

Office of the State Courts Administrator

Charlotte Jerrett
Director of Administrative Services
Phone: (850) 488-9922 Fax: (850) 488-3744
e-mail: jerrette@flcourts.org

M E M O R A N D U M

TO: Trial Court Administrators

FROM: Charlotte Jerrett *Charlotte*

DATE: August 3, 2010

SUBJECT: Policy Guidelines for the Administration of Resources and Use of the Sr. Judge Web-based System for FY 2010/11 Economic Recovery Funding

This information is provided to you in follow-up to our conference call yesterday regarding payment request processing for sr. judges who work on real property/mortgage foreclosure cases for the special initiative targeted to dispose of 62% of backlogged cases. It is critical that these resources are only used for this purpose and remain segregated from payment and reporting of your regular allotment of sr. judge days. Listed below is a summary of the main points we discussed on the call:

- ✓ Sr. Judges will no longer have the ability to request payment directly in the web-based system. This change is necessary to prohibit potential errors or miscalculation in keeping the resources and funds separately accounted for. All payment requests must be submitted through Court Administration with the appropriate documentation. A "timesheet" form has been provided on the system log-in page for this purpose, or circuits may use their own system of documentation. This documentation is necessary for prudent resource management and audit tracking purposes.
- ✓ Upon log-in to the payment processing screen, you will see the addition of a drop-down menu and must now choose between the "regular" and "foreclosure" allocation when processing requests for payment. Accordingly, you will make the selection based on the type of payment request you are processing.

Memorandum
August 2, 2010
Page Two

- ✓ If a sr. judge works on caseload assigned from the "regular" allocation for part of the day and then works on caseload assigned from the "foreclosure" allocation for another part of the same day, the entire eight hour request for payment must be submitted from the "regular" allocation, as no portion of the "foreclosure" allocation may be used to pay for caseload associated with and assigned through the "regular" allocation. We simply do not have the ability to split-pay for hours worked between the two different funding sources.
- ✓ Payment for days worked from the "regular" allocation of resources must be submitted separately from payment for days worked from the "foreclosure" allocation. As such, you may have two separate submissions for one judge in any given 2-week submission period, depending on how you assign the caseload and resources.
- ✓ If a sr. judge works on "foreclosure" cases and also works on cases assigned through the "regular" allocation, the judge will receive two separate payment vouchers – one for hours worked from the "foreclosure" allocation and one for hours worked from the "regular" allocation.
- ✓ Travel expenses associated with days worked from the "foreclosure" allocation must be paid from the 22 20 XX 00 375 Organization Code, while travel expenses associated with days worked from the "regular" allocation of resources will continue to be paid from your local circuit expense budget. Forms for travel reimbursement requests have been updated and are available on the log-in screen.
- ✓ Attached are the TCBC approved allocations of both "regular" and "foreclosure" sr. judge days – Cost Centers 630 and 375, respectively.

Thank you again for your patience while we worked through the necessary administrative changes to the web-based system. If you or your judges have any questions, please do not hesitate to contact me directly at (850) 488-9922.

Attachments

cc: Lisa Goodner
Blan Teagle
Dorothy Wilson
Jackie Knight
Gary Phillips
Delcynth Schloss
Michelle Ogletree
Denise Overstreet
Mandy Couch
Don Lubbers

**Trial Court Budget Allocations
FY 2010-2011**

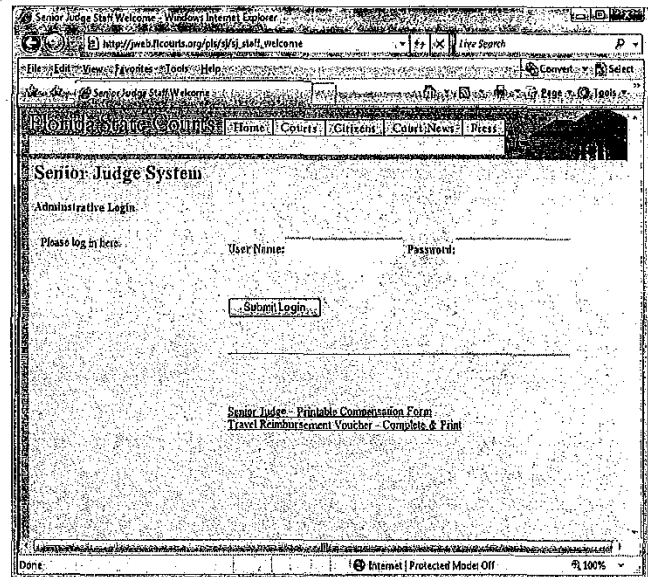
Senior Judge Days (Classification: 6140)	
Circuit	FY 2010-11 Allotment
0	100
1	249
2	162
3	89
4	359
5	298
6	440
7	281
8	151
9	442
10	263
11	761
12	196
13	398
14	138
15	348
16	47
17	549
18	276
19	197
20	343
Total	6,087

Prothonotary and Registrar (Recovery/Funding/Prothonotary) (Classification: 312)	
Circuit	FY 2010-11 Allotment
0	0
1	106
2	60
3	0
4	493
5	206
6	237
7	260
8	50
9	705
10	52
11	490
12	270
13	557
14	92
15	716
16	142
17	250
18	744
19	240
20	438
Total	6,108

INSTRUCTIONS FOR ENTERING SENIOR JUDGE DAYS OUT OF THE FORECLOSURE ALLOCATION

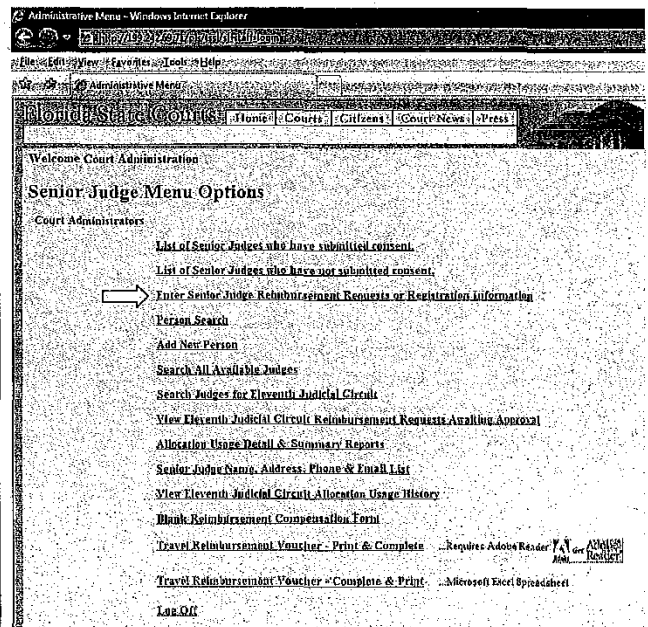
LOGGING IN

1. Open your internet browser and go to the Senior Judge System login page.
http://jweb.flcourts.org/pls/sj/sj_staff_welcome
2. Enter your user name and password and click **Submit Login**.
3. If you do not have a user name and password or have forgotten your user name or password, please request them at SrJudgeSystemHelp@flcourts.org.
4. If you only need to print a compensation form, click the **Senior Judge - Printable Compensation Form** link.
5. If you only need to complete and print a travel reimbursement voucher, click the **Travel Reimbursement Voucher - Complete & Print** link.



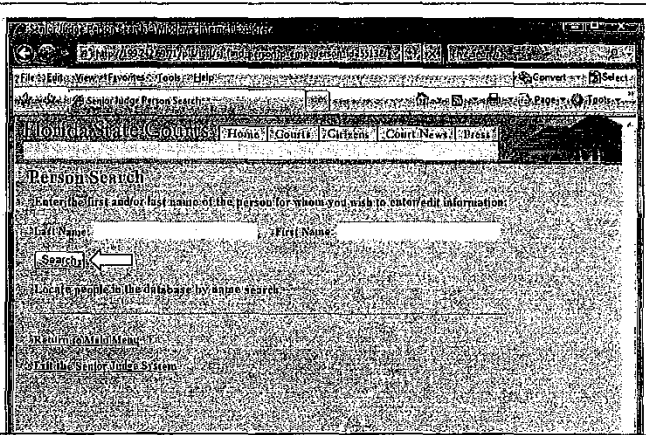
ENTER REQUEST FOR REIMBURSEMENT

1. Click on the **Enter Senior Judge Reimbursement Requests or Registration Information** link.



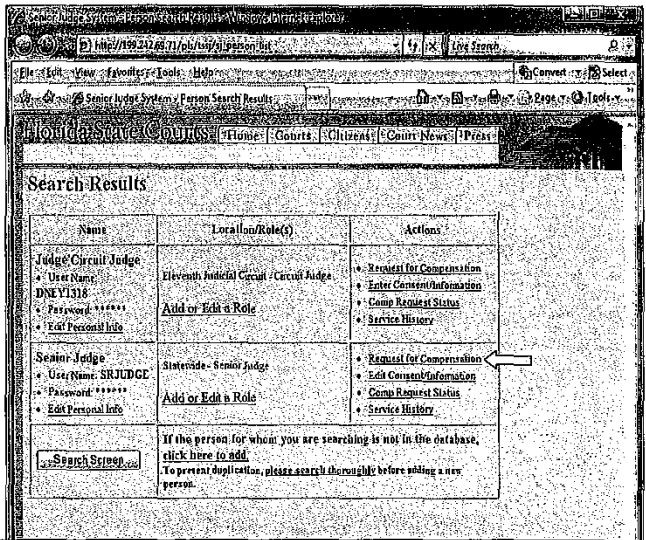
2. Type the senior judge's last name in the **Last Name** box and/or type the senior judge's first name in the **First Name** box.

