

I was in computer training all day yesterday. I'm hesitant to go it alone without a Clerk. I rely on the Clerks to keep track of evidence identified and offered/admitted, especially in the longer trials. I do rely on the Clerk's minutes as I do look back at the minutes if I don't issue my report right away and I know that the lawyers look at the minutes to prepare proposed Reports. The case managers also rely on the minutes to keep track of the outcome of hearings and trial when a recommended Order or order is not yet in the court file. I do NOT need a clerk for finding cases or images in Odyssey. Sometimes, the related cases are not linked in Odyssey and I find them by happenstance and bring it to the Clerk's attention, so I'd just need some alternate way of communicating to the Clerk's office about related cases. Thanks so much for all you and the Civil Trial Court clerks do to help the Magistrate's be efficient. Have a good day!

Lee

---

From: Sandi Sauls [mailto:ssauls@leeclerk.org]  
Sent: Monday, May 18, 2009 9:44 AM  
To: Schreiber, Lee Ann  
Subject: FW: Court clerks

Do you believe you can do w/o a court clerk? If not, do you need them for minutes, finding cases in Odyssey, finding images in cases in Odyssey, all of the above, etc. We just trying to figure out how we're going to schedule clerks with the pending budget cuts. However, if you need a clerk then so be it - we can pursue other areas. Thanks, Lee.

Thank you,

Sandi C. Sauls  
Civil Division Manager  
P.O. Box 310  
Fort Myers, FL 33902  
239-533-9188

---

From: Kantor, Marianne [mailto:MKantor@CA.CJIS20.ORG]  
Sent: Friday, May 01, 2009 9:32 AM  
To: Sandi Sauls  
Cc: Lee Ann Schreiber; Steve Studybaker; Nancy Aloia; Fernandez, Susana  
Subject: RE: Court clerks

**20TH CIR 00218**

I quickly asked Lee for her thoughts and we have some ideas but believe we need to run this past Nancy and Susana since they are our supervisors. I'm also including Steve in this reply.

I know that with the inundation of foreclosure cases, your team has been stretched. We have tried to let them know in advance when we have scheduled vacations or other time when we are not scheduled to be in court so they don't have to plan for that time. But I understand your request appears to be for a more permanent situation.

We will follow up as soon as we can.

Marianne

---

From: Sandi Sauls [mailto:ssauls@leeclerk.org]  
Sent: Thursday, April 30, 2009 3:55 PM  
To: Schreiber, Lee Ann; Kantor, Marianne  
Subject: Court clerks

In our efforts to reduce staff we are investigating the necessity of all of the services provided by our office. When I spoke to the Court Clerk team today they suggested that I inquire as to whether the Magistrates need clerks since they take their own notes and have Court Smart as a back-up. What are your thoughts on this?

Thank you,

Sandi C. Sauls  
Civil Division Manager  
P.O. Box 310  
Fort Myers, FL 33902  
239-533-9188

Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure. {Token}

**20TH CIR 00219**

---

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.

This footnote also confirms that this email message has been swept by Symantec Mail Security for the presence of computer viruses.

[www.symantec.com](http://www.symantec.com)

**From:** Schreiber, Lee Ann </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LSCHREIBER>

**To:** Richards, George

Embury, Jon

**CC:** Davis, Dana

**Date:** 8/31/2010 7:55:12 AM

**Subject:** ?RE: Foreclosures

---

I agree with you. On the more recent filings, I am willing to abate for a specific period of time – 90 days max and I cc the case manager for follow up after 90 days. All filings after July 1 will require the “managed mediation,” in essence front ending the efforts to “work it out.” I suspect we will see fewer abatement requests in light of the Supreme Court mandated mediation.

---

**From:** Richards, George

**Sent:** Tuesday, August 31, 2010 8:48 AM

**To:** Schreiber, Lee Ann; Embury, Jon

**Cc:** Davis, Dana

**Subject:** Foreclosures

I’m starting to see a number of motions on the following:

Motions to Abate foreclosure case while they “work something out” with the homeowner. Some of these are 2008 cases. I am denying these motions. My position is either dismiss the case and work it out or proceed with the foreclosure. If we abate these cases they could sit on the docket forever.

Motions to Cancel the Foreclosure Sale which are set in mid October. Again, working something out. I’m denying these motions. They have almost two months to work it out.

I think denying these motions will make them reach a resolutions sooner than later.

Your input please. George

**From:** Schreiber, Lee Ann </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LSCHREIBER>

**To:** Richards, George

**CC:** Embury, Jon

Shelton, Jeremy

**Date:** 9/10/2010 3:54:48 PM

**Subject:** Motions For Continuance of trials

---

I wanted to share my thoughts on motions for continuances and let you know how I intend to approach these motions. With a view towards trying to be relatively uniform Yes, we have a firm policy against continuances, especially on these old cases, but we cannot have blanket no continuance rule in all cases

I am finding the request for continuances (mostly from Plaintiffs) to fall into a couple categories:

- 1) we wish to pursue settlement
- 2) there is insufficient time to set the motion for SJ (even though when we served the Order, we allowed sufficient time; they sat on it)
- 3) Discovery is not concluded
- 4) A Counter-claim is pending and a responsive pleading or motion direct to that counterclaim has not been filed &/or disposed; i.e. a Mo Dismiss)
- 5) I have a (documented) schedule conflict (which cannot be resolved by Admin Order 2.10) and my client will be prejudiced (I've gotten these from Defendant's attorneys because they are scheduled to be on other foreclosure trials (Collier County) on older cases than ours)

I will deny the Mo Continue on all but the last 2.

If the case is not at issue under Rule 1.440, it is reversible error to compel them to go to trial. This may happen on occasion given that MANY old foreclosure cases were set for trial on the Court's own motion (and upon cursory review that made the case appear as if it was at issue and ready to be placed on the trial docket when, in fact, it is not "at issue" within the meaning of the Rule). If a counterclaim is pending and the Complaint is set for trial, I am converting the 10" trial to a 10" case management conference on the Court's own motions and entering an Order accordingly.

If there is a documented, genuine conflict with the trial date, I am granting the motion to continue to another trial date. In other words I'm not just granting the motion and letting the case sit. It will automatically be set on the next trial docket approx 30 days away and the Order granting continuance will re-set the date and time for trial.

**20TH CIR 00222**

Because of the # of requests for continuances, I have developed a couple of templates that I just started using today. The templates for Order Denying Mo Continuance and Order Granting Continuance/convert to Case management conference are attached in cases you might find them helpful or something you could enhance. Either Ellen or I are hand-writing the case name & number and hand writing in the blanks which helps it go faster. On the "service list" we copy the one attached to the motion for continuance (doctor it up on copier if needed) and serve all parties.

Jon/Jeremy, is there a way to streamline these Orders (including the Order setting trial date) so that the case style & # and ALL the attorneys/parties names do not have to be re-typed? We have software capabilities in Lee County to do this (Kim Cambareri wrote the program to integrate with the family court docket in Lee County ). Is there a way to have a forms data base that we populate w standard info? I think Jeremy had to hand type all the trial orders? Not an efficient good use of his or our time.

Your thoughts?

LAS

**From:** Schreiber, Lee Ann </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LSCHEIBER>

**To:** Richards, George

Kyle, Keith

**CC:** Conderman, Ellen

**Date:** 9/3/2010 11:09:46 AM

**Subject:** Mortgage foreclosure cancellation of sales by P upon ex-parte request

---

The Circuit Civil Judges in Lee County have recently decided that they will impose a deadline of 10:00 a.m. the day before a scheduled sale in order to consider ex-parte motions to cancel. The motion must be in substantial conformity with the new FL Supreme Court form. The thinking is that the flow of paperwork from delivery to Judge's desk, review/consider ex-parte to a return of Order cancelling sale to clerk, if appropriate.

Do you think we might adopt a similar policy to try to have consistency across the Circuit?

See you next week. Have a nice (long) weekend.

Lee

**From:** Shelton, Jaremy </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JSHELTON>

**To:** Conderman, Ellen

**CC:**

**Date:** 10/28/2010 12:49:20 PM

**Subject:** ?RE: Foreclosure hearing time in JACS

---

Judge Pellecchia just cancelled his senior judge day on Dec. 30. This means he will only be here one day in December, the 28th. That entire day is now open for MSJs and is the only day open in December.

Sorry about all the confusion and I'll get all of Judge Schreiber's December trials onto JACS asap.

Thanks

From: Conderman, Ellen  
Sent: Thursday, October 28, 2010 10:46 AM  
To: Shelton, Jaremy  
Subject: RE: Foreclosure hearing time in JACS

That will take care of it then, thank you.

Ellen Conderman

Judicial Assistant

Judge Lee Ann Schreiber

239-533-2603 Lee County

941-833-3033 Charlotte County

econderman@ca.cjis20.org

From: Shelton, Jaremy  
Sent: Thursday, October 28, 2010 10:39 AM  
To: Conderman, Ellen  
Subject: RE: Foreclosure hearing time in JACS

20TH CIR 00225

I haven't opened anything for Judge Pellecchia in December yet because he was unsure of what days he could be here (just received confirmation from him today.) He will be here only two days in December, the 28th and 30th. I will be opening time on those days today, so you can direct requests for hearings to those dates.

Because of mass cancellations, we've only had 15-30 MSJs per day, down from the original 150 a day we were doing. November 23 only has 8 scheduled, so there shouldn't be too many complaints from attorneys not being able to get hearing time.

I reblocked the time slots on Dec. 8. I have 70 trials scheduled for that day (also on the 6th, 13th, and 15th) that I will be putting on JACS today and tomorrow. Sorry I didn't get them on there faster.

