favor of the client after three-day bench trial concerning a release that barred an adversary's multimillion-dollar claims against the client. The court denied the adversary's efforts to reform the release based on allegations of a mutual mistake and also denied the adversary's demand for a declaratory judgment determining that the release did not apply to those multimillion-dollar claims asserted against the client. Read Order.

All Insights

07.30.2020 Florida Governor Limits Mortgage Foreclosure and Eviction Relief to Non-Payment Defaults and Single-Family Mortgagors and Residential Tenants

03.17.2020 COVID-19: What Can a Lender Do to Prepare for the Inevitable Defaults?

11.01.2019	The History of Condominium Development Rhymes: Contract Purchasers Are Again Seeking to Get Out of Purchasing Condominium Units
08.22.2019	Carlton Fields Obtains Directed Verdict in Real Property Lawsuit in Federal Court
08.15.2018	Green Light for Miami Developer
06.19.2017	The New 2016 ALTA Commitment with Florida Modifications: Expressing the Limitations on Liability
05.25.2017	The New 2016 ALTA Commitment: Expressing Limitations on Liability
10.06.2016	Surrendering Your Property in Bankruptcy Means You Must Actually Surrender It
09.30.2016	10 Lawsuits You Can't Ignore
06.23.2016	The Docket: Arizona Supreme Court Rules Against Insurer on Date of Loss Issue
04.26.2016	CFPB Director Offers Cold Comfort on TRID
03.19.2016	The TRID Rule: Impact and Consequences on the Residential Mortgage Lending Market
01.28.2016	Tennessee Supreme Court Ruling in MERS Case May Muddle Marketable, Insurable Title After Tax Deed Sale
09.28.2015	Florida Court Confirms Substantial Compliance Standard Concerning Foreclosures
07.30.2015	Florida's Second District Court of Appeal Confirms Substantial Compliance is the Standard for Evaluating Conditions Precedent to Mortgage Foreclosures
07.01.2015	Florida's Original Real Estate Law Hornbook – The Uniform Title Standards
06.15.2015	Eleventh Circuit: Enforcement of a Security Interest Is Not Debt Collection

All News

- 06.11.2020 Apeiron at the Jockey Club Developer Wins Key Ruling from Appeals Court
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- 06.05.2020 Third District Court of Appeal Upholds Carlton Fields Client Apeiron's Real Property and Development Rights
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- 08.19.2019 Media Spotlights Carlton Fields' Client Win in Complex Title Dispute
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- 08.13.2019 Carlton Fields Clients Win Complex Title Dispute Over Sea Bonay Beach Resort in Hillsboro Beach
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- 03.27.2019 Carlton Fields' Christopher Smart Wins Award for Real Estate Thought Leadership
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- 07.09.2018 Super Lawyers Honors 81 Carlton Fields Attorneys on 2018 Florida "Super Lawyers" and "Rising Stars"
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- 06.29.2018 Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2018 "Legal Elite"
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- 08.15.2017 The New 2016 ALTA Commitment With Florida Modifications: Expressing The Limitations On Liability
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- 08.03.2017 BTI Ranks Carlton Fields among Firms with Best Insurance Industry Client Relationships
-
- 07.11.2017 Judge Rules in Favor of Firm Client Apeiron Miami, LLC of Development at Jockey Club
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- 06.23.2017 Florida Super Lawyers Ranks 92 Carlton Fields Attorneys as 2017 "Super Lawyers" and "Rising Stars"
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- 06.21.2017 Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2017 "Legal Elite"
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- 06.01.2017 The 2016 ALTA Commitment: Expressing Limitations on Liability

Recognition

- Florida Legal Elite, *Florida Trend Magazine* (2017–2020)
- Florida Super Lawyers, *Super Lawyers Magazine* (2013–2019)
- *The Best Lawyers in America*, Real Estate Law (2020–2021)

Professional & Community Involvement

- American Land Title Association
 - Title Claims Committee (2011–present)
 - State Legislative/Regulatory Action Committee (f/k/a Real Property Records Committee) (2015–present)
- Florida Land Title Association (2007–present)
- The Florida Bar
 - Real Property, Probate, and Trust Law Section
 - Title Issues and Standards Committee (2009–present)
 - ◦ Chair (2012–present)
 - ◦ Vice Chair (2009–2011)
 - Code and Rules of Evidence Committee (2020–present)