3. Click **Search**.



4. Find the appropriate senior judge in the search results.
Note: Look under the second column (Location/Role(s)) for a "Statewide - Senior Judge" role.

5. Click the **Request for Compensation** link.

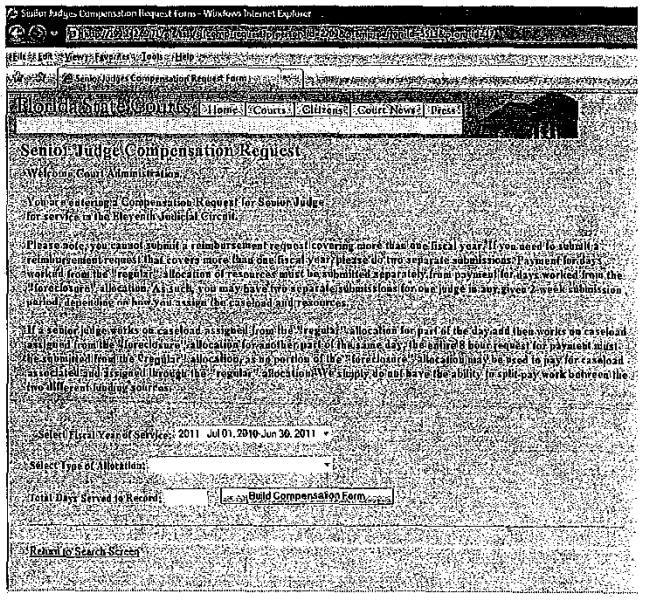


6. Select the appropriate fiscal year from the **Select Fiscal Year of Service** dropdown.
Note: The selection defaults to the current fiscal year.

7. Select the appropriate allocation fund from the **Select Type of Allocation** dropdown.
Note: You must select either "Regular Senior Judge Allocation" or "Foreclosure Senior Judge Allocation." The selection cannot be blank.

8. Type the number of days served in the **Total Days Served to Record** box.
Note: You must enter at least one day to build the compensation form. This field cannot be blank. Payment for days worked from the "regular" allocation of resources must be submitted separately from payment for days worked from the "foreclosure" allocation.

9. Click **Build Compensation Form**



10. Select a county from the **Select a county if applicable** dropdown.

11. Enter the actual dates of service under the **Service Date** column.

Note: Dates must be entered in MM/DD/YYYY format.

12. Enter the number of hours worked for the appropriate division.

Note: If you are entering senior judge days for the "foreclosure" allocation, then you will only be able to submit hours for the foreclosure division. See the following screenshot for a view of the compensation form for "regular" allocation.

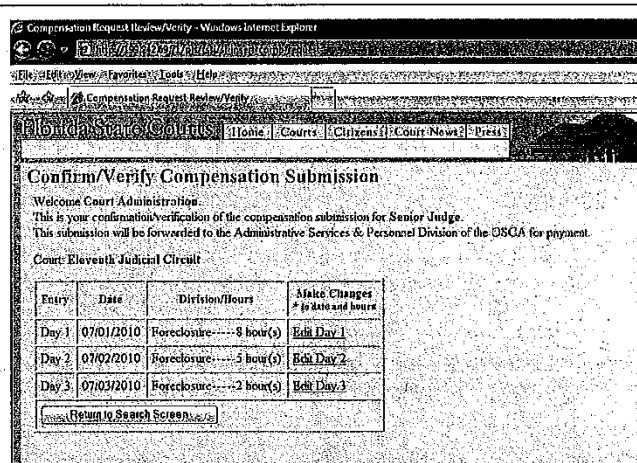
13. Click **Submit Compensation Form** once all days and hours have been entered.

Foreclosure Allocation Compensation Form:

Regular Allocation Compensation Form:

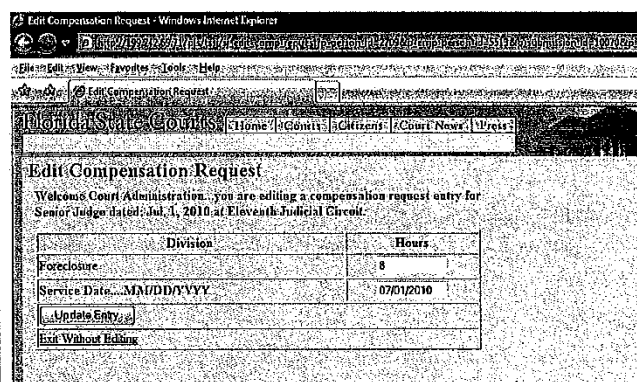
14. Confirm your compensation submission and print for your records. Click **Return to Search Screen** to exit.

15. If you have entered an incorrect date or incorrect hours, click **Edit Day #** link to make corrections.



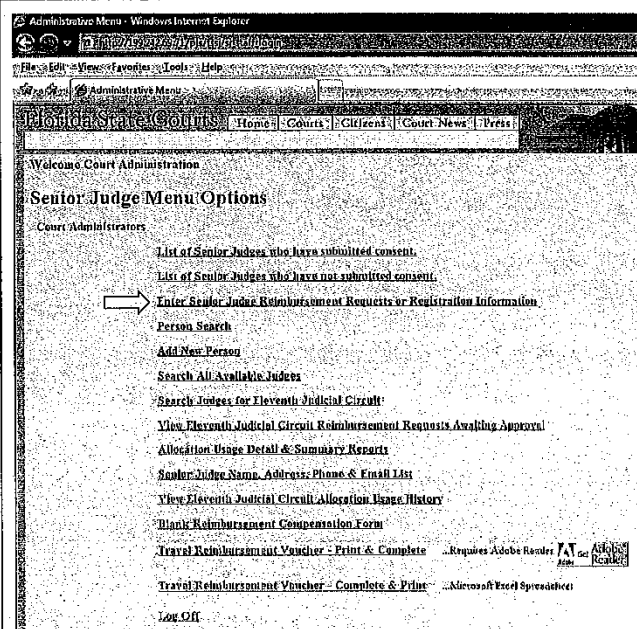
16. Make appropriate corrections and click Update Entry.

Note: If you have submitted a compensation request from an incorrect allocation fund, please contact SrJudgeSystemHelp@flcourts.org.



CHECK STATUS OF COMPENSATION REQUEST

1. Click on the **Enter Senior Judge Reimbursement Requests or Registration Information** link.





From: [Keri Igney](#)
To: [Robin Wright](#)
Subject: FW: FLORIDA CHANNEL INTERVIEW REQUEST

Sent: Mon, 20 Sep 2010 13:23:30 GMT

Heads up....

From: Keri Igney
Sent: Monday, September 20, 2010 1:23 PM
To: Todd Morrill; Shelia Sims
Cc: Keri Igney
Subject: RE: FLORIDA CHANNEL INTERVIEW REQUEST

Mr. Morrill:

We are utilizing the Foreclosure and Economic Recovery Program in the First Judicial Circuit and we are utilizing the services of two senior judges to preside over the foreclosure divisions.

While I do coordinate the efforts of our Senior Judges, I am not the appropriate person to sit for an on-camera interview regarding this programming. I am forwarding your request to our Chief Deputy Court Administrator and media contact Shelia Sims. Ms. Sims can provide you further assistance in this regard.

Ms. Sims is out of her office today but you may contact her by electronic transmission to Shelia.Sims@FLCourts1.gov or in the Court Administrator's office at 850-595-4400.

Keri Igney

From: Todd Morrill [<mailto:tmorrill@fsu.edu>]
Sent: Monday, September 20, 2010 1:11 PM
To: Keri Igney
Subject: FLORIDA CHANNEL INTERVIEW REQUEST

Ms. Igney,

I am a reporter with the Florida Channel, and we are working on a story on the use of senior judges in foreclosure cases.

I understand you are making use of this program.

Would it be possible to interview you or someone else at the court on camera about how this program is

working?