Thank you,

Jaremy J. Shelton

Civil Case Manager

20th Judicial Circuit, Charlotte County

Administrative Office of the Courts

350 East Marion Avenue

Punta Gorda, Florida 33983

Email: [jshelton@ca.cjis20.org](mailto:jshelton@ca.cjis20.org)

Phone: 941.637.2100

From: Conderman, Ellen  
Sent: Thursday, October 28, 2010 10:09 AM  
To: Shelton, Jaremy  
Subject: Foreclosure hearing time in JACS

Hi Jaremy,

Can you tell me why there are no hearing timeslots in JACS for Judge Pelleccia? I had a call to set a Dec hearing. I opened some slots for Dec 8th but I'm not sure if I was supposed to?

Ellen Conderman

Judicial Assistant

Judge Lee Ann Schreiber

239-533-2603 Lee County

941-833-3033 Charlotte County

[econderman@ca.cjis20.org](mailto:econderman@ca.cjis20.org)

**From:** Shelton, Jeremy </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JSHELTON>

**To:** Conderman, Ellen

**CC:**

**Date:** 8/25/2010 3:34:02 PM

**Subject:** ?RE: Summary Judgements on Foreclosure hearings

---

Right now, the September 21 and September 28 are still available within 25 days. My strategy was to wait as long as possible before opening new dates. This Friday (8/27) I'll open the first available day in October (10/19) so you can tell him that date will be available on JACS as of end of day Friday.

I wasn't sure I was the one to ask either! Your earlier message went around in a circle until it got to me, so I guess I am. I didn't mean to hijack the whole process!

Thanks

From: Conderman, Ellen  
Sent: Wednesday, August 25, 2010 4:28 PM  
To: Shelton, Jeremy  
Cc: Embury, Jon  
Subject: RE: Summary Judgements on Foreclosure hearings

Hi Jeremy,

He needs 25 days out for proper service and wanted more than one date to coordinate. I'll just tell him to wait. I didn't know you were the one to ask, thank you.

Ellen Conderman

Judicial Assistant

Judge Lee Ann Schreiber

239-533-2603 Lee County

941-833-3033 Charlotte County

econderman@ca.cjis20.org

20TH CIR 00228

From: Shelton, Jeremy  
Sent: Wednesday, August 25, 2010 4:17 PM  
To: Conderman, Ellen  
Cc: Embury, Jon  
Subject: RE: Summary Judgements on Foreclosure hearings

Ellen,

I'm planning to open the Senior Judge days in October on JACS for MSJ hearings soon, but I'm waiting a few more days to try to force the attorneys to use the available times in September. There are still over 200 MSJ timeslots available in September.

Beginning next week, I'm going to begin opening the October days, probably one at a time, to try to coerce the attorneys to schedule earlier rather than later, and to avoid days where only a few motions are scheduled.

Thank you,

Jaremy J. Shelton

Civil Case Manager

20th Judicial Circuit, Charlotte County

Administrative Office of the Courts

350 East Marion Avenue

Punta Gorda, Florida 33983

Email: [jshelton@ca.cjis20.org](mailto:jshelton@ca.cjis20.org)

Phone: 941.637.2100

From: Embury, Jon  
Sent: Wednesday, August 25, 2010 4:04 PM  
To: Shelton, Jaremy  
Subject: FW: Summary Judgements on Foreclosure hearings

It looks like Ellen is getting calls about October time. You may want to give her a call. Maybe we can convince the attorney to use the last date in September..

Jon

From: Mause, Denise  
Sent: Wednesday, August 25, 2010 2:58 PM  
To: Embury, Jon  
Subject: FW: Summary Judgements on Foreclosure hearings

Jon – I'm not sure what to tell Ellen.....

Respectfully,  
Denise P. Mause  
Administrative Assistant  
Administrative Office of the Courts  
Twentieth Judicial Circuit  
(941) 637-2110  
Fax: (941) 637-2283  
dmause@ca.cjis20.org

Our mission is to provide professional services to support the judiciary in their efforts to protect rights and liberties, uphold and interpret the law, and provide for the peaceful resolution of disputes.

\_\_\_\_\_

From: Conderman, Ellen  
Sent: Wednesday, August 25, 2010 2:53 PM  
To: Mause, Denise

20TH CIR 00230

Hi Denise,

I know the Senior Judges will be hearing MSJ's beginning the end of September. I got a call asking for October dates but I don't see anything open yet. Can you find out if they can set up the dates for them in October?

Ellen Conderman

Judicial Assistant

Judge Lee Ann Schreiber

239-533-2603 Lee County

941-833-3033 Charlotte County

econderman@ca.cjis20.org

**From:** Shelton, Jeremy </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JSHELTON>

**To:** Conderman, Ellen

**CC:**

**Date:** 9/14/2010 8:11:56 AM

**Subject:** question from attorney

---

An attorney has cases scheduled for trial with Judge Schreiber next month (his email is below), and has filed a Motion to Dismiss the Defendant's Counterclaim in those cases. The trial order indicates that if any filed motions are unheard by the time of trial, they are considered waived or withdrawn. He wants to know how he can have this motion heard since Judge Schreiber will be in Lee County until the date of the trial here in Charlotte County.

These are the two options I can think of:

1. Judge Schreiber can hear the motion at the date/time of trial then proceed with the trial after the motion is heard
2. The attorney can schedule the motion to be heard before Judge Richards before the trial date

Let me know how Judge Schreiber wants to handle this.

Thank you,

Jaremy J. Shelton

Civil Case Manager

20th Judicial Circuit, Charlotte County

Administrative Office of the Courts

350 East Marion Avenue

Punta Gorda, Florida 33983

Email: [jshelton@ca.cjis20.org](mailto:jshelton@ca.cjis20.org)

Phone: 941.637.2100

20TH CIR 00232

From: Kest, Kristopher J. [mailto:Kristopher.Kest@lowndes-law.com]  
Sent: Monday, September 13, 2010 4:36 PM  
To: Shelton, Jaremy  
Subject: ques re foreclosure trial deadlines

Jaremy,

According to the court's foreclosure trial order, any motions not heard prior to the day of trial are deemed waived. We have filed a Motion to Dismiss the Defendant's Counterclaim in several cases, and attempted to schedule those motions for hearing before Judge Schreiber. However, we understand from Judge Schreiber's JA that she is not available again for hearing in Charlotte County until the day of trial (October 4).

I would like to discuss my options with you, as I'm sure it is not the court's intent to foreclose the possibility of any motions being heard between now and the trial date.

Thanks for any assistance you can provide.

Kristopher Kest ( bio)  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
450 S. Orange Ave., Suite 800  
Orlando, FL 32801  
407-418-6285  
Fax: 407-843-4444  
kristopher.kest@lowndes-law.com  
www.lowndes-law.com

---

Notice of Confidentiality: This e-mail communication and the attachment(s) hereto, if any, are intended solely for the information and use of the addressee(s) identified above and may contain information which is legally privileged from disclosure and/or otherwise confidential. If a recipient of this e-mail communication is not an addressee (or an authorized representative of an addressee), such recipient is hereby advised that any review, disclosure, reproduction, re-transmission or other dissemination or use of this e-mail communication (or any information contained herein) is strictly prohibited. If you are not an addressee and have received this e-mail communication in error, please notify the sender of

that circumstance either by reply e-mail or by telephone at (800) 356-6818, immediately delete this e-mail communication from any computer and destroy all physical copies of same.

Replies Filtered: Any incoming reply to this e-mail communication or other e-mail communication to us will be electronically filtered for "spam" and/or "viruses." That filtering process may result in such reply or other e-mail communications to us being quarantined (i.e., potentially not received at our site at all) and/or delayed in reaching us. For that reason, we cannot guarantee that we will receive your reply or other e-mail communications to us and/or that we will receive the same in a timely manner. Accordingly, you should consider sending communications to us which are particularly important or time-sensitive by means other than e-mail.

Notice Under U.S. Treasury Department Circular 230: To the extent that this e-mail communication and the attachment(s) hereto, if any, may contain written advice concerning or relating to a Federal (U.S.) tax issue, United States Treasury Department Regulations (Circular 230) require that we (and we do hereby) advise and disclose to you that, unless we expressly state otherwise in writing, such tax advice is not written or intended to be used, and cannot be used by you (the addressee), or other person(s), for purposes of (1) avoiding penalties imposed under the United States Internal Revenue Code or (2) promoting, marketing or recommending to any other person(s) the (or any of the) transaction(s) or matter(s) addressed, discussed or referenced herein. Each taxpayer should seek advice from an independent tax advisor with respect to any Federal tax issue(s), transaction(s) or matter(s) addressed, discussed or referenced herein based upon his, her or its particular circumstances.

[v4.30]

**From:** Sloan, James D </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JDS5227>

**To:** Gutshall, Tilena

**CC:**

**Date:** 5/6/2010 3:32:16 PM

**Subject:** ?FW: Civil Case Management/Foreclosure program-20th-Awesome Progress--Next Steps!

---

The one you don't have is the Civil CMGuidelines.

---

**From:** Mann, Sheila

**Sent:** Wednesday, May 05, 2010 2:16 PM

**To:** Sloan, James D

**Cc:** Greider, Christine

**Subject:** FW: Civil Case Management/Foreclosure program-20th-Awesome Progress--Next Steps!

Judge Sloan,

This just came out. I have not reviewed the documents as of yet. We will need to discuss/formulate a plan to submit to the Chief Judge by 5/30/10. I am asking the clerk to provide the necessary reports to assist us in getting baseline information.

I will be out next week, but perhaps we could meet the week after?

Thank you.