Speaking Engagements

- "The Federal Summary Judgment Standard and Real Property Litigation," Florida's "Federal Judgment Standard" – Strategic Considerations for Real Property and Construction Litigation, The Florida Bar Continuing Legal Education Committee and the Real Property, Probate, and Trust Law Section (March 23, 2021)
- "Florida's Uniform Title Standards: One of the Best Resources for the Real Estate Practitioner," Audio Webcast for the Real Property, Probate, and Trust Law Section of The Florida Bar (September 23, 2020)
- "Making Your Real Estate Transactions Easier: Correction of Obvious Errors in Deeds and Elimination of Subscribing Witnesses in Leases," 40th Annual Legislative & Case Law Update for the Real Property, Probate, and Trust Law Section of The Florida Bar (August 21, 2020)
- "Privacy Update for the Mortgage Industry," Carlton Fields Client Presentation, Virginia Beach, VA (March 4, 2020)
- "Double Indemnity? What Every Florida Real Estate Professional Should Understand About Title Insurance," Real Property, Probate, and Trust Law Section of The Florida Bar (December 18, 2019 & January 14, 2020)
- "Florida's Marketable Record Title Act," Fidelity National Title Group (October 29, 2019)
- "Title Counsel Committee Meeting," American Land Title Association Fall Meeting, Austin, TX (October 18–22, 2019)
- "Quieting Title to Real Property in Florida," Legal Services of North Florida Inc. (September 26, 2019)
- "Introduction to Understanding Title Insurance," Executive Council Meeting and Convention, Real Property, Probate, and Trust Law Section of The Florida Bar, Clearwater Beach, FL (May 30, 2019)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, Chicago, IL (May 20–21, 2019)

- "Annual Title Insurance Case Law Update: 2018-2019," Florida Land Title Association Claims Roundtable Presentation (April 26, 2019)
- "Understanding Title Insurance" and "The 2016 ALTA Commitment," Title Law: A to Z, Tampa, FL (June 4, 2018)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, Nashville, TN (April 10–11, 2018)
- "Annual Title Insurance Case Law Update: 2017-2018," Florida Land Title Association Claims Roundtable Presentation (April 5, 2018)
- "How I Learned to Stop Worrying and Love the 2016 ALTA Commitment, and Why You Should Too," Fidelity National Title Group (March 1, 2018)
- "Title Counsel Committee Meeting," American Land Title Association Fall Meeting, Miami, FL (October 8–9, 2017)
- "Inside Counsel's Advice: What We Like From You and, More Importantly, What We Don't," Florida Land Title Association Claims Roundtable Presentation (April 21, 2017)
- "Annual Title Insurance Case Law Update: 2016-2017," Florida Land Title Association Claims Roundtable Presentation (April 21, 2017)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, New Orleans, LA (April 3–4, 2017)
- "Professionalism for the Real Property Litigator: Everything You Need to Know, You Learned in Kindergarten," Real Property, Probate, and Trust Law Section of The Florida Bar (November 2, 2016)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, Washington, D.C. (May 16–17, 2016)
- "Annual Title Insurance Case Law Update: 2015-2016," Florida Land Title Association Claims Roundtable Presentation (April 15, 2016)
- "Banking Regulation Update," Carlton Fields In-House Counsel Forum, Orlando, FL (March 2016)
- "Title Counsel Committee Meeting," American Land Title Association Fall Meeting, Boston, MA (October 3–7, 2015)
- "Annual Title Insurance Case Law Update: 2014–2015," Florida Land Title Association Claims Roundtable Presentation (April 22, 2015)

Credentials

EDUCATION

- University of Florida Fredric G. Levin College of Law (J.D., high honors, 2002)
- Johns Hopkins University (M.A., 1999)
- University of Florida (M.A., 1994)
- George Mason University (B.A., with distinction, 1991)

COURT ADMISSIONS

- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida

BAR ADMISSIONS

- Florida

LANGUAGES

- Spanish

Areas of Focus

PRACTICES

- Appellate & Trial Support
- Cannabis Law
- Creditors' Rights and Bankruptcy
- Development
- Eminent Domain
- Environmental, Land Use & Development Approvals and Litigation
- Institutional Investment and Finance
- Litigation and Trials
- Real Property Litigation
- Title Insurance

INDUSTRIES

- Banking, Commercial, and Consumer Finance
- Real Estate