Thank you,

Todd Morrill
Producer/Reporter
The Florida Channel

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Mark Lehmann, Foreclosure Case Coordinator




From: Mark A. Lehmann

Sent: Mon, 19 Jul 2010 14:40:10 GMT

To: Janet Gilbert

Subject: RE: Docket you prepare

 **09-02-10.doc** (56Kb)

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

From: Janet Gilbert
Sent: Monday, July 19, 2010 2:12 PM
To: Mark A. Lehmann
Subject: Docket you prepare

Mark, could you please email me a copy of the docket you're typing, so I can give it to Amanda as a template? Thanks

Janet E. Gilbert
Family Court Manager
Court Administration
1st Judicial Circuit of Florida
190 Governmental Center
Pensacola, FL 32502
Phone: 850-595-0379
FAX: 850-595-3246

janet.gilbert@flcourts1.gov

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From: [Janet Gilbert](#)

Sent: Fri, 16 Jul 2010 10:04:00 GMT

To: [Mark A. Lehmann](#)

Subject: Emailing: 2010 Foreclosure Requirements.rtf

 2010 Foreclosure Requirements.rtf (179Kb)



From: Mark A. Lehmann
To: Patt Ormerod
Subject: RE: Book Install

Sent: Mon, 26 Jul 2010 13:31:58 GMT

Yes
Thank you

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

From: Patt Ormerod
Sent: Monday, July 26, 2010 1:15 PM
To: Mark A. Lehmann
Subject: Book Install

Mark,

Can I install these books for you today?

Patt Ormerod
Information Technology Operations Manager
First Judicial Circuit of Florida
190 Governmental Center 5th fl
Pensacola, FL 32502
Bus (850)595-4406
Fax (850)595-0436

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From: Mark A. Lehmann

Sent: Thu, 05 Aug 2010 15:36:00 GMT

To: Cheri High

Subject: Division W

Hi Cheri,
I know you are busy, did you ever get to run a docket with defaults? And I have not seen Judge Parnhams mail you talked about the other day. Do you need me to come get it? If you designate a spot I can swing by every day and pick up.
Thanks

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533



From: [Mark A. Lehmann](#)

Sent: Wed, 28 Jul 2010 14:06:00 GMT

To: [Janet Gilbert](#)

Subject: RE: Data Base for Foreclosures

No problem

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

From: Janet Gilbert

Sent: Wednesday, July 28, 2010 2:00 PM

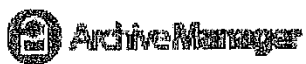
To: Mark A. Lehmann

Subject: Data Base for Foreclosures

Mark, please make sure you review the data base system Patt loaded and the input guide. Robin wants to see it and get an overview on Monday at the Chief Judges request. Thank you.

Janet E. Gilbert
Family Court Manager
First Judicial Circuit of Florida
190 Governmental Center Pensacola, FL 32502
(850) 595-0379 phone
(850) 595-3246 fax
janet.gilbert@flcourts1.gov

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From: [Mark A. Lehmann](#)
To: DMcGulre@defaultlawfl.com
Subject: Foreclosure cases. Division W

Sent: Mon, 26 Jul 2010 13:44:00 GMT

 [201032DIVISIONWFORECLOSURE.pdf \(139Kb\)](#)  [CHECKLIST.rtf \(41Kb\)](#)

Deborah,
Hi
Division W only handles cases from December 31, 2009 and back. All 2010 cases are to remain with the circuit Judges. I have included the administrative order and the Foreclosure checklist to be completed prior to Final Judgment. I can schedule any case prior to 12/31/2009. If you have any questions please don't hesitate to call or e-mail. Thank-you.

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533



From: Freida Nichols
To: Mark A. Lehmann
Subject: Re: LOP Time

Sent: Mon, 08 Nov 2010 10:35:04 GMT

Mark -

Sounds great - 12/16, 2-2:15 p.m. There won't be that many so we will need only 15 minutes.

Thanks,

Freida

----- Original Message -----

From: Mark A. Lehmann
To: Freida Nichols
Sent: Monday, November 08, 2010 10:22 AM
Subject: RE: LOP Time

Freida,
How about December 16th, 2010 @ 2:00 PM? How many cases do you have for LOP?
Thanks

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

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From: Freida Nichols [mailto:fnichols@escambiaclerk.com]
Sent: Monday, November 08, 2010 9:05 AM
To: Mark A. Lehmann
Subject: LOP Time

Mark -

Can I please get 15 minutes scheduled some time mid- to late December for lop's?

Thanks,

Freida

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From: [Mark A. Lehmann](#)
To: [Janet Gilbert](#)
Subject: RE: data from Friday

Sent: Mon, 22 Nov 2010 09:00:00 GMT

Escambia 317 hearings
Santa Rosa 92 hearings

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

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From: Janet Gilbert
Sent: Monday, November 22, 2010 8:59 AM
To: Mark A. Lehmann
Cc: Amanda Bailey
Subject: RE: data from Friday

Thanks - please send your numbers of scheduled hearings. Thanks

Janet E. Gilbert
Sr. Deputy Court Administrator
First Judicial Circuit of Florida
190 Governmental Center
Pensacola, FL 32502
(850) 595-0379 phone
(850) 595-3246 fax
janet.gilbert@flcourts1.gov

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From: Mark A. Lehmann
Sent: Mon 11/22/2010 8:42 AM
To: Janet Gilbert
Subject: RE: data from Friday

Janet,

This was continued to 12/17/10

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

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From: Janet Gilbert
Sent: Monday, November 22, 2010 8:37 AM
To: Mark A. Lehmann
Subject: data from Friday

Hope you had a nice birthday weekend Mark. Could you please look at you page 2 of Friday's docket and tell me what the outcome of #10 is - GMAC vs Didier Van Flertern? Thanks

Janet E. Gilbert
Sr. Deputy Court Administrator
First Judicial Circuit of Florida
190 Governmental Center
Pensacola, FL 32502
(850) 595-0379 phone
(850) 595-3246 fax
janet.gilbert@flcourts1.gov

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From: Karen Lessard
To: Mark A. Lehmann
Subject: RE:

Sent: Mon, 06 Dec 2010 09:59:31 GMT

Thanks Mark.

I'll forward this information along.

Karen

Karen Lessard
Assistant to Michael J. Beaudine
and Jonathan A. Stimler
Latham, Shuker, Eden & Beaudine, LLP
390 North Orange Avenue, Suite 600
Orlando, Florida 32801

Telephone: 407-481-5803
Facsimile: 407-481-5801

From: Mark A. Lehmann [mailto:Mark.Lehmann@FLCOURTS1.GOV]
Sent: Monday, December 06, 2010 10:53 AM
To: Karen Lessard
Subject:

Karen,
Here is a copy of the motion and order I described.
Thanks

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA (SANTA ROSA) COUNTY, FLORIDA

Plaintiff,

vs.

CASE NO.:
DIVISION: "W"
JUDGE PARNHAM

Defendant(s).

ORDER GRANTING MOTION TO ADMINISTRATIVELY CLOSE FILE

THIS CAUSE having come before the Court on Plaintiff's Motion to Administratively Close File and having reviewed the aforementioned documents, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion is hereby GRANTED.
2. The Clerk of Courts is directed to remove this matter from the Court's active docket.
3. Any party to this action may move the Court for an Order Reinstating the Case to Active Status within 6 months from the date of this order and upon payment of the reopening fee.

DONE AND ORDERED in Chamber at _____ County, Florida on this _____ day of _____, 201_.

John T. Parnham
Circuit Court Judge (Senior Status)

Conformed copies to:
(All parties of record)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA (SANTA ROSA) COUNTY, FLORIDA
CIVIL ACTION

Plaintiff,

vs.

CASE NO.:
DIVISION: "W"
JUDGE PARNHAM

Defendant(s).
_____ /

MOTION TO ADMINISTRATIVELY CLOSE FILE

COMES NOW, Plaintiff, _____ by and through its undersigned attorney, and moves this Court for an Order Granting it's Motion to Administratively Close File, and in support thereof states as follows:

1. Plaintiff's residential mortgage foreclosure complaint was filed on _____.
2. Plaintiff and the homeowner(s) have entered into a negotiated agreement to resolve this matter.

WHEREFORE, Plaintiff respectfully requests this Court enter an Order Granting Motion to Administratively Close File.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all parties listed on the attached service list on this _____ day of _____ 201_.



Plaintiff's Attorney

Cc: (Copies must be provided to all defendants)



From: Connie Capps
To: Janet Gilbert; Mark A. Lehmann;
Subject: CMC Order

Sent: Thu, 29 Jul 2010 14:22:15 GMT

 [CMC Scheduling Order.doc \(37Kb\)](#)  [image001.jpg \(75Kb\)](#)

Please check for typos. Thanks.

Connie S. Capps

Administrative Secretary
Mediation / Family Court
First Judicial Circuit
(850) 595-4482
(850) 595-3246 fax
connie.capps@flcourts1.org

LOVE, LAUGH, PHOTOGRAPH

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT IN AND
FOR ESCAMBIA COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

Plaintiff,

VS

CASE NO.:

Defendant.

CASE MANAGEMENT CONFERENCE SCHEDULING ORDER

This Case is scheduled for a Case Management Conference in accordance with Rule 1.200(a), Florida Rules of Civil Procedure and current administrative orders of the court. The case management hearing is scheduled for _____, 2010 at _____ A.M. / P.M. in Courtroom _____, at the M.C. Blanchard Judicial Building, 190 W. Governmental Center, Pensacola, Florida, before the Honorable John T. Parnham.