Sheila

---

**From:** Callanan, Richard

**Sent:** Wednesday, May 05, 2010 12:22 PM

**To:** Aloia, Nancy K; Middlebrook, Mark; Embury, Jon; Mann, Sheila; Mravic, Deborah; Cambareri, Kimberly; McLean, Craig

**Cc:** Fishbeck, Eric; Ederr, Suzanne; Kiesel, Lisa

**Subject:** FW: Civil Case Management/Foreclosure program-20th-Awesome Progress--Next Steps!

Dear All

I apologize for sending what may be the longest email of all time, but I wanted to send you these latest model Civil DCM Orders/Forms (attachments) developed by Collier and Lee working groups so we all have the latest version. I also want to lay out next steps to keep this rocking. You are all making amazing progress with judges and stakeholder groups, and I can't tell you how appreciative I am.

Just so we stay on track, here is a recap of next steps, which we can discuss in more detail at the next June 11<sup>th</sup> Civil DCM meeting :

**1. Civil DCM Administrative Order ( Suzanne working with Mark and Nancy)**

Once we have model forms finalized and plans, we will develop a Circuit AO to implement the full DCM program effective 10/1/10. Lee and Collier look like a 10/1 start date is set, but if you believe that more time is needed in your county to go to the full DCM model, you can request a delayed start date and we will keep it flexible. I am asking Suzanne Ederr to work with you, using the Criminal DCM AO as a model, to get this in draft form by July 1, 2010.

**2. Model Forms on Website ( Craig/Kim Cambo/Nancy)**

We will want to create a Civil DCM Project link on our homepage that describes the Civil DCM/Backlog Reduction program goals and provides a link for the Bar and staff to the model Civil DCM forms and the Civil DCM AO. If possible they should be "drop down forms" that can be completed on-line. If not possible yet, pdf would be a start.

20TH CIR 00235

I would ask Craig to take lead on this and try to have forms up and linked by July 1.

### 3. DCM Guidelines/Backlog Plans ( Mark, Nancy, Jon & Sheila)

Backlog reduction plans ( which most of you have already done in draft form) need to be submitted to the Chief Judge per the guidelines by 5/30/10. This is not just busy work, it is important that we have written Civil Backlog and DCM plans so that we have a baseline of where we started, goals set, staffing and activities to be implemented so we can demonstrate results.

Backlog Reduction Plans can be concise and address the following:

#### 20<sup>th</sup> Circuit Civil DCM/Backlog Reduction Plan

County: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_

a. Civil Case Management Stakeholder Working Group

*A local Civil Case Management Stakeholder Working Group should be established by the Circuit Administrative Judge or Civil Presiding Judge to coordinate backlog reductions efforts. The working group should include Circuit Civil and County Civil judges and representatives from the local Bar, Clerks office and Court case management staff to ensure consultation with key stakeholders in the process;*

**Describe local approach and activities:**

b. Analysis of Civil Backlog - Identification of Delayed/Backlog Target Cases

*Each plan should provide an analysis of the trends in circuit civil and county civil filings, dispositions and baseline data on the number and types of Circuit Civil cases pending over 18 months, County Civil pending over 12 months and the number of Circuit Civil Foreclosure filings, dispositions and number of cases pending over 12 months.*

**Describe filing trends, clearance rates and baseline data on pending Circuit Civil over 18 months, Foreclosure cases over 12 months( from the date you began your backlog reduction program) attach charts on baseline data:**

c. Backlog Reduction Goals

*Based on the analysis of the existing situation, the plan should set realistic goals to achieve 20-50% reduction in backlog (cases pending over goal) based upon the nature and volume of cases pending in excess of time standards (Circuit Civil over 18 months and Non-Jury cases pending over 12 months). Progress should be tracked monthly.*

**Goals set for Circuit Civil, Foreclosure and County Civil backlog reduction:**

- d. Updated Dismissal Lists for Inactivity should be developed in cooperation with the Clerk's Office on an ongoing basis.

**Describe local approach to purging cases that are shown as active pending but should be dismissed or otherwise disposed:**

- e. Case Management/Settlement Conferences

*The plan should set procedures for use of Magistrate, Senior Judges or Case Manager to screen, identify and assist judges in holding case management or status conferences in backlog or delayed cases. Steps to ensure coordination with the local Clerks staff on scheduling, case tracking procedures and MIS reporting should be described. The use of Senior Judges to assist with expedited foreclosure dockets or other backlog reduction activities planned should be described.*

***Describe your backlog reduction activities planned for July 2010- June 2011, and/or what is already underway( i.e. Use of Sr Judges for expedited Foreclosure dockets, Case management reviews by Case managers, Settlement of case conferences in older cases, etc.:***

- f. Procedures and Form of Order for Referral to Magistrate and Order Setting Case Management Conference should be developed based upon the circuit model forms to the extent practical;

***Describe how cases will be referred to Magistrate/Case Manager for CMC's in older cases. If you are planning to use orders/forms other than the circuit models describe and provide copies:***

#### 4. Model Case Management Tracking/Aging Reports ( Eric/Klm)

Eric will be working with you on a description of elements and format of the key model case management reports/information that we will need to develop with the Clerks. Many of you are already getting these aging reports in some form, but you will need the aging information more regularly in order to manage the CM process. I would like to get these report formats to the Clerks and linked on the website by July 1<sup>st</sup>.

- a. Monthly Age of Pending Civil Cases Report by Case type
- b. Monthly Civil Case Pending Report – Exception List of Civil Cases Pending over Time Goal ( 18 months)
- c. Monthly Report of Number of Cases Filed and Disposed by Case Type/Docket
- d. Non-Service Report of Cases Pending over 120 days without service( Dismissal list)
- e. Monthly Report-Answered Cases over 120 days without filed Counsel Stipulated Case Management Plan

**20TH CIR 00237**

Thanks again for all your great work on this.

*Richard Callanan, Trial Court Administrator  
20th Judicial Circuit  
1700 Monroe Street  
Fort Myers, FL. 33901  
239 533-1712*

**From:** Starnes, Hugh E </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=HES2257>

**To:** Winesett, Sherra

Thompson, James

Gerald, Lynn

**CC:** Hamsharie, Deborah

Aloia, Nancy K

English, Sharon

**Date:** 10/30/2010 10:16:36 AM

**Subject:** ?RE: Case Caption

---

The most effective way to handle this would probably be for Sharon English to call the lead contact person with each of the mass foreclosure law firms and tell them to change their pleadings. Nancy Aloia has told me they have good contacts with most all of these firms and they are actually pretty responsive when we go through their designated representative.

---

**From:** Winesett, Sherra

**Sent:** Friday, October 29, 2010 5:16 PM

**To:** Thompson, James; Gerald, Lynn; Starnes, Hugh E

**Cc:** Hamsharie, Deborah

**Subject:** RE: Case Caption

I agree with you. The comments to Florida Rule of Civil Procedure 1.100( c ) entitled "Pleadings and Motions - Caption" states: "Only the first party on each side need be stated in the caption, **and these are not changed regardless of changes in parties.**" Also, see Trawicks, Section 6.2 which states in the 4<sup>th</sup> paragraph, "**The names of the parties in the caption are never changed** even when all original parties have cease to be parties."

Like you, I also got tired of striking out the direction to the clerk to change the caption so I had stamps made for me and my judicial assistant which state: "THE STYLE OF THE CASE SHALL REMAIN UNCHANGED AS ORIGINALLY FILED. SEE FLA.R.CIV.P. 1.100 AND COMMENTS THERETO." If you will stop by, Debbie will give you the stamps to you for you and Judge Starnes to use. Sherra

---

**From:** Thompson, James

**Sent:** Friday, October 29, 2010 4:49 PM

**To:** Gerald, Lynn; Winesett, Sherra; Starnes, Hugh E

**Subject:** Case Caption

Need legal advice. I was taught, or thought I was taught, that the caption of a case was fixed on filing and despite the fact the parties may be changed by substitution the original caption never changed. I think I got it from Trawick. Question – was that ever the law and if so, is it still the law? I am getting a lot of orders that substitute parties and that direct clerk to change the caption. I am tired of striking out the change of caption part of these orders, particularly if I am wrong.

Jim

**From:** Studybaker, Steven </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SSTUDYBAKER>

**To:** Schreiber, Lee Ann

**CC:**

**Date:** 5/20/2009 9:54:18 AM

**Subject:** ?RE: Court clerks

---

Thanks. I did not follow the email chain carefully and thought we did ans.

---

**From:** Schreiber, Lee Ann

**Sent:** Wednesday, May 20, 2009 10:50 AM

**To:** Kantor, Marianne; Studybaker, Steven; Fernandez, Susana; Aloia, Nancy K

**Subject:** FW: Court clerks

This is the second inquiry I received from Sandy Sauls on the same subject. That last emial of 4/30/09 she sent to both Kantor and me which we shared with this group. There were some email discussions between the five of us, but, based on Sandy's follow up inquiry, no one communicated to her the outcome of our discussions. Thus, I am communicating directly to her on this second inquiry.

---

**From:** Schreiber, Lee Ann

**Sent:** Wednesday, May 20, 2009 10:45 AM

**To:** Sauls, Sandi

**Subject:** RE: Court clerks

I was in computer training all day yesterday. I'm hesitant to go it alone without a Clerk. I rely on the Clerks to keep track of evidence identified and offered/admitted, especially in the longer trials. I do rely on the Clerk's minutes as I do look back at the minutes if I don't issue my report right away and I know that the lawyers look at the minutes to prepare proposed Reports. The case managers also rely on the minutes to keep track of the outcome of hearings and trial when a recommended Order or order is not yet in the court file. I do NOT need a clerk for finding cases or images in Odyssey. Sometimes, the related cases are not linked in Odyssey and I find them by happenstance and bring it to the Clerk's attention, so I'd just need some alternate way of communicating to the Clerk's office about related cases. Thanks so much for all you and the Civil Trial Court clerks do to help the Magistrate's be efficient. Have a good day!

