



# Christopher Smart

SHAREHOLDER

TAMPA

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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 has served as an expert on Florida real property law. 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 longtime chair 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. Chris is a regular presenter 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

## Experience

- *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.
- *Jordan v. Wells Fargo Bank, N.A.*, No. 2015-CA-8870 (Fla. Cir. Ct. Feb. 1, 2019). Order dismissing plaintiffs' claims with prejudice and finding that the tortious interference claims were barred by the statute of limitations and because a servicer cannot tortiously interfere with the lender's mortgage loan, except in limited circumstances not alleged, and that plaintiffs' Equal Credit Opportunity Act violation claims failed because they failed to allege they were members of a protected class. Read Order.
- *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 two0day 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
- *Badia v. Wells Fargo Bank, N.A.*, No. 13-CA-1837 (Fla. Cir. Ct. Sept. 23, 2014). Order granting motion to dismiss, with prejudice, claims of an oral promise to provide a written loan commitment based on Florida's Banking Statute of Frauds. Read Order
- *Fed. Deposit Ins Corp. v. Commonwealth Land Title Ins. Co.*, No. 8:12-cv-02247 (M.D. Fla. Mar. 28, 2013). Order granting motion for more definite statement. Read Order
- *Genevish v. Wells Fargo Bank, N.A.*, No. 8:13-cv-00402, 2013 WL 1296276

(M.D. Fla. Apr. 1, 2013). Order granting motion to dismiss FCRA, defamation, and negligence claims with prejudice. Read Order

- *HSBC Bank, USA, N.A. v. Reynolds*, No. 29-2008-CA-024413 (Fla. Cir. Ct. Jan. 16, 2013). Final judgment of foreclosure after trial. Read Order

## All Insights

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- 08.22.2019 Carlton Fields Obtains Directed Verdict in Real Property Lawsuit in Federal Court
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- 08.15.2018 Green Light for Miami Developer
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- 07.26.2018 The Docket: Indiana Court Addresses Insured's Negligent Misrepresentation Claim
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- 06.19.2017 The New 2016 ALTA Commitment with Florida Modifications: Expressing the Limitations on Liability
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- 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
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- 07.30.2015 Florida's Second District Court of Appeal Confirms Substantial Compliance is the Standard for Evaluating Conditions Precedent to Mortgage Foreclosures
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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
12.23.2014	The Docket: U.S. Seventh Circuit Rules 'Complete Defense' Does Not Apply to Title Insurance
12.22.2014	An Unlikely Condition Precedent to Foreclosure in Florida
01.01.2014	Attorney-Client Privilege and Work Product Doctrine in the Context of A Title Insurance Claim: A Case Study
<b>All News</b>	
08.19.2019	Media Spotlights Carlton Fields' Client Win in Complex Title Dispute
08.13.2019	Carlton Fields Clients Win Complex Title Dispute Over Sea Bonay Beach Resort in Hillsboro Beach
03.27.2019	Carlton Fields' Christopher Smart Wins Award for Real Estate Thought Leadership
07.09.2018	Super Lawyers Honors 81 Carlton Fields Attorneys on 2018 Florida "Super Lawyers" and "Rising Stars"
06.29.2018	Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2018 "Legal Elite"
08.15.2017	The New 2016 ALTA Commitment With Florida Modifications: Expressing The Limitations On Liability
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
06.23.2017	Florida Super Lawyers Ranks 92 Carlton Fields Attorneys as 2017 "Super Lawyers" and "Rising Stars"
06.21.2017	Carlton Fields Ranked Top Firm and Attorneys Named Legal Leaders in Florida Trend Magazine's 2017 "Legal Elite"

## Recognition

- Selected for inclusion in *Florida Trend's* Florida Legal Elite (2017-2019)
- Selected for inclusion in *Florida Super Lawyers* (2019)
- Listed in *The Best Lawyers in America*, Real Estate Law (2020)

## Professional & Community Involvement

- Barney Masterson American Inn of Court (2017-present)
  - Best Group Program Award (2017-2018)
- American Land Title Association
  - Title Claims Committee (2011-present)
  - 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)
  - Tax Section

## Speaking Engagements

- “Quieting Title to Real Property in Florida,” Legal Services of North Florida Inc., Webinar (September 26, 2019).
- “Introduction to Understanding Title Insurance,” Real Property Problems Study Committee, The Florida Bar Real Property, Probate and Trust Law Section Executive Council Meeting and Convention, Clearwater Beach, FL (May 30, 2019).
- “Title Counsel Committee Meeting,” American Land Title Association Spring Meeting, Chicago (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 In-House CLE (March 1,

2018).

- "Title Counsel Committee Meeting," American Land Title Association Fall Meeting, Miami (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 (April 3-4, 2017).
- "Professionalism for the Real Property Litigator: Everything You Need to Know, You Learned in Kindergarten," The Florida Bar Real Property, Probate and Trust Law Webinar (November 2, 2016)
- "Title Counsel Committee Meeting," American Land Title Association Spring Meeting, Washington (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 (October 3-7, 2015).
- "Annual Title Insurance Case Law Update: 2014-2015," Florida Land Title Association Claims Roundtable Presentation (April 22, 2015).
- Title Counsel Committee Meeting, American Land Title Association Fall Meeting, Seattle (October 13-14, 2014).
- "Annual Title Insurance Case Law Update: 2013-2014," Florida Land Title Association Claims Roundtable Presentation (April 23, 2014).
- "Everything You Need to Know About Bad Faith (Sort of)," Fidelity National Title Group In-House CLE (March 25, 2014).

## 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
- Development
- Eminent Domain
- Environmental, Land Use and Development Approvals and Litigation
- Institutional Investment and Finance
- Real Property Litigation
- Title Insurance

### INDUSTRIES

- Banking, Commercial, and Consumer Finance
- Real Estate