The purpose of this Case Management Order is to identify and resolve outstanding issues and determine what action is necessary to move the case expeditiously to resolution, because of the length of the time that this case has been pending. The parties are hereby notified that all pending motions may be considered at the Case Management Conference, including any pending summary judgment motion, and all opposition to any such motion must be filed and served in accordance with Rule 1.510 (c), Florida Rules of Civil Procedure, with a courtesy copy to Mark Lehmann, Foreclosure Division Case Manager, 190 W. Governmental Center, 3rd Floor, Suite 34002, Pensacola, Fl 32502. The Court will also consider discovery motions and attorneys should appear having first attempted to resolve those issues with opposing counsel and fully prepared to argue those motions.

Appearance at Case Management Conference:

The Court has determined that the presence of the parties, Plaintiff and Borrowers:
_____ is required _____ is not required.

For Plaintiff, appearance shall be by a person with specific knowledge of the file and the ability to answer questions by the Court, including but not limited to the status of loss mitigation efforts, knowledge and consent of investors as to settlement, vacancy/tenancy in the property, and diligent search for borrowers. **Where attendance is required, failure to appear by either party**

or failure to appear with requisite knowledge shall be grounds for dismissal, striking of pleadings and entry of default and/or such other sanctions as the Court deems appropriate.

For the Plaintiff, telephone appearance of a representative: ___ is allowed ___ is not allowed.
For the Borrower, telephone appearance: ___ is allowed ___ is not allowed. Any other party ___ is allowed ___ is not allowed to appear by telephone.

A Case Management Report as detailed in this order shall be filed by the Plaintiff and any appearing Defendant in the case as required below, except that the Parties may file the following, and only the following, in lieu of the Case Management Report:

1. A stipulation of Voluntary Dismissal and Proposed Order of Dismissal agreed to by parties.
2. A stipulation of settlement or forbearance with a Proposed Order of Dismissal reserving jurisdiction to enforce the settlement of forbearance.
3. In a situation in which the case has been finalized, but remains open on the court's docket, a Motion for Case Closure and Proposed Order to Close Case. A photocopy of the order which finalized the case shall be attached as an exhibit to the motion, for example, a final judgment, an order of dismissal, an order dismissing for lack of prosecution. This category is for cases that should have been closed but due to error are still listed as open cases. The proposed order should provide that this case shall be closed due to: _____ (state grounds)
4. In cases which are stayed or abated due to bankruptcy, a Motion Advising of Bankruptcy Status, which attaches a current bankruptcy case docket and an indication of whether or when relief from stay will be sought, with a Proposed Order regarding Bankruptcy Status reflecting that the case is still in bankruptcy.

Required Case Management Report:

A Case Management Report shall be filed by each party with the Clerk of Court, served on opposing parties, with a courtesy copy delivered to Mark Lehmann, Foreclosure Division Case Manager, 190 W. Governmental Center, 3rd Floor, Suite 34002, Pensacola, FL 32502. This report shall be filed and delivered no later than ten (10) days prior to the scheduled Case Management Hearing Date.

The Case Management Report shall include:

1. **Date of filing of complaint and status** of complaint, including any lost note count.
2. **Status of pleadings of each defendant.** An accurate statement as to the:
 - a. Service, method of service, non-military affidavit

b. Response filed:

- i. Motion to dismiss, pending or resolved
- ii. Motions for extension of time, pending or resolved
- iii. Answers from Defendants identified by name
- iv. Motions to strike affirmative Defenses, pending or resolved
- v. Copies of all outstanding Motions and responses shall be attached to the Case Management Report

3. Status of the Property: Whether owner-occupied, tenant-occupied, or vacant. If vacant, Plaintiff must advise whether they will seek an expedited sale date if available.

4. Status of Documents: Is Plaintiff in possession of the original note? What is the chain of ownership of the note? Are there assignments of mortgage? The original documents should be brought to the Case Management Conference for examination by the Court.

- a. If the case is a lost note case, an adequate lost note affidavit that complies with statute should be filed separately in the case and a copy provided with the Case Management Report.

5. Status of Mediation: Has any party requested mediation? Should mediation be Ordered? If mediation was ordered, has it occurred and what was the outcome?

6. Status of Loss Mitigation:

- a. Does this properly qualify for the HAMP Program?
- b. Identify and list what HAMP outreach has occurred. Proof/documentation of same should be brought to hearing.
- c. Has the foreclosure been put on hold at any time?
- d. Are there current active loss mitigation efforts, including short sale?
- e. What if anything, is delaying a loss mitigation determination?
- f. Results of eligibility determination for loss mitigation
- g. The status of compliance with all U.S. Treasury directives and regulations

7. Status of the Case:

- a. Has Plaintiff sought summary judgment?
 - i. Was the motion set for hearing, when, what result? If the hearing was cancelled, advise as to reasons for cancellation.
 - ii. If the motion was not set for hearing, advise as to reasons and whether it is ripe for summary judgment.
 - iii. If all affidavits have been filed, is the matter ready for determination of a motion for summary judgment at the time of the case management

conference?

- b. What discovery, if any, has occurred or is outstanding?
 - i. If there is discovery outstanding, has a motion to compel been filed?
 - ii. If objections have been filed, has a discovery hearing and order been previously held?
 - iii. What reasons exist for delays in discovery?
 - iv. Indicate outstanding objections to discovery that are pending and the basis for those objections.
 - v. Counsel/parties are directed to confer on any outstanding discovery between the time of the filing of the report and the Case Management Conference to attempt to narrow the issues. Failure to do so will result in sanctions.
 - vi. Courtesy copies of all outstanding discovery and responses thereto shall be attached to the Case Management Report.

8. Status of Related Cases/Title: Are there any other related cases involving any other foreclosures, ownership, lien or title issues, and are there any related cases involving insurance issues? If so, each case should be identified by complete case style.

9. Status for Trial: If Summary Judgment has been denied, or no summary judgment will be sought, is the case ready for trial?

- a. Parties must list known witnesses and exhibits on the Case Management Report.
- b. Parties must list what discovery is necessary to prepare the case for trial.
- c. Motion which must be resolved prior to trial (limine, etc)
- d. Any other issues which may affect trial status should be brought to the court's attention.
- e. Coordinate the course of the case, including:
 - (a) Allocation of time for trial;
 - (b) Scheduling disclosure of final witness lists, discovery and exhibits;
 - (c) Discussion of evidence and affirmative defenses to claim;
 - (d) Setting of trial thirty (30) days from case management conference;
- f. Require filing of preliminary stipulations if issues can be narrowed.

The information contained in the report must be accurate as to the status of the case.

By signing the Case Management Report, the attorney signing is certifying accuracy. The attorney signing the report should be the attorney appearing at the Case Management

Conference. Plaintiff must bring stamped addressed envelopes for all parties on the service list to the Case Management Conference.

Scheduling of Dates

Parties must bring their calendars to the Case Management Conference to schedule remaining court events and court-related events. The Court cautions Counsel that it is the objective of this Court Division to promptly and efficiently provide resolutions to outstanding foreclosure cases. Counsel shall be prepared to schedule those events according to priorities established by administrative order of this Court.

IF THE PARTIES OR COUNSEL FAIL TO ATTEND THIS CONFERENCE, THE COURT MAY DISMISS THE ACTION, STRIKE PLEADINGS, LIMIT PROOF OF WITNESSES OR TAKE ANY OTHER APPROPRIATE ACTION AS PROVIDED IN RULE 1.200

THIS CASE MANAGEMENT CONFERENCE MAY BE CANCELLED ONLY BY THE COURT. Rescheduling should be sought through a motion to continue for good cause.

DONE and ORDERED in Escambia County, Florida, on this _____ day of _____, 2010.

CIRCUIT COURT JUDGE

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Shelia Sims, 190 Governmental Center, 5th Floor, Pensacola, FL 32502 (850) 595-4400 at least 7 days before your scheduled mediation appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.



From: Mark A. Lehmann

Sent: Tue, 03 Aug 2010 10:22:00 GMT

To: paulla.carter@prommis.com

Subject: MSJ requirements

CHECKLIST.rtf (41Kb) 201032DIVISIONWFORECLOSURE.pdf (139Kb)

Paula, this is a sample e-mail from me for Santa Rosa County.

this confirms these hearings for MSJ set for 10:40 AM and 10:50 AM CST. On September xx, 2010 at the Santa Rosa County Court House 6865 Caroline St. room 100. before Judge John T. Parnham. I have included the administrative order requiring personal appearance by counsel and the Foreclosure checklist, if local counsel is utilized please call or email name and phone number if not already done. The Foreclosure Checklist must be completed prior to the Final Judgment. Please submit the Checklist and Final Judgment packet to the Circuit Clerk no later than 10 days prior to the hearing. If any defendant has filed an answer in the case and they are represented by counsel, please coordinate this 10 minute hearing with opposing counsel's office. Please make sure the date and time are correct on the notice of hearing. Please put both central and eastern times on the notice of hearing. Please reply to this e-mail for confirmation. If you have any questions please don't hesitate to call or e-mail. Make sure the information below is accurate.