Lee

---

**From:** Sandi Sauls [mailto:ssauls@leeclerk.org]

**Sent:** Monday, May 18, 2009 9:44 AM

**20TH CIR 00240**

To: Schreiber, Lee Ann

Subject: FW: Court clerks

Do you believe you can do w/o a court clerk? If not, do you need them for minutes, finding cases in Odyssey, finding images in cases in Odyssey, all of the above, etc. We just trying to figure out how we're going to schedule clerks with the pending budget cuts. However, if you need a clerk then so be it - we can pursue other areas. Thanks, Lee.

Thank you,

Sandi C. Sauls  
Civil Division Manager  
P.O. Box 310  
Fort Myers, FL 33902  
239-533-9188

---

From: Kantor, Marianne [mailto:MKantor@CA.CJIS20.ORG]  
Sent: Friday, May 01, 2009 9:32 AM  
To: Sandi Sauls  
Cc: Lee Ann Schreiber; Steve Studybaker; Nancy Aloia; Fernandez, Susana  
Subject: RE: Court clerks

Sandi,

I quickly asked Lee for her thoughts and we have some ideas but believe we need to run this past Nancy and Susana since they are our supervisors. I'm also including Steve in this reply.

I know that with the inundation of foreclosure cases, your team has been stretched. We have tried to let them know in advance when we have scheduled vacations or other time when we are not scheduled to be in court so they don't have to plan for that time. But I understand your request appears to be for a more permanent situation.

We will follow up as soon as we can.

Marianne

20TH CIR 00241

---

From: Sandi Sauls [mailto:ssauls@leeclerk.org]  
Sent: Thursday, April 30, 2009 3:55 PM  
To: Schreiber, Lee Ann; Kantor, Marianne  
Subject: Court clerks

In our efforts to reduce staff we are investigating the necessity of all of the services provided by our office. When I spoke to the Court Clerk team today they suggested that I inquire as to whether the Magistrates need clerks since they take their own notes and have Court Smart as a back-up. What are your thoughts on this?

Thank you,

Sandi C. Sauls  
Civil Division Manager  
P.O. Box 310  
Fort Myers, FL 33902  
239-533-9188

Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure. {Token}

---

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.

This footnote also confirms that this email message has been swept by Symantec Mail Security for the presence of computer viruses.

[www.symantec.com](http://www.symantec.com)

**From:** Studybaker, Steven </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SSTUDYBAKER>

**To:** Fernandez, Susana

Kantor, Marianne

Schreiber, Lee Ann

**CC:**

**Date:** 5/6/2009 7:37:12 AM

**Subject:** ?RE: Court clerks

---

1. Attys sometimes rely on court minutes during the interval between the hrgs and the filing of the ROs, whether prepared by attys or the GMs, to answer questions regarding actions that need to be taken and in advising clients. I assume but I am not certain attys rely on the mins in preparing orders even though attys take notes. In some instances attys have attached copies of mins to letters in which the attys question the correctness of ROs prepared by other attys.
2. I believe we each take detailed, comprehensive notes; however, there are times when I view the mins for clarification or confirmation.
3. From the perspective of the GMs, the discs would provide an adequate substitute for notes assuming ECR and Ct Admin would not be upset or annoyed if the number of requests for discs ?.
4. If we are provided w/the exhibit labels, we can admit the exhibits at the hrgs, but we would have to take them to the clerk's office; someone would have to be assigned to receive the exhibits on a regular basis. Furthermore, I assume we would have to prepare the exhibit lists that become part of the court file.
5. I don't know if the presence of clerks is required by statute or court rule. In Collier one of the judges for whom I served is adamant the GMs check mins. The judge takes the position the mins are the official record and must be accurate.
6. The clerks take the mins, mark the exhibits, take the exhibits back to the clerk's office for proper storage, prepare the exhibit list, and sometimes help in other ways during hrgs. For example, during yesterday's hrg my clerk printed a family case Hx bec back child was an issue and neither party brought a Hx. I think we can function w/o the clerks, and the mortgage foreclosures place tremendous burdens on the clerks. However, we and the system function better when clerks are present.
7. Our notes are not public records pursuant to Fla.R.Jud.Admin. 2.420(c) (1)
8. Someone should check w/the appellate clerks to confirm there are no acts the trial clerks take that we would take that would affect the preparation of the appellate record. I assume if we prepare the exhibit lists, there would be no effect on the record preparation for appeals.

---

From: Fernandez, Susana  
Sent: Tuesday, May 05, 2009 6:52 PM  
To: Kantor, Marianne; Schreiber, Lee Ann; Studybaker, Steven  
Subject: RE: Court clerks

20TH CIR 00243

I would like to hear your ideas before answering this email. How are they presently assisting you now in the courtroom?

They mentioned on the email below that you take your own notes but that does not serve the same purpose as the clerks minutes which are public in the court file. Do attys. rely on the clerk minutes to prepare the R&R?

What do you think about the whole idea?

---

From: Kantor, Marianne  
Sent: Friday, May 01, 2009 9:32 AM  
To: Sauls, Sandi  
Cc: Schreiber, Lee Ann; Studybaker, Steven; Aloia, Nancy K; Fernandez, Susana  
Subject: RE: Court clerks

Sandi,

I quickly asked Lee for her thoughts and we have some ideas but believe we need to run this past Nancy and Susana since they are our supervisors. I'm also including Steve in this reply.

I know that with the inundation of foreclosure cases, your team has been stretched. We have tried to let them know in advance when we have scheduled vacations or other time when we are not scheduled to be in court so they don't have to plan for that time. But I understand your request appears to be for a more permanent situation.

We will follow up as soon as we can.

Marianne

---

From: Sandi Sauls [mailto:ssauls@leeclerk.org]  
Sent: Thursday, April 30, 2009 3:55 PM  
To: Schreiber, Lee Ann; Kantor, Marianne  
Subject: Court clerks

Page 3  
In our efforts to reduce staff we are investigating the necessity of all of the services provided by our office. When I spoke to the Court Clerk team today they suggested that I inquire as to whether the Magistrates need clerks since they take their own notes and have Court Smart as a back-up. What are your thoughts on this?

Thank you,

Sandi C. Sauls  
Civil Division Manager  
P.O. Box 310  
Fort Myers, FL 33902  
239-533-9188

Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure. {Token}

**From:** Thompson, James </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JRT2831>

**To:** Carlin, John S.

McHugh, Michael

Aloia, Nancy K

Starnes, Hugh E

**CC:**

**Date:** 10/29/2010 7:03:16 AM

**Subject:** Good of the Order (??)

---

The envelopes with many of the foreclosure orders I sign do not contain any return address. I think a better practice would be to stamp these with some return address ( Office of Magistrates ? Something) with "Return Service Requested" then when the mail does not reach the addressee it would be returned and could be placed in the court file providing a record of its non delivery.

This is not a big deal for me. Especially since many of the return addresses are for the attorneys and those would not end up in the court file when there is no delivery. Just a thought.

Jim

**From:** Thompson, James </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JRT2831>

**To:** Aloia, Nancy K

**CC:**

**Date:** 8/4/2010 12:51:32 PM

**Subject:** Forecl order Leave to Amend.doc

---

Nancy,

This is a draft of a possible form order if we have many improper Motions to Amend.

Judge Thompson

**From:** Thompson, James </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JRT2831>

**To:** Rose, Penelope

**CC:**

**Date:** 8/4/2010 7:15:48 AM

**Subject:** ?RE: Sr Judge form

---

Thanks. Will bring it down latter today.

I am in for Judge Hayward but do not anticipate it requiring all day so I am available as needed to sign any foreclosure stuff.

Judge Thompson

From: Rose, Penelope

Sent: Tuesday, August 03, 2010 9:48 AM

To: Thompson, James

Subject: FW: Sr Judge form

Good Morning Your Honor:

I had a conference call with the State yesterday regarding the Senior Judge Foreclosure Allocation Funds.

In case we are audited by the State, you will need to complete the attached " SrJudge.pdf" every two weeks for foreclosure work only. And then send it to me via email for my files.

So going forward, I will need one on August 15 and the next one August 31. You will be paid twice per month for the foreclosures.

All other SJ work (EID, Shelters, Felony, Family, DV) can be submitted by regular email to me at the end of the month which we presently do. The money for foreclosure work comes from a separate State fund.

So you will receive 3 payments each month. Two for foreclosure related work and one for everything else.

**20TH CIR 00248**

I will fill out your July foreclosure work and leave it for you to sign.

Penelope

From: Pace, Cheryl  
Sent: Monday, August 02, 2010 3:40 PM  
To: Rose, Penelope  
Subject: Sr Judge form

Penelope –

Matt should be down in a bit to get you the latest adobe downloaded. I hope this takes care of it. Here's the latest – I know there are no Japanese characters in the document, but I'm sure the latest version has support for them if there is.

Thank You,

Cheryl Pace

Internet/Intranet Manager

(239) 533-2915 work

(239) 826-4983 mobile

<mailto:cpace@ca.cjis20.org>

**From:** Thompson, Lucinda </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LTHOMPSON>

**To:** Golden, Diana

Repperger, Kathryn

Trammell, Cindy

Hamsharie, Deborah

Conderman, Ellen

**CC:** Cambareri, Kimberly

Pace, Cheryl

**Date:** 7/7/2010 8:28:04 AM

**Subject:** Please note the changes listed below...

---

**RESIDENTIAL MORTGAGE FORECLOSURE HEARINGS:**

**Please note:** Attorneys must be present for hearings. No telephonic appearances will be permitted in residential mortgage foreclosure cases.

- For hearing time on **all Residential Mortgage Foreclosure**, please e-mail [massforeclosure@leeclerk.org](mailto:massforeclosure@leeclerk.org).  
(Please do not place dashes in the case number for e-mailed requests. Example: 04CA20008)

Please be advised that I have asked Kim and Cheryl in IT to make the above changes to JACS. Judge Schreiber's office is no longer scheduling any residential foreclosure hearings.

*Lucinda Thompson  
Judicial Assistant to Judge Fuller  
Lee County Justice Center  
1700 Monroe Street  
Fort Myers, FL 33901  
(239) 533-2831*

**From:** Winesett, Sherra </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SWINESETT>

**To:** Schreiber, Lee Ann

**CC:**

**Date:** 3/3/2010 5:55:56 PM

**Subject:** In re: Amendments to the Fla. Rules of Civil Proc/FJ Form relating to Foreclosures

---

Lee, Since you'll be handling the residential foreclosures, if you're not already aware of the Amendments made by the Fla. Supreme Court to the Civil rules of Procedure and Final Judgment of Foreclosure Form, you'll want to get a copy of the Court's Opinion No.SC09-1460 and No. SC09-1579 and review it. Looks like it's effective immediately. I just found out about it today Judge McHugh and wanted to bring it to your attention just in case you weren't aware of it. If you need a copy, have your ja contact Debbie. Sherra

**From:** Winesett, Sherra </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SWINESETT>

**To:** McHugh, Michael

Gerald, Lynn

Fuller, Joseph

Schreiber, Lee Ann

Rosman, Jay

**CC:** Sauls, Sandi

English, Sharon

Crongeyer, Robert L.

**Date:** 3/5/2010 11:20:10 AM

**Subject:** ?RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

---

As I read the opinion, the 60 day comment period only applies to the new final judgment form, Form 1.996(a), not the new form on the Motion to Cancel and Reschedule Foreclosure Sale, so its effective as of 2/11/10. However, I do agree we need to give a prospective date when we will require the new form. Otherwise, we're going to have a lot of motions to set aside sales that didn't get cancelled under the prior procedures allowed, or worse, hearings on whether the form is procedural and not mandatory.

I've also copied our new case manager and magistrate with this e-mail because they attended the meeting where the Sup.Ct. opinion was brought up, and although we don't anticipate them being involved with foreclosures, they should be in the loop. Sorry, I overlooked you on the first e-mail.

From: McHugh, Michael

Sent: Friday, March 05, 2010 10:20 AM

To: Winesett, Sherra; Gerald, Lynn; Fuller, Joseph; Schreiber, Lee Ann; Rosman, Jay

Cc: Sauls, Sandi

Subject: RE: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

Judge Winesett and I had a conversation about the cancellation and rescheduling of foreclosure sales issue. It was our opinion that since the Supreme Court has promulgated the new form for the cancellation and rescheduling of sales, we should require the plaintiffs in these cases to use it. The rule adopted appears to be purely procedural, therefore not needing any enabling statute. The rule is effective immediately, with the understanding that there is a 60 day comment period. Our proposal is to require the form beginning April 1st. This is roughly consistent with the comment period and will give us an opportunity to make the plaintiff firms aware of our requirement in this regard, presumably through Mr. Hill and Mr. Goetz. This would mostly effect the cancellations that occur when the plaintiff firm calls the clerk's office and asks to cancel the sale before any motion has been filed or order signed. Under the new procedure the clerk's office would decline to cancel the sale and tell them the appropriate motion needs to be filed. Let me know your thoughts on this issue so we can decide the appropriate way to proceed.

Thanks,

Mike.

20TH CIR 00252

11\_16\_2010

From: Winesett, Sherra

Sent: Thursday, March 04, 2010 6:12 PM

To: Gerald, Lynn; McHugh, Michael; Fuller, Joseph; Schreiber, Lee Ann; Rosman, Jay; Winesett, Sherra

Subject: Re: Fla. Supreme Ct Cases No SC09-1460 and SC 09-1579 - Amendments to Rules/Form 1.996 re foreclosures

I reviewed the opinion in the consolidated Fla. Sup. Ct. Case No. SC09-1460 entitled In Re: Amendments to the Florida Rules of Civil Procedure and Case No. SC09-1579 entitled In Re: amendments to the Florida Rules of Civil Procedure - Form 1.996 (Final Judgment of Foreclosure).

Case No. SC 09-1460 amends rule 1.110(b) to require verification of mortgage foreclosure complaints involving residential real property, adopts new form 1.924, Affidavit of Diligent Search and Inquiry and new form 1.996(b), Motion to Cancel and Reschedule Foreclosure Sale which provides for a reason to be checked to explain why the foreclosure sale needs to be cancelled and rescheduled. Fla. Sup. Ct. Case SC 09-1579 amends Form 1.996, the Final Judgment of Foreclosure form and numbers it Form 1.996(b).

As I read the opinion on the consolidated cases, the amendments made by SC 09-1460 were effective immediately upon the release of the opinions on Feb. 11, 2010. However, there is a 60 day period from that date during which comments on the amendments made to form 1.996(a) may be filed.

I think the question is, Is the use of these forms, or the information required by them, mandatory? If so, effective immediately, we need to make sure new Complaints filed are verified, Diligent Search affidavits in compliance with the new rule are filed for constructive service, and a reason is stated in a motion for cancellation of the sale.

You should note in its opinion, the Court rejected including a provision in the Final Judgment form that the sale be cancelled if Plaintiff's representative is not present at the sale, finding that to be in conflict with the new form for Motion to Cancel and Reschedule Foreclosure Sale.

Judge Gerald has suggested that with respect to the Final Judgment Form we require the Plaintiff's attorney to file a certification with the proposed final judgment, listing any provisions in the proposed judgment that are not in Form 1.996(a) so that the presiding judge can quickly review those additional provisions to determine if they are allowable provisions.

Comments or suggestions? Sherra

**20TH CIR 00253**



**From:** Winesett, Sherra </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SWINESETT>

**To:** Fuller, Joseph

Gerald, Lynn

Rosman, Jay

McHugh, Michael

Schreiber, Lee Ann

Winesett, Sherra

**CC:** English, Sharon

**Date:** 5/7/2010 11:38:56 AM

**Subject:** ?FW: mortgage form

---

Here is Sharon's e-mail with the uniform form attached.

From: English, Sharon

Sent: Thursday, May 06, 2010 3:01 PM

To: Winesett, Sherra

Subject: mortgage form

I found the same form you provided me on the 12th Circuit's website. I guess what I'm trying to find out is if you would like your form to also have drop boxes, etc (the shaded areas on the form for litigants to fill out)? Thanks.

Sharon English  
Civil Case Manager

239-533-2801

**From:** Winesett, Sherra </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SWINESETT>

**To:** Fuller, Joseph

Gerald, Lynn

Rosman, Jay

McHugh, Michael

Schreiber, Lee Ann

Winesett, Sherra

**CC:** English, Sharon

**Date:** 5/7/2010 11:36:56 AM

**Subject:** ?RE: Foreclosure motions/Uniform Final Judgment Needed?

---

This just points out the need for a standard form final judgment. Judge Gerald has suggested a certification by the plaintiff's attorney listing any nonstandard provisions in the proposed final judgment. In working on his suggestion, I learned of a uniform final judgment form used in other circuit and asked our civil case manager to see if we could develop one for our circuit. Sharon located the form on the website of the 12th judicial circuit. I am forwarding her e-mail with the form attached to you. The attorney fills in the information in the areas allowed and can't modify other provisions. Other than the names & numbers any modifications or changes to the form must be listed in Item #8. That would make the judge's job a lot easier. Currently we have to review the entire form for such provisions as George points out are being inserted by attorneys.

Please let me know if you would like us to work on developing a uniform form for this circuit. You will note that the 12th's form says it's been updated to comply with the new final judgment form.

Sherra

From: Fuller, Joseph

Sent: Friday, May 07, 2010 11:08 AM

To: Winesett, Sherra; Gerald, Lynn; Rosman, Jay; McHugh, Michael; Schreiber, Lee Ann

Subject: FW: Foreclosure motions

From: Richards, George

Sent: Friday, May 07, 2010 9:45 AM

To: Fuller, Joseph

Subject: Foreclosure motions

Judge Fuller,

20TH CIR 00256

I have been seeing the following on Ex Parte Foreclosure motions from some of the big firms.

This may not be the exact wording, and I did not keep copies. If you need examples please just let me know.

Motion to cancel upcoming foreclosure sale, they are now adding something like, "should the sale have already occurred, then it will be set aside without further hearing or order". Due process??!

On motions to set aside the Final Summary Judgment, dismiss the case, and return the original documents, I have seen one or both of the following,

1. Should the case need to be reopened for any reason it will be at no cost to the Plaintiff.
2. If the note and mortgage are marked or cancelled, upon the return they will remain if full force and effect. The markings and cancellation are null and void.

Thanks George

**From:** Winesett, Sherra </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SWINESETT>

**To:** Schreiber, Lee Ann

**CC:** English, Sharon

Thompson, James

**Date:** 6/3/2010 5:01:54 PM

**Subject:** ?RE: Fl Supreme Court DENIED Motions for rehearing on the their Feb 11 mortgage foreclosure opinion

---

Lee, Thanks for the up to date information on this. I forwarded a copy to Judge J. Thompson since he's doing foreclosures. Judge Starnes and Judge Schoonover don't have e-mails but should have the information if they're doing foreclosures. Also, I'm sending a copy to our case manager since I know she's been checking on these amendments.

As an aside, I had a new issue in a foreclosure trial today. The Plaintiff did not have the original note at trial. Plaintiff also had no count in the complaint to reestablish a lost note but represented wouldn't have helped because the note was not lost, just in transit and couldn't be obtained by trial time. They did have a copy of the note and certified copy of the mortgage and assignment to the plaintiff. Plaintiff argued neither the original note nor reestablishment is required if plaintiff seeks only an in rem judgment and the court does not retain jurisdiction to enter a deficiency judgment. The case law cited was Lovinggood v. Butler const. Co., 100 Fla. 1252, 131 So. 126 (Fla 1930) See Headnote [7] and Lawyers Title Insurance co. v. Novastar Mortgage, Inc., 862 So.2d 793 (Fla. 4<sup>th</sup> DCA 2003) See Headnote [5][6][7]. Just to make sure, no one would seek a deficiency judgment, I titled the final judgment as IN REM FINAL JUDGMENT OF FORECLOSURE and instead of just not retaining jurisdiction to enter a deficiency judgment, I specifically so stated.