Paulla, This is a sample e-mail for Escambia County with the required info.

This e-mail is to confirm the five Motions for Summary Judgment set for 2:20 PM CST and running through 3:10 PM CST. On September xx, 2010 at the M.C. Blanchard Building, 190 Governmental Center, Pensacola, Florida 32502 on the 6th floor in Chambers before Judge John T. Parnham. Personal appearance by counsel is required per the administrative order (attached), if local counsel is utilized please call or email name and phone number if not already done. Also I have attached the Foreclosure Checklist which must be complete prior to the Final Judgment. Please submit the Checklist and Final Judgment packet to the Circuit Clerk 10 days prior to the hearing. If any defendant has filed an answer in the case and they are represented by counsel, please coordinate this 10 minute hearing with opposing counsel's office. Please make sure the date and time are correct on the notice of hearing. Please put both central and eastern times on the notice of hearing. Please reply to this e-mail for confirmation.

Mark A Lehmann
Court Program Specialist II
Foreclosure and Economic Recovery Program
Escambia and Santa Rosa Counties
850-595-4533

REQUIREMENTS EFFECTIVE 1/1/10
MORTGAGE FORECLOSURE REQUIREMENTS
WALTON COUNTY
(updated 1/2/10)

**TELEPHONIC APPEARANCE WILL
NO LONGER BE ALLOWED FOR
COUNSEL IN REAL ESTATE
FORCLOSURE (FINAL
HEARINGS/MOTIONS FOR
SUMMARY JUDGMENT) CASES.**

THE FOLLOWING REQUIREMENTS WILL APPLY TO ALL WALTON COUNTY JUDGES
(JUDGE DAVID W. GREEN/JUDGE W. HOWARD LaPORTE/JUDGE KELVIN C. WELLS)

COUNSEL SHOULD MAKE ARRANGEMENTS TO EITHER APPEAR IN PERSON FOR
ALL FORECLOSURE HEARINGS OR MAKE ARRANGEMENTS WITH LOCAL
COUNSEL.

IT IS THE RESPONSIBILITY OF COUNSEL FOR THE PLAINTIFF AND/OR LOCAL
COUNSEL TO EXAMINE THE COURT FILE PRIOR TO THE SCHEDULED HEARING
ENSURING THAT ALL DOCUMENTS HAVE BEEN FILED (i.e. Note, Mortgage, Assignment
of Mortgage(s) if any, and all affidavits) AND THAT THE FILE IS READY FOR THE
HEARING. IF THE FILE IS FOUND NOT TO BE READY THE HEARING WILL BE
IMMEDIATELY CANCELLED AND IT WILL BE COUNSEL'S RESPONSIBILITY TO RE-
SCHEDULE THE MATTER FOR HEARING WITH THE ASSIGNED JUDGE.

HEARINGS WILL BE SCHEDULED ON A FIRST COME/FIRST SERVE BASIS VIA
TELEPHONE CONFERENCE WITH THE ASSIGNED JUDGE'S OFFICE. FACSIMILE
REQUESTS AND E-MAIL REQUESTS FOR HEARING DATES WILL NOT BE ACCEPTED.

THE JUDGE'S JUDICIAL ASSISTANT MAY REQUIRE COUNSEL TO COORDINATE THE
SCHEDULING OF HEARINGS WITH COUNSEL AND/OR PARTIES.

FAILURE TO COMPLY WITH THESE REQUIREMENTS COULD RESULT IN A DELAY IN
RESOLUTION OF THE MATTER.

THE FOLLOWING ATTACHMENTS ARE PROVIDED AS A GUIDE.
BELOW IS A CHECKLIST OF DOCUMENTS THAT THE FILE MUST CONTAIN AT THE
TIME OF THE HEARING.

- ✓ Motion for Summary Judgment, if applicable.

- ✓ Motion for Default Final Judgment, if applicable.
- ✓ Affidavit of Indebtedness (with supporting attachments)
- ✓ Affidavit of Costs (with supporting attachments)
- ✓ Attorney's Fee Affidavit
- ✓ Supporting Attorney's Fee Affidavit (original)
- ✓ Attorney's Affidavit of Filing Supporting Documents
- ✓ Original Note and Mortgage (filed with a Notice of Filing—Certified Copies of Mortgage are acceptable only if certified by the Walton County Clerk of Court)
- ✓ Assignment(s) of Mortgage
- ✓ Affidavit of Lost Note and/or Mortgage, if applicable.
- ✓ Copies of warranty deeds, as applicable.

I. **FINAL SUMMARY JUDGMENT PACKET:** The Foreclosure Packet containing the proposed Final Summary Judgment of Foreclosure/Final Judgment of Foreclosure, Notice of Sale, Certificate of Sale, Certificate of Title and supporting affidavits shall be submitted prior to the hearing or at the time of the hearing directly to the court. In accordance with F.R.C.P. 1.080, please provide substantial copies of documents and self-addressed postage paid envelopes for mailing. **Do not provide the court copies of documents already filed in the court file.**

a. **Form for Final Summary Judgment:** (*attachment 2*) Any proposed final summary judgment **must** substantially conform to Form 1.996 (Final Judgment of Foreclosure), Florida Rules of Civil Procedure and Florida Statutes 45.031. The standard form must be revised to include the appropriate summary judgment language (and shall ensure all counts in the complaint are clearly addressed). Further, the parties may believe other changes to the standard form are necessary either based upon the facts of a particular case or as a matter of practice. For example, the Court also finds that the appropriate language to award reasonable attorney's fees in accordance with Florida Patients' Compensation Fund v Rowe, 472 So. 2d 1145 (Fla. 1985) may be inserted. **To assist the Court in easily identifying any changes (deletion or addition) to the standard Form 1.996 beyond those identified above, the party submitting the proposed Final Summary Judgment shall in cover letter, identify and justify for the Court all changes to the standard form.**

Attachment 1, SAMPLE COVER LETTER

Attachment 2, FORM FINAL SUMMARY JUDGMENT

b. **Title Search Expenses:** Based on the ordinary and reasonable charges prevailing in this area, the Court will award up to \$225.00 in aggregate for title search-related expenses. If more than \$225.00 is claimed, proof of the additional amounts must be submitted (i.e. copy of the invoice from the entity rendering service *and* proof of payment must be attached). Acceptable "proof of payment" includes, for example, a cancelled check or paid receipt. In addition, the movant shall file a cover letter justifying for the Court the expenses which exceed the ordinary and reasonable charges prevailing in this area.

c. **Service of Process Expenses:** Based on the ordinary and reasonable charges prevailing in this area, the Court will award up to \$40.00 per person or entity, unless unusual circumstances. If more than \$40.00 per person or entity is claimed, proof of the additional amounts must be submitted (i.e. copy of invoices and documentation regarding service of process and proof of payment must be attached). Acceptable "proof of payment" includes, for example, a cancelled check or paid receipt. In addition, the movant shall file a cover letter justifying for the Court the expenses which exceed the ordinary and reasonable charges prevailing in this area.

d. **Final Disposition Form:** (*attachment 3*) A completed Form 1.998 Final Disposition Form shall be submitted with the Final Judgment.

II. **OTHER INFORMATION:** The Courts' requirements are self-explanatory. The Courts and the staff **WILL NOT GIVE ADDITIONAL DIRECTIONS BY TELEPHONE OR LETTER.** It is your responsibility to be familiar with the legal requirements of filing and proving a lawsuit. If you want to schedule a hearing without the information the Court requires, you may coordinate with the Judicial Assistant to set a ten (10) minute hearing. You are responsible for issuing the notice of hearing.

///-----///

Attachments (3):

1. Form—Sample Cover Letter to Court (re: changes to standard form judgment; expenses)
2. Form—*proposed* Final Summary Judgment of Foreclosure
3. Form—Final Disposition Form, Form 1.998

ATTACHMENT 1 SAMPLE/FORM COVER LETTER TO COURT

[Date]

The Honorable _____
Circuit Judge
Walton County Courthouse
571 U.S. Hwy. 90 East,
DeFuniak Springs, FL 32433

RE: **Plaintiff's Name v Defendants' Names**
County Case No. 0__-CA-XXXX

Dear Judge _____:

Please find enclosed a proposed Final Summary Judgment in the above-mentioned foreclosure case.

The following changes have been made to the standard Form 1.996:

- (1) At para. 5, the following words "....." have been added after the words "....." The reason for this change is: _____.
- (2) At para. 6, the last-sentence which reads, "....." has been added. The reason for this change is: _____.
- (3) At para. 9, the words "....." have been deleted. The reason for this change is: _____.
- (4) Para. 14 is an additional paragraph and is necessary in this case for the following reason: _____.

Plaintiff claims title search expenses in the amount of [>\$225.00]. The expenses over \$225.00 are reasonable and necessary for the following reasons: _____.

Plaintiff claims service of process fees in the amount of [>\$40.00] for Defendant XXXXX. The reasons for these additional service fees are as follows: _____.