---

**From:** Schreiber, Lee Ann

**Sent:** Thursday, June 03, 2010 5:27 PM

**To:** McHugh, Michael; Winesett, Sherra; Rosman, Jay; Fuller, Joseph; Gerald, Lynn

**Cc:** Richards, George

**Subject:** Fl Supreme Court DENIED Motions for rehearing on the their Feb 11 mortgage foreclosure opinion

Earlier today, the Florida Supreme Court denied the motion for rehearing filed by Ben-Ezra & Katz, P.A. and the Motion for Rehearing/Clarification filed by Shapiro & Fishman as it relates to the Amendments to the Florida Rules of Civil Procedure on Foreclosures and the Forms (Final Judgment of Foreclosure).

I have had a number of contested hearings about whether the opinions were binding since the time for rehearing had not expired and the original opinion stated that the opinion is "not final until time expires to file rehearing motion and, if filed, determined."

Since rehearing was denied, the opinions set forth in SC09-1460 and SC09-1579 are final. We should thus expect to see VERIFIED Complaints on residential property, use of the new form "Affidavit of Diligent Search & Inquiry", new approved Form for "Mo cancel/Re-set Foreclosure Sales", (uniform) Final Judgments which are in substantial conformity with the approved Form 1.996(a) and a bigger push for managed mediation on homestead property.

Today's Supreme Court Decision can be found at [www.flcourts.org](http://www.flcourts.org). click on Supreme Court, then Court Opinions, then Supreme Court opinions, then click on year (2010) and look under the 06/03/09 opinions.

Please feel free to pass along to fellow Circuit Judges who preside over foreclosure cases in other counties as I do not have the docket assignments memorized for counties other than the two where I preside.

Lee

**From:** Sloan, James D </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JDS5227>

**To:** Cary, G. Keith

**CC:** Callanan, Richard

Greider, Christine

Mann, Sheila

**Date:** 6/8/2010 1:20:50 PM

**Subject:** Foreclosure funds

---

Judge Cary,

In discussing this matter with Barbara Butler, Clerk of Court, we have best determined that the best use of the \$15,780 that we are allotted under the prorata distribution formula is to hire a part-time person to assist with the administrative and clerical demands associated with the additional senior judge time devoted to foreclosures.

Judge Sloan

**FLORIDA STATE COURTS SYSTEM**  
**Administrative Office of the Courts**  
**SPECIAL RECOGNITION/ACCOMPLISHMENT**  
**Twentieth Judicial Circuit**

**PLEASE PRINT**

**Name:**            Virginia Wegis

**Headquarters:** Lee            **Division/Unit:** Human Resources

**Position Title:** Assistant HR Manager

This is to recognize Virginia Wegis for the exceptional accomplishments you have made in the performance of your duties. You are commended for your efforts that are above and beyond the normal work expectations as described below:

Accomplishments: The 20th Circuit was granted 7 OPS positions unexpectedly and Ms. Wegis was able to set up the positions in the system, arrange for their advertisement, enroll and conduct orientation for the new employees, and ensure they were properly paid in record time while still managing the day-to-day responsibilities. She also enrolled a large number of interns this year which helped offset the loss of positions and the increase of civil case management due to foreclosures. She performed the efficient and accurate orientation and enrollment of 50 new hires and 8 terminations.

Employee's Signature: \_\_\_\_\_

Date:

Supervisor's Signature: \_\_\_\_\_

Date:

Supervisor's/Manager's Signature: \_\_\_\_\_

Date:

**From:** [Smith, Carrie </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=CSMITH>](mailto:Smith, Carrie </O=SAO20/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CSMITH>)

**To:** [Kiesel, Lisa](mailto:Kiesel, Lisa)

**CC:**

**Date:** 1/27/2009 9:42:24 AM

**Subject:** approval

Good morning,

Attached are the minutes for the next Training meeting – set for this Friday at 12 noon. I would like to send a meeting reminder and attach the minutes document. Also, to check to see who will be available to attend.

Thank you - Have a Grand Day!

Respectfully,

Carrie

Carrie Chalker Smith, Administrative Assistant to  
Lisa Kiesel, Chief Deputy Court Administrator

Office: 239.533.1711

Personal Cell: 239.633.5807

FAX: 239.533.1701

[csmith@ca.cjis20.org](mailto:csmith@ca.cjis20.org)

"We don't stop laughing because we grow old--we grow old beause we stop laughing." Michael Pritchard  
/ccs

\*\*\*\*\*

Our mission is to provide professional services to support the judiciary in their efforts to protect rights and liberties, uphold and interpret the law, and provide for the peaceful resolution of disputes.

**From:** [Embury, Jon </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JEMBURY>](mailto:Embury, Jon </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JEMBURY>)

**To:** [Kyle, Keith](mailto:Kyle, Keith)

**CC:**

**Date:** 10/14/2010 1:13:54 PM

**Subject:** ?RE: New Foreclosure Bench Book Attached; FYI

---

Just sent it out to him.

Thanks

---

**From:** Kyle, Keith

**Sent:** Thursday, October 14, 2010 1:55 PM

**To:** Richards, George; Schreiber, Lee Ann; Greider, Christine

**Cc:** Embury, Jon

**Subject:** New Foreclosure Bench Book Attached; FYI

This was forwarded to me, just want to make sure that you have seen/have a copy. Have a great afternoon. Jon, can you forward to Judge Pellicchia? Thanks.

A PDF of the bench book is attached, but you can also access it from the Court Education Resource Library, at [https://intranet.flcourts.org/osca/Judicial\\_Education/Library/librarymain.shtml](https://intranet.flcourts.org/osca/Judicial_Education/Library/librarymain.shtml) (As the bench book will be periodically updated to reflect changes in foreclosure law and procedure, please visit the site for update notifications.)

***Please share this information with judges and court staff who are handling residential mortgage foreclosure cases.***

If you have any questions, contact Susan Leseman, OSCA Publications Attorney, at (850) 922-5085 or [lesemans@flcourts.org](mailto:lesemans@flcourts.org)

**From:** Middlebrook, Mark </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=MARKM>

**To:** Williams, Diane

**CC:**

**Date:** 10/14/2010 12:00:16 PM

**Subject:** ?FW: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

---

Please print and bind 8 copies.

---

**From:** Callanan, Richard

**Sent:** Thursday, October 14, 2010 12:28 PM

**To:** Aloia, Nancy K; Embury, Jon; Middlebrook, Mark; Mann, Sheila

**Cc:** Cary, G. Keith; Carlin, John S.; Kyle, Keith; Pivacek, Cynthia; Sloan, James D; Lundy, Jack

**Subject:** Fw: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

Please forward the attached to all civil judges, and other magistrates, senior judges, case managers involved in the foreclosure process.

Thank you.

20th Circuit - Integrity, Fairness, Service

---

**From:** Melissa Henderson <HendersM@flcourts.org>

**Date:** Oct 14, 2010 12:11 PM

**Subject:** New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

**To:** Trial Court Chief Judges <TrialCourtChiefJudges@flcourts.org>; Trial Court Administrators <TrialCourtAdministrators@flcourts.org>

**CC:** Susan Leseman <LesemanS@flcourts.org>; OSCA-JUDED <JUDED@flcourts.org>; Blan Teagle <teagleb@flcourts.org>

**To:** Chief Judges and Trial Court Administrators

**From:** Judge Mark King Leban, Chair, Florida Court Education Council's Publications Committee

**Re:** New Publication: *Residential Foreclosure Bench Book*

The Publications Committee of the Florida Court Education Council is pleased to announce the posting of the *Residential Foreclosure Bench Book* in the Court Education Resource Library on the Florida State Courts intranet. The *Residential Foreclosure Bench Book* was written by the Eleventh Circuit's Judge Jennifer Bailey and Assistant General Counsel Doris Bermudez-Goodrich. Used for a recent judicial education course for judges assigned to hear foreclosure cases, this bench book presents readers with the nuts and bolts of current foreclosure law and procedures.

In addition to this bench book, the Court Education Resource Library, developed by OSCA's Court Education Section and Publications Unit, contains a plethora of judicial education materials, among them, court publications (benchguides, bench books, toolkits, and case summaries); court education program materials; and other useful resources (a catalog of books, manuals, and other publications, including materials by state and national organizations).

A PDF of the bench book is attached, but you can also access it from the Court Education Resource Library, at [https://intranet.flcourts.org/osca/Judicial\\_Education/Library/librarymain.shtml](https://intranet.flcourts.org/osca/Judicial_Education/Library/librarymain.shtml) (As the ~~both~~ ~~00263~~ ~~00263~~)

***Please share this information with judges and court staff who are handling residential mortgage foreclosure cases.***

If you have any questions, contact Susan Leseman, OSCA Publications Attorney, at (850) 922-5085 or [lesemans@flcourts.org](mailto:lesemans@flcourts.org)

# **RESIDENTIAL FORECLOSURE BENCH BOOK**

Prepared by

Honorable Jennifer Bailey  
Administrative Judge  
Circuit Civil Jurisdiction Division  
Eleventh Judicial Circuit of Florida

and

Coris Bermude Goodrich  
Assistant General Counsel  
Eleventh Judicial Circuit of Florida

## TABLE OF CONTENTS

Introduction	2
Lender's Right to Foreclose	2
e ault	
Acceleration	
Statute of Limitations	
Jurisdiction	4
Parties to the Foreclosure Action	5
Filing of the Lis Pendens	11
The Foreclosure Complaint	11
Original Document Filing and Reestablishment of the Note	1
Fair Debt Practice Act	15
Mandatory Mediation of Homestead Foreclosures	15
Service of Process	1
Personal Service	1
Constructive Service	20
Service of Process outside the State of Florida	24
Substitution of Parties	25
Entry of e ault	25
Appointment of a Guardian ad Litem	2
Appointment of a Receiver	2
Summary Final Judgment of Foreclosure	2
Affidavits in Support of Motion for Summary Judgment	0
Affirmative Defenses	2
Summary Judgment Hearing	
Final Judgment	
Judicial Sale	
Post Sale Issues	42
Right of Possession	4
Protecting Tenants at Foreclosure Act of 2009	4
Surplus	45
Deficiency Judgment	45
Bankruptcy	4
Florida's Expedited Foreclosure Statute	4
Common Procedural Errors	50
Mortgage Workout Options	51

2010

## Introduction

1 Foreclosure is the enforcement of a security interest by judicial sale of collateral. All mortgages shall be foreclosed on the date of maturity. § 202.01, Fla. Stat. 2010

### 2 Definitions:

a **Mortgage:** any written instrument securing the payment of money or advances including liens to secure payment of assessments for condominiums, cooperatives and homeowners associations. § 202.00, Fla. Stat. 2010

A mortgage creates only a specific lien against the property; it is not a conveyance of legal title or of the right of possession. § 202, Fla. Stat. 2010; *Fla Nat'l Bank Trust Co of Miami v. Brown*, 4 So. 2d 414

b **Mortgagee:** refers to the lender; the secured party or holder of the mortgage lien. § 21.2, Fla. Stat. 2010

c **Mortgagor:** refers to the obligor or borrower; the individual or entity who has assumed the obligation secured by the mortgage lien. § 21.2, Fla. Stat. 2010. The mortgagor holds legal title to the mortgaged property. *o man Semet*, 1 So. 2d 4, 52 Fla. 4th CA 15

To foreclose the mortgage lien and extinguish the duties of redemption, secured parties must file a civil action. § 45.015, Fla. Stat. 2010

## Lender's Right to Foreclose

1 Constitutional obligation to uphold mortgage contract and right to foreclose. F.S.A. Const. Art. 1, § 10

a Right unaffected by defendant's misfortune. *Lee County Bank v. Christian Mut. Found., Inc.*, 40 So. 2d 44, 44 Fla. 2d CA 11; *Morris v. Aite*, 10 So. 51, 51 Fla. 15

b Right not contingent on mortgagor's health, good fortune, ill fortune, or the regularity of his employment. *Home Owners Loan Corp. v. First Nat'l Bank of Chicago*, 1 So. 111, 14 Fla. 1

c Contract impairment or imposition of moratorium is prohibited by court. *Lee County Bank v. Christian Mut. Foundation, Inc.*, 40 So. 2d 44, 44 Fla. 11

**Default**

1 Right to foreclosure accrues upon the mortgagor's default

2 Basis of default:

a mortgagor's failure to tender mortgage payments; or

b impairment of security, including failure to pay taxes or maintain casualty insurance

**Acceleration**

1 Acceleration gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default

2 Mortgage Acceleration Clause confers a contract right upon the note or mortgage holder which he may elect to enforce upon default *and Sun Fed Sa Loan Ass'n*, 41 So 2d 10, 4 Fla 1 4

a Absent acceleration clause, lender can only sue for amount in default *Kirk an Petten*, 21 So 2d 10, Fla 1

Commencement upon delivery of written notice of default to the mortgagor; prior notice is not required unless it is a contractual term *Millett Pere*, 41 So 2d 10, Fla d CA 1 2; *Fowler First Sa Loan Ass'n of the Uniak S rings*, 4 So 2d 10, 4 Fla 1st CA 1 4, filing of complaint is notice of acceleration

4 Pre acceleration mortgagor may defeat foreclosure by the payment of arrearages, thereby reinstating the mortgage *Pici First Union Nat'l Bank of Florida*, 21 So 2d 10, Fla 2d CA 1

**Statute of Limitations**

1 Five year statute of limitations period applies specifically to mortgage foreclosure actions 5112 c, Fla Stat 2010; *Farmers Merch Bank Riede*, 55 So 2d 10, 5 Fla 1st CA 1 0

2 Commencement of limitations period:

a General rule commencement upon accrual of the cause of action; this occurs when the last element of the cause of action is satisfied for example, default

5011, Fla Stat 2010; *Maggio et al v Labor Employment Sec*, 10 So 2d , Fla 2d CA 2005

b A note or other written instrument when the first written demand or payment occurs *Ruhl Perry*, 10 So 2d 5, 5 Fla 1 0

c Oral loan payable on demand commencement upon demand or payment *Mosher Anderson*, 1 So 2d 12, 1 Fla 2002

Tolling of the limitations period acknowledgment of the debt or partial loan payments subsequent to the acceleration notice toll the statute of limitations

50511, Fla Stat 2010; *Cadle Company v McCartha*, 20 So 2d 144, 145 Fla 5th CA 200

a Tolling effect starts the running anew of the limitations period on the debt *ester Rigdon*, 110 So 2d 40, 44 Fla 1st CA 1 5

### Jurisdiction

1 Court's judicial authority over real property based on *in rem* jurisdiction

2 Two part test to establish *in rem* jurisdiction: 1 jurisdiction over the class of cases to which the case belongs, and 2 jurisdictional authority over the property or *res* that is the subject of the controversy *Ruth et al v Legal Affairs*, 4 So 2d 11, 15 Fla 1

a Class of case jurisdictional parameters defined by Article Section 5 b, Florida Constitution, implemented by Section 2012.2 g, Fla Stat 2010 *Ale de Cor Nachon Enter, Inc*, 41 So 2d 5 Fla 1 4, concurrent equity jurisdiction over lien enclosures of real property that fall within statutory monetary limits *Id*, at

b Jurisdictional authority over real property only in the circuit where the land is situated *ammond SY e lopers, LLC*, 51 So 2d 5, Fla 2d CA 200 *Goedmakers Goedmakers*, 520 So 2d 55, 5 Fla 1 ; court lacks *in rem* jurisdiction over real property located outside the court's circuit If real property lies in two counties, the enclosure suit may be maintained in either county, however, the notice of sale must be published in both 0204, Fla Stat 2010

## Parties to the Foreclosure Action

### Plaintiff

1 Must be the owner holder of the note as of the date of filing suit. *Je Ray Cor Jacobsen*, 5 So 2d 5 Fla 4th CA 10; see also, *M Specialty Mortgage, LLC Salomon*, 4 So 2d 0, 2 Fla 4th CA 2004

a The holder of a negotiable instrument means the person in possession of the instrument payable to bearer or to the identified person in possession

1 201 21, Fla Stat 2010

1 Endorsement in blank where unsigned and unauthenticated, an original note is insufficient to establish that the plaintiff is the owner and holder of the note. Must have affidavits or deposition testimony establishing plaintiff as owner and holder. *Riggs Aurora Loan Services, LLC*, 2010 WL 151 Fla 4th CA 4 21 10

b The holder may be the owner or a nominee, such as a servicer, assignee or a collection and litigation agent. Rule 1 210 a, Fla R Civ P 2010 provides that an action may be prosecuted in the name of an authorized person without joinder of the party or whose benefit the action is brought. See also, *Kumar Cor No al Lines, Ltd*, 4 2 So 2d 11, 11 4 Fla d CA 1 5

c Plaintiff's nominee has standing to maintain foreclosure based on real party in interest rule. *Mortgage Electronic Registration Systems, Inc Re oredo*, 55 So 2d Fla d CA 200, *MERS* was the holder by delivery of the note; *Mortgage Elec Registration Systems, Inc A i e*, 5 So 2d 151 Fla 2d CA 200; *Philogene ABN AMRO Mortgage Group, Inc*, 4 So 2d 45 Fla 4th CA 200

2 Assignment of note and mortgage Plaintiff should assert assignee status in complaint. Absent formal assignment of mortgage or delivery, the mortgage in entirety assesses as an incident of the debt. *Perry Fairbanks Capital Cor*, So 2d 25, 2 Fla 5th CA 2004; *Johns Gillian*, 1 4 Fla 5 5, 5 Fla 1; *arren Seminole Bond Mortg Co*, 12 Fla 10 Fla 1, security follows the note, the assignee of the note secured by a mortgage is entitled to the benefits of the security. Assignments must be recorded to be valid against creditors and subsequent

urchasers 01 02, Fla Stat 2010 See also, *Glynn First Union Nat'l Bank*, 12 So 2d 5 , 5 Fla 4th CA 2005

a No requirement of a written and recorded assignment of the mortgage to maintain foreclosure action where evidence establishes plaintiff as owner and holder of the note on date of filing suit *Perry*, So 2d at 2 ; *M Specialty Mortgage, LLC*, 4 So 2d at 2; *Chem Residential Mortgage Rector*, 42 So 2d 00 Fla 1st CA 1 ; *Clifford Eastern Mortgage Sec Co*, 1 So 5 2 Fla 1

owner, the incomplete, unsigned and unauthenticated assignment of mortgage attached as an exhibit to purported mortgage holder and note holder's response to motion to dismiss did not constitute admissible summary judgment evidence sufficient to establish standing *BAC Funding Consortium, Inc ISAOA ATIMA Jean Jacques*, 2010 WL 4 41 Fla A 2 CA Feb 12, 2010 Plaintiff has an assignment of mortgage recorded prior to the date of filing suit, then he can enforce enforcement of note never physically delivered Florida courts recognize constructive delivery The absence of the note does not make a mortgage unenforceable *Lawyers Title Ins Co Inc Noastar Mortgage, Inc*, 2 So 2d , Fla 4th CA 2004 Assignment may be by physical delivery or by written assignment