Sincerely,

ATTORNEY'S SIGNATURE BLOCK

cc: (Opposing counsel/parties)

ATTACHMENT 2 PROPOSED FINAL SUMMARY JUDGMENT OF FORECLOSURE

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA
CIVIL DIVISION

[XXXXXXXXXXXXXXXXXX],
Plaintiff,

vs.

CASE NO. 0__-CA-000__

[DEFENDANT # 1; DEFENDANT # 2;
and DEFENDANT # 3];
Defendants.

FINAL SUMMARY JUDGMENT

THIS CAUSE came before the Court for hearing on _____, 200__, upon Plaintiff's Motion for Summary Judgment. Having reviewed the instant Motion and the supporting affidavits and the court file, having heard argument of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that:

1. The Court has jurisdiction of the subject matter and the parties of this cause.
2. There are no genuine issues of material fact [as to Count I for foreclosure]. Plaintiff's Motion for Final Summary Judgment [on all counts] [on Count I for foreclosure] is **GRANTED**.
3. Plaintiff is entitled to an award of reasonable attorney's fees in the total amount of \$ _____ [at rate of \$ _____/hour for ____ total *attorney* hours; at the rate of \$ _____/hour for ____ total *paralegal* hours] [per flat fee agreement]. In awarding same, the Court has considered all of the criteria set forth in Florida Patients' Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).

4. Plaintiff is due the following:

Principal	\$ _____
Interest to the date of this Judgment	_____
Title search expense (as allowed)	_____
Taxes	_____
Insurance premiums	_____
Attorney's fees	_____
<u>Court costs (itemize each here):</u>	
Clerk's filing fee	_____
Service of Process fee (# of Defendants: ____)	_____
Diligent search & inquiry fees (if applicable)	_____
Publication of Notice of Action (if applicable)	_____
Other: [specify]	_____

<u>Less:</u>	
Undisbursed escrow funds	(\$ _____)
Unearned insurance premiums, under the note and mortgage sued on in this action	(\$ _____)

making a total sum of \$ _____, that shall bear interest at the rate of _____ % per year, or as otherwise prescribed by law, whichever is less.

5. Plaintiff holds a lien for the total sum superior to any claim or estate of Defendant(s) on the following property in Walton County, Florida, commonly known as [insert street address] and legally described as: the legal description is set forth in Attachment "A" to this Final Summary Judgment, and is incorporated herein.

6. If the total sum with interest at the rate described in paragraph 4 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on _____, 200___, at 11:00 a.m. (Central Time), or as soon thereafter as the sale may proceed, to the highest bidder for cash, except as prescribed in paragraph 7, at www.walton.realforeclose.com, in accordance with Chapter 45, Florida Statutes.)

7. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and cost accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

8. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorney's fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 4 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

9. On filing the certificate of title defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property and the purchaser at the sale shall be let into possession of the property.

10. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, writs of possession and deficiency judgment.

11. IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER

THAN 60 DAYS AFTER THIS SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER, OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF COURT, WALTON COUNTY, COURTHOUSE 571 U.S. HIGHWAY 90 EAST, 2ND FLOOR, DEFUNIAK SPRINGS, FLORIDA 32433, WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRASFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT LEGAL SERVICES OF NORTH FLORDIA, INC., 133 STAFF DRIVE, SUITE B, FORT WALTON BEACH, FLORIDA 32548, (850) 862-3279, TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT LEGAL SERVICES OF NORTH FLORIDA, INC. FOR ASSISTANCE, YOU

SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

12. [IF APPLICABLE]: **In Rem Judgment:** This final summary judgment is an **in rem judgment** against Defendant(s): _____ [insert name(s)] _____, and there are no in personam damages or costs against said Defendant(s). A deficiency judgment may be sought against only those defendants who executed or assumed the Note, who were personally served in this action, and whose debts have not been discharged in bankruptcy.

13. [IF APPLICABLE]: **Count [?] of [Complaint] [First Amended Complaint] - Reestablishment of Lost [Note] [and/or] [Mortgage]:** The lost [Note] [and] [Mortgage] is/are hereby **REESTABLISHED.**

14. [IF APPLICABLE]: **Count [?] of Complaint - Reformation of Mortgage:** Plaintiff is entitled to reformation of the Mortgage. The mortgage contains a scrivener's error in the legal description, to wit: [describe]. Accordingly, the legal description in the mortgage recorded on _____, 20__, in Official Records Book _____, at Page _____, of the public records of Walton County, Florida, is hereby reformed, *nunc pro tunc* to the date of the original recording, to read as follows: the correct legal description is set forth in Attachment "A" to this Final Summary Judgment, and is incorporated herein.

15. [OTHER/AS APPLICABLE AND WARRANTED IN PARTICULAR CASE]:

DONE AND ORDERED in Chambers at DeFuniak Springs, Walton County, Florida,

this ____ day of _____, 200__.

Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Summary Judgment has been furnished to the following:

_____, ESQ.
LAW OFFICES OF _____
[Street Address]
[City/State/Zip]
(Counsel for Plaintiff)

_____, P.A.
_____, ESQ.
[P.O. Box ____]
[City/State/Zip]
(Counsel for Defendant(s) _____)

[List Name & mailing addresses of all other Defendants that are not represented by counsel.]
[Provide addressed stamped envelopes for mailing]

by regular U.S. mail this ____ day of _____, 200__.

Martha Ingle

BY: _____
Deputy Clerk

ATTACHMENT "A"
(Legal Description of Property)

ATTACHMENT 3. FORM 1.998. FINAL DISPOSITION FORM

This form shall be filed by the prevailing party for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

(Name of Court)

Plaintiff _____

Case #: _____

Judge: _____

vs.

Defendant _____

II. MEANS OF FINAL DISPOSITION (Place an "x" in one box for major category and one subcategory, if applicable, only)

- Dismissed Before Hearing
 - Dismissed Pursuant to Settlement – Before Hearing
 - Dismissed Pursuant to Mediated Settlement – Before Hearing
 - Other – Before Hearing
- Dismissed After Hearing
 - Dismissed Pursuant to Settlement – After Hearing
 - Dismissed Pursuant to Mediated Settlement – After Hearing
 - Other After Hearing – After Hearing
- Disposed by Default
- Disposed by Judge
- Disposed by Non-jury Trial
- Disposed by Jury Trial
- Other

DATE _____

SIGNATURE OF ATTORNEY FOR PREVAILING PARTY _____

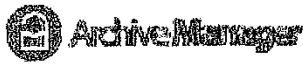
FORM 1.998. INSTRUCTIONS FOR ATTORNEYS COMPLETING FINAL DISPOSITION FORM

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned to the case and the names (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Means of Final Disposition. Place an "x" in the appropriate major category box and in the appropriate subcategory box, if applicable. The following are the definitions of the disposition categories.

- (A) Dismissed Before Hearing—the case is settled, voluntarily dismissed, or otherwise disposed of before a hearing is held;
- (B) Dismissed Pursuant to Settlement - Before Hearing—the case is voluntarily dismissed by the plaintiff after a settlement is reached without mediation before a hearing is held;
- (C) Dismissal Pursuant to Mediated Settlement - Before Hearing—the case is voluntarily dismissed by the plaintiff after a settlement is reached with mediation before a hearing is held;
- (D) Other - Before Hearing—the case is dismissed before hearing in an action that does not fall into one of the other disposition categories listed on this form;
- (E) Dismissed After Hearing—the case is dismissed by a judge, voluntarily dismissed, or settled after a hearing is held;
- (F) Dismissal Pursuant to Settlement - After Hearing—the case is voluntarily dismissed by the plaintiff after a settlement is reached without mediation after a hearing is held;
- (G) Dismissal Pursuant to Mediated Settlement - After Hearing—the case is voluntarily dismissed by the plaintiff after a settlement is reached with mediation after a hearing is held;
- (H) Other - After Hearing—the case is dismissed after hearing in an action that does not fall into one of the other disposition categories listed on this form;
- (I) Disposed by Default—a defendant chooses not to or fails to contest the plaintiff's allegations and a judgment against the defendant is entered by the court;
- (J) Disposed by Judge—a judgment or disposition is reached by the judge in a case that is not dismissed and in which no trial has been held. Includes stipulations by the parties, conditional judgments, summary judgment after hearing and any matter in which a judgment is entered excluding cases disposed of by default as in category (I) above;
- (K) Disposed by Non-Jury Trial—the case is disposed as a result of a contested trial in which there is no jury and in which the judge determines both the issues of fact and law in the case;
- (L) Disposed by Jury Trial—the case is disposed as a result of a jury trial (consider the beginning of a jury trial to be when the jurors and alternates are selected and sworn);
- (M) Other—the case is consolidated, submitted to arbitration or mediation, transferred, or otherwise disposed of by other means not listed in categories (A) through (L).

DATE AND ATTORNEY SIGNATURE. Date and sign the final disposition form.



From: Melissa Henderson **Sent:** Thu, 14 Oct 2010 11:08:07 GMT
To: Trial Court Administrators; Trial Court Chief Judges;
CC: Bian Teagle; OSCA-JUDED; Susan Leseman;
Subject: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

Foreclosure Bench Book.pdf (197Kb)

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 (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

 This e-mail has been scanned by Verizon Business Managed Email Content Service, using Skeptic(tm) technology powered by MessageLabs.