MERS that is it Mortgage Electronic Registration Systems is a corporation which maintains an electronic registry tracking system of servicing and ownership rights to mortgages throughout the United States In many cases MERS is the mortgagee of record and is identified in the mortgage On each MERS loan there is an 11 digit number used for tracking Through the MERS servicer ID number, homeowners can identify their lender with borrower name and property address

4 Since the promissory note is a negotiable instrument, plaintiff must present the original note or give a satisfactory explanation of its absence 0 5 1 , Fla Stat 2010 ; *State Street Bank and Trust Co Lord*, 51 So 2d 0, 1 Fla 4th CA 200 A satisfactory explanation includes loss, theft, destruction and wrongful possession of the note 0 1 1 , Fla Stat 2010 Reestablishment of the note is governed by 0 1 2 , Fla Stat 2010

### Necessary and Proper Defendants

1 The owner of the fee simple title is the only indispensable party defendant to a foreclosure action. *English Bankers Trust Co of Cali, N A*, 5 So 2d 1120, 1121 Fla 4th CA 2005. Foreclosure is void if titleholder omitted. *Id*. If a spouse fails to sign the mortgage, lender may still foreclose on property owned by husband and wife when both spouses knew of loan and purchased in joint names. *Countrywide Home Loans Kim*, So 2d 250 Fla 2005.

a Indispensable parties defined: necessary parties so essential to a suit that no final decision can be rendered without their joinder. *Sudho Federal Nat'l Mortgage Ass'n*, 42 So 2d 425, 42 Fla 5th CA 200

2 Failure to join other necessary parties: they remain in the same position as they were in prior to foreclosure. *Abdoney York*, 0 So 2d 1, Fla 2d CA 2005.

Omitted party: only remedies are to compel redemption or the re-foreclosure in a suit de novo. *Id*; *Quinn Plumbing Co New Miami Shores Cor*, 12 So 2d 0, Fla 1 0.

4 Death of titleholder prior to entry of final judgment: beneficiaries of the titleholder and the personal representatives are indispensable parties. *Campbell Napoli*, So 2d 12 2 Fla 2d CA 2001.

a If indispensable parties not joined, action abated pending joinder. *Id*. As such, suit against a decedent alone will result in abatement.

b Post judgment death of titleholder, these parties are not deemed indispensable parties. *as Scott*, 120 So 1 Fla 1 2.

5 Necessary parties to the foreclosure action: all subordinate interests recorded or acquired subsequent to the mortgage.

a Includes: junior mortgagees, holders of judgments and liens acquired after the superior mortgage, lessees and tenants: parties in possession of the real property. *Posnansky Breckenridge Estates Cor*, 21 So 2d , Fla 4th CA 1 ; *Commercial Laundries, Inc, Golf Course Towers Associates*, 5 So 2d 501, 502.

Fla d CA 1 0 ; *Crystal River Lumber Co Knight Tur entine Co,* So 4, 5 Fla 1 15

b Junior lien holders are not joined, their rights in the real property survive the foreclosure action

c Joinder of original parties to the deed or mortgage are essential when a reformation court is needed to remedy an incorrect legal description contained in the deed and or mortgage *Chanrai In , Inc Clement,* 5 So 2d , 40 Fla 5th CA 1 0 As such, the original grantor and grantee are necessary parties in an action to reform a deed *Id*

Prior titleholders that signed the note and mortgage do not have to be named in the foreclosure action unless:

a Mortgagee seeks entry of a deficiency judgment against the prior unreleased mortgagors in the foreclosure action *PMI Ins Co Ca endar,* 15 So 2d 10, 11 Fla d CA 1

### **Superior Interests**

1 First or senior mortgagees are never necessary or proper parties to the foreclosure action by the junior mortgagee *Garcia Stewart,* 0 So 2d 111 , 111 Fla 4th CA 2005 ; *Poinciana Hotel o Miami Beach, Inc Kasden,* 0 So 2d , 401 Fla d CA 1

a Senior liens are unaffected by the foreclosure of a junior mortgage

2 **Purchase money mortgage defined** proceeds of the loan are used to acquire the real estate or to construct improvements on the real estate 2 a , Restatement Third of Property; Mortgages 200 The purchase and conveyance of real property occur simultaneously and are given as security for a purchase money mortgage

a Purchase money mortgages priority over all prior claims or liens that attach to the property through the mortgagor, even if latter be prior in time *BancFlorida Hayward,* So 2d 1052, 1054 Fla 1 ; *Sarmiento Stockton, Hatley, a in Co,* So 2d 105 , 105 Fla d CA 1 1

1 Priority does not extend beyond the amount of the purchase money advanced *Citibank Carteret Sa Bank, FA*, 12 So 2d 5 , 01 Fla 4th CA 1 2

### **Association Liens and Assessments**

1 Condominium Associations Section 1 11 1 b , Fla Stat 2010 establishes the liability of the first mortgagee, its successor or purchaser or condominium assessments and maintenance as the lesser of :

a units unpaid common expenses and regular periodic assessments which came due 12 months prior to title acquisition; or

b one percent of the original mortgage debt provided condominium association is joined as a defendant

1 The law is clear that the purchaser of a condominium unit has liability for unpaid condominium assessments 1 11 , Fla Stat 2010 This statutory cap , limits the liability of reclosing mortgagees or unpaid condominium assessments that become due prior to acquisition of title This safe harbor applies only to the first mortgagee or a subsequent holder of the first mortgage *Bay Holdings, Inc 2000 Island Boulevard Condo Assn*, 5 So 2d 11 Fla d CA 2005 The term successor or assignee as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage 1 11 1 g , Fla Stat 2010 Other entities that acquire title are not entitled to this limitation of liability and are jointly and severally liable for all unpaid assessments that come due up to the time of transfer of title 1 11 1 a , Fla Stat 2010

2 Homeowners Associations Section 20 0 5 2 c 1 , Fla Stat 2010 establishes the liability of the first mortgagee, its successor or purchaser or homeowner's assessments and maintenance as the lesser of :

a parcels unpaid common expenses and regular periodic or special assessments which accrued 12 months prior to acquisition of title; or

b one percent of the original mortgage debt

c homeowners Association's lien or assessments had priority over purchase money mortgage where Association's declaration of covenants contained express

provision establishing priority *Ass'n of Poinciana Ill. v. Astar Procs*, 24 So. 2d 555, Fla. 5th CA 1

d. The limitations on the first mortgagee's liability only apply if the lender filed suit and initially joined the homeowner's association as a defendant. 2005-2 c., Fla. Stat. 2010

e. Statutory revisions of the 200 Legislature failed to remedy the potential superior priority of liens recorded prior to July 1, 200. Prior statutory version amended by the 200 Legislature gave homeowner's association liens a priority, even if the mortgage was filed first in time. Arguably, many homeowner's associations have subordination language in their declaration of covenants providing that their lien is subordinate to the mortgage. However, the subordination language is not standard in all declarations. Any challenge to the priority of the mortgage will likely be resolved on the basis of interpretation of contract.

Reverse foreclosures defined where association takes title and pursues lender or where association sets done the motion or summary judgment due to delays by lenders.

4. Cannot force lenders to pay association fees during pendency of foreclosure. *S. Bank Nat'l Ass'n as Trustee v. Tadmor*, 200 L 42-1-01 Fla. 1d CA 12-2-0

### **Judgment Liens**

1. Section 55.10-1, Fla. Stat. 2010 applies to judgment liens.

a. Requirements: 1. must contain address of the party in the judgment or in an accompanying affidavit; and 2. a certified copy of judgment lien must be recorded in the official records of the county.

b. Judgment liens recorded after July 1, 1994 retain their judgment lien status for a period of 10 years from recording. A judgment lien is renewable by recording a certified copy of the judgment containing a current address prior to the expiration of the judgment lien. 55.10-2, Fla. Stat. 2010

### Filing of the Lis Pendens

1 Filing of lis pendens cuts off the rights of any person whose interest arises  
after filing *Bowers Pearson*, 15 So 5 2 Fla 1 1

a Constitutes bar to the enforcement against the subject real property of any  
other unrecorded interests and liens unless the holder of the unrecorded interest  
interposes within twenty days of the notice of the lis pendens 4 2 1 b , Fla  
Stat 2010

2 Validity of a notice of lis pendens is one year from filing 4 2 2 , Fla Stat  
2010

a Exception: One year period may be tolled by the trial court's exercise of  
discretion or appellate review *Olesh Greenberg*, So 2d 2 , 242 Fla 5th CA  
200 ; *onmitschke Collande Kramer*, 41 So 2d 4 1, 4 2 Fla d CA 2002

Lis pendens automatically dissolved upon dismissal of foreclosure Rule  
1 420 , Fla R Ci P 2010

a Lis pendens refiled or reinstated upon the reversal of dismissal  
*onmitschke Collande*, 41 So 2d at 4 2

### The Foreclosure Complaint

1 Florida Supreme Court Form of foreclosure Form 1 44, Fla R Ci P  
2010 Requisite allegations assert: jurisdiction, default, acceleration and the legal  
description of the real property As of 2 11 10, complaint must be verified Rule  
1 110 b , Fla R Ci P 2010

a Plaintiff must allege that he is the present owner and holder of the note  
and mortgage *Edason Cent Farmers Trust Co*, 12 So , 00 Fla 1 0

b If plaintiff is a nonresident corporation, it must comply with the condition  
precedent of filing a nonresident bond, upon commencement of the action 5 011,  
Fla Stat 2010 If plaintiff has failed to file the requisite bond within 0 days after  
commencement, the defendant may move for dismissal after 20 days notice to  
plaintiff