RESIDENTIAL FORECLOSURE BENCH BOOK

Prepared by

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

and

Doris Bermudez-Goodrich
Assistant General Counsel
Eleventh Judicial Circuit of Florida

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Introduction

1. Foreclosure is the enforcement of a security interest by judicial sale of collateral. All mortgages shall be foreclosed of equity. § 702.01, 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. § 702.09, 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. § 697.02, Fla. Stat. (2010); *Fla. Nat'l. Bank & Trust Co. of Miami v. Brown*, 47 So. 2d 748 (1949).

(b) **Mortgagee:** refers to the lender; the secured party or holder of the mortgage lien. § 721.82(6), 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. § 721.82(7), Fla. Stat. (2010). The mortgagor holds legal title to the mortgaged property. *Hoffman v. Semet*, 316 So. 2d 649, 652 (Fla. 4th DCA 1975).

3. To foreclosure the mortgage lien and extinguish equities of redemption, secured parties must file a civil action. § 45.0315, 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.*, 403 So. 2d 446, 449 (Fla. 2d DCA 1981); *Morris v. Waite*, 160 So. 516, 518 (Fla. 1935).

(b) Right not contingent on mortgagor's health, good fortune, ill fortune, or the regularity of his employment. *Home Owners' Loan Corp. v. Wilkes*, 178 So. 161, 164 (Fla. 1938).

(c) Contract impairment or imposition of moratorium is prohibited by court. *Lee County Bank v. Christian Mut. Foundation, Inc.*, 403 So. 2d 446, 448 (Fla. 1981).

Default

1. Right to foreclosure accrues upon the mortgagor's default.
2. Basis for 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. *David v. Sun Fed. Sav. & Loan Ass'n.*, 461 So. 2d 93, 94 (Fla. 1984).
 - (a) Absent acceleration clause, lender can only sue for amount in default. *Kirk v. Van Petten*, 21 So. 286 (Fla. 1896).
3. Commencement - upon delivery of written notice of default to the mortgagor; prior notice is not required unless it is a contractual term. *Millett v. Perez*, 418 So. 2d 1067 (Fla. 3d DCA 1982); *Fowler v. First Sav. & Loan Ass'n. of Defuniak Springs*, 643 So. 2d 30, 34 (Fla. 1st DCA 1994), (filing of complaint is notice of acceleration).
4. Pre-acceleration - mortgagor may defeat foreclosure by the payment of arrearages, thereby reinstating the mortgage. *Pici v. First Union Nat'l. Bank of Florida*, 621 So. 2d 732, 733 (Fla. 2d DCA 1993).

Statute of Limitations

1. Five year statute of limitations period - applies specifically to mortgage foreclosure actions. § 95.11(2)(c), Fla. Stat. (2010); *Farmers & Merch. Bank v. Riede*, 565 So. 2d 883, 885 (Fla. 1st DCA 1990).
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).

§ 95.031(1), Fla. Stat. (2010); *Maggio v. Dept. of Labor & Employment Sec.*, 910 So. 2d 876, 878 (Fla. 2d DCA 2005).

(b) A note or other written instrument - when the first written demand for payment occurs. *Ruhl v. Perry*, 390 So. 2d 353, 357 (Fla. 1980).

(c) Oral loan payable on demand - commencement upon demand for payment. *Mosher v. Anderson*, 817 So. 2d 812, 813 (Fla. 2002).

3. Tolling of the limitations period - acknowledgment of the debt or partial loan payments subsequent to the acceleration notice toll the statute of limitations. § 95.051(1)(f), Fla. Stat. (2010); *Cadle Company v. McCartha*, 920 So. 2d 144, 145 (Fla.5th DCA 2006).

(a) Tolling effect - starts the running anew of the limitations period on the debt. *Wester v. Rigdon*, 110 So. 2d 470, 474 (Fla. 1st DCA 1959).

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 v. Dept. of Legal Affairs*, 684 So. 2d 181, 185 (Fla. 1996).

(a) Class of case - jurisdictional parameters defined by Article V Section 5(b), Florida Constitution, implemented by Section 26.012(2)(g), Fla. Stat. (2010). *Alexdex Corp. v. Nachon Enter., Inc.*, 641 So. 2d 858 (Fla. 1994), (concurrent equity jurisdiction over lien foreclosures of real property that fall within statutory monetary limits). *Id.*, at 863.

(b) Jurisdictional authority over real property only in the circuit where the land is situated. *Hammond v. DSY Developers, LLC*, 951 So. 2d 985, 988 (Fla. 2d DCA 2007). *Goedmakers v. Goedmakers*, 520 So. 2d 575, 578 (Fla. 1988); (court lacks *in rem* jurisdiction over real property located outside the court's circuit). If real property lies in two counties, the foreclosure suit may be maintained in either county, however, the notice of sale must be published in both. § 702.04, 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. *Jeff-Ray Corp. v. Jacobsen*, 566 So. 2d 885 (Fla. 4th DCA 1990); see also, *WM Specialty Mortgage, LLC v. Salomon*, 874 So. 2d 680, 682 (Fla. 4th DCA 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. § 671.201(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 v. Aurora Loan Services, LLC*, 2010 WL 1561873 (Fla. 4th DCA 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 for whose benefit the action is brought. See also, *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1184 (Fla. 3d DCA 1985).

(c) Plaintiff's nominee has standing to maintain foreclosure based on real party in interest rule. *Mortgage Electronic Registration Systems, Inc. v. Revoredo*, 955 So. 2d 33 (Fla. 3d DCA 2007), (*MERS* was the holder by delivery of the note); *Mortgage Elec. Registration Systems, Inc. v. Azize*, 965 So. 2d 151 (Fla. 2d DCA 2007); *Philogene v. ABN AMRO Mortgage Group, Inc.*, 948 So. 2d 45 (Fla. 4th DCA 2006).

2. Assignment of note and mortgage - Plaintiff should assert assignee status in complaint. Absent formal assignment of mortgage or delivery, the mortgage in equity passes as an incident of the debt. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725, 726 (Fla. 5th DCA 2004); *Johns v. Gillian*, 134 Fla. 575, 579 (Fla. 1938); *Warren v. Seminole Bond & Mortg. Co.*, 127 Fla. 107 (Fla. 1937), (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

purchasers. § 701.02, Fla. Stat. (2010). See also, *Glynn v. First Union Nat'l. Bank*, 912 So. 2d 357, 358 (Fla. 4th DCA 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*, 888 So. 2d at 726; *WM Specialty Mortgage, LLC*, 874 So. 2d at 682; *Chem. Residential Mortgage v. Rector*, 742 So. 2d 300 (Fla. 1st DCA 1998); *Clifford v. Eastern Mortg. & Sec. Co.*, 166 So. 562 (Fla. 1936). However, 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 v. Jean Jacques*, 2010 WL 476641 (Fla. App. 2 DCA Feb. 12, 2010). If plaintiff has an assignment of mortgage recorded prior to the date of filing suit, then he can enforce even if possession of note never physically delivered. Florida courts recognize constructive delivery. "The absence of the note does not make a mortgge unenforceable." *Lawyers Title Ins. Co. Inc v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 798 (Fla. 4th DCA 2004). Assignment may be by physical delivery (provide evidence) or by written assignment.

3. MERS – What 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 18 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 for its absence. § 90.953(1), Fla. Stat. (2010); *State Street Bank and Trust Co. v. Lord*, 851 So. 2d 790, 791 (Fla. 4th DCA 2003). A satisfactory explanation includes loss, theft, destruction and wrongful possession of the note. § 673.3091(1), Fla. Stat. (2010). Reestablishment of the note is governed by § 673.3091(2), Fla. Stat. (2010).

Necessary and Proper Defendants

1. The owner of the fee simple title - only indispensable party defendant to a foreclosure action. *English v. Bankers Trust Co. of Calif., N. A.*, 895 So 2d 1120, 1121 (Fla. 4th DCA 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 v. Kim*, 898 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. *Sudhoff v. Federal Nat'l. Mortgage Ass'n.*, 942 So. 2d 425, 427 (Fla. 5th DCA 2006).

2. Failure to join other necessary parties - they remain in the same position as they were in prior to foreclosure. *Abdoney v. York*, 903 So. 2d 981, 983 (Fla. 2d DCA 2005).

3. Omitted party - only remedies are to compel redemption or the re-foreclosure in a suit de novo. *Id.*; *Quinn Plumbing Co. v. New Miami Shores Corp.*, 129 So. 2d 690, 693 (Fla. 1930).

4. Death of titleholder prior to entry of final judgment - beneficiaries of the titleholder and the personal representative are indispensable parties. *Campbell v. Napoli*, 786 So. 2d 1232 (Fla. 2d DCA 2001).

(a) If indispensable parties not joined, action abated pending proper 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. *Davis v. Scott*, 120 So. 1 (Fla. 1929).

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 v. Breckenridge Estates Corp.*, 621 So. 2d 736, 737 (Fla. 4th DCA 1993); *Commercial Laundries, Inc., v. Golf Course Towers Associates*, 568 So. 2d 501, 502

(Fla. 3d DCA 1990); *Crystal River Lumber Co. v. Knight Turpentine Co.*, 67 So. 974, 975 (Fla. 1915).

(b) If 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 count is needed to remedy an incorrect legal description contained in the deed and/or mortgage. *Chanrai Inv., Inc. v. Clement*, 566 So. 2d 838, 840 (Fla. 5th DCA 1990). As such, the original grantor and grantee are necessary parties in an action to reform a deed. *Id.*

6. 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. v. Cavendar*, 615 So. 2d 710, 711 (Fla. 3d DCA 1993).

Superior Interests

1. First or senior mortgagees are never necessary or proper parties to the foreclosure action by the junior mortgagee. *Garcia v. Stewart*, 906 So. 2d 1117, 1119 (Fla. 4th DCA 2005); *Poinciana Hotel of Miami Beach, Inc. v. Kasden*, 370 So. 2d 399, 401 (Fla. 3d DCA 1979).

(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. § 7.2(a), Restatement (Third) of Property; Mortgages (2008). 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 v. Hayward*, 689 So. 2d 1052, 1054 (Fla. 1997); *Sarmiento v. Stockton, Whatley, Davin & Co.*, 399 So. 2d 1057, 1058 (Fla. 3d DCA 1981).

(1) Priority does not extend beyond the amount of the purchase money advanced. *Citibank v. Carteret Sav. Bank, F.A.*, 612 So. 2d 599, 601 (Fla. 4th DCA 1992).

Association Liens and Assessments

1. Condominium Associations - Section 718.116(1)(b), Fla. Stat. (2010) establishes the liability of the first mortgagee, its successor or purchaser for condominium assessments and maintenance as the lesser of:

(a) unit's unpaid common expenses and regular periodic assessments which came due 6 months prior to title acquisition; or

(b) one per cent 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. § 718.1176, Fla. Stat (2010). This statutory cap, limits the liability of foreclosing mortgagees for 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. v. 2000 Island Boulevard Condo. Ass'n.*, 895 So. 2d 1197 (Fla. 3d DCA 2005). The term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage. § 718.116(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." § 718.116(1)(a), Fla. Stat. (2010).

2. Homeowners' Association's - Section 720.3085(2)(c)(1), Fla. Stat. (2010) establishes the liability of the first mortgagee, its successor or purchaser for homeowner's assessments and maintenance as the lesser of:

(a) parcel's unpaid common expenses and regular periodic or special assessments which accrued 12 months prior to acquisition of title; or

(b) one per cent of the original mortgage debt.

(c) Homeowners' Association's lien for assessments had priority over purchase money mortgage where Association's declaration of covenants contained express

provision establishing priority. *Ass'n. of Poinciana Vill. v. Avatar Props.*, 724 So. 2d 585, 587 (Fla. 5th DCA 1999).

(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. § 720.3085(2)(c), Fla. Stat. (2010).

(e) Statutory revisions of the 2008 Legislature failed to remedy the potential super-priority of liens recorded prior to July 1, 2008. (Prior statutory version amended by the 2007 Legislature gave homeowner's association liens a priority, even if the mortgage was filed first in time.) Arguably, many homeowners' 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 if the mortgage will likely be resolved on the basis of impairment of contract.

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

4. Cannot force lenders to pay association fees during pendency of foreclosure. *U. S. Bank Nat'l. Ass'n. as Trustee v. Tadmire*, 2009 WL 4281301 (Fla. 3d DCA 12/2/09).

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 v. Pearson*, 135 So. 562 (Fla. 1931).

(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 intervenes within twenty days of the notice of the lis pendens. § 48.23(1)(b), Fla. Stat. (2010).

2. Validity of a notice of lis pendens is one year from filing. § 48.23(2), Fla. Stat. (2010).

(a) Exception: One year period may be tolled by the trial court's exercise of discretion or appellate review. *Olesh v. Greenberg*, 978 So. 2d 238, 242 (Fla. 5th DCA 2008); *Vonmitschke-Collande v. Kramer*, 841 So. 2d 481, 482 (Fla. 3d DCA 2002).

3. Lis pendens automatically dissolved upon dismissal of foreclosure. Rule 1.420(f), Fla. R. Civ. P. (2010).

(a) Lis pendens revived or reinstated upon the reversal of dismissal. *Vonmitschke-Collande*, 841 So. 2d at 482.

The Foreclosure Complaint

1. Florida Supreme Court Form for foreclosure - Form 1.944, Fla. R. Civ. 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. Civ. P. (2010).

(a) Plaintiff must allege that he is the present owner and holder of the note and mortgage. *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

(b) If plaintiff is a nonresident corporation, it must comply with the condition precedent of filing a nonresident bond, upon commencement of the action. § 57.011, Fla. Stat. (2010). If plaintiff has failed to file the requisite bond within 30 days after commencement, the defendant may move for dismissal (after 20 days notice to plaintiff).

(c) Rule 1.130(a), Fla. R. Civ. P. (2010) mandates that a copy of the note and mortgage be attached to the complaint. *Eigen v. FDIC*, 492 So. 2d 826 (Fla. 2d DCA 1986).

(d) If note and mortgage assigned, complaint should allege assignment. Attachment of the assignment is preferred but may not be required since the cause of action is based on the mortgage; not the assignment. Rule 1.130(a), Fla. R. Civ. P. (2010), *WM Specialty Mortgage, LLC v. Salomon*, 874 So. 2d 680, 682 (Fla. 4th DCA 2004); *Chemical Residential Mortgage v. Rector*, 742 So. 2d 300 (Fla. 1st DCA 1998); *Johns v. Gillian*, 184 So. 140, 144 (Fla. 1938).

(e) Junior lien holders - allegation is sufficient if it states that the interest of a defendant accrued subsequent to the mortgage and he is a proper party. *InterNat'l. Kaolin Co. v. Vause*, 46 So. 3, 7 (Fla. 1908).

(f) Federal tax lien allegation must state interest of the United States of America, including: the name and address of the taxpayer, the date and place the tax lien was filed, the identity of the Internal Revenue office which filed the tax lien and if a notice of tax lien was filed. Title 28 U. S. C. § 2410(b). A copy of the tax lien must be attached as an exhibit.

(g) Local taxing authority or State of Florida party defendant - allegation should state with particularity the nature of the interest in the real property. § 69.041(2), Fla. Stat. (2010).

(h) Complaint must include statement of default. Default based on unpaid taxes or insurance must be allege default with particularity. *Siahpoosh v. Nor Props.*, 666 So. 2d 988, 989 (Fla. 4th DCA 1996).

(i) Complaint should allege compliance with condition precedent, particularly notices.

(j) Legal description of the subject real property.

(k) Attorney fees - must be pled or it is waived. *Stockman v. Downs*, 573 So. 2d 835, 838 (Fla. 1991). Allegation as to obligation to pay a reasonable attorney fee is sufficient to claim entitlement. *Wallace v. Gage*, 150 So. 799, 800 (Fla. 1933). The claim of attorney fees is based on contractual language in the note and mortgage.

(l) Additional counts include: reestablishment of the note and reformation.

Reestablishment of the note is necessary if the note is lost; reformation of the note is needed if material terms are missing. Reformation of the mortgage applies if there is a legal description discrepancy; reformation of deed is there is a deed problem.

(m) Deficiency judgment – if plaintiff seeks a deficiency, the guarantors must be sued.

Original Document Filing and Reestablishment of the Note

1. Note - Lender is required to either present the original promissory note or give a satisfactory explanation for the lender's failure to present it prior to it being enforced. *Nat'l. Loan Investors, L.P. v. Joymar Associates*, 767 So. 2d 549, 550 (Fla. 3d DCA 2000).

(a) A limited exception applies to lost, destroyed or stolen instruments. *Id.*

2. A lost promissory note is a negotiable instrument. § 673.1041(1), Fla. Stat. (2008); *Thompson v. First Union Bank*, 643 So. 2d 1179 (Fla. 5th DCA 1994).

(a) Loss or unintentional destruction of a note does not affect its validity or enforcement.

3. Reestablishment of the lost note - An owner of a lost, stolen or destroyed instrument may maintain an action by showing proof of his ownership, facts that prevent the owner from producing the instrument and proof of the terms of the lost instrument. § 673.3091(2), Fla. Stat. (2004); *Lawyer's Title Ins. Co., Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 798 (Fla. 4th DCA 2004); *Gutierrez v. Bermudez*, 540 So. 2d 888, 890 (Fla. 5th DCA 1989).

(a) Owner of note is not required to have held possession of the note when the loss occurred to maintain an action against the mortgagor. *Deaktor v. Menendez*, 830 So. 2d 124, 126 (Fla. 3d DCA 2002). Further, plaintiff is not required to prove the circumstances of the loss or destruction of the note to seek enforcement. *Id.*, at 127. Plaintiff must show only that it was entitled to enforce the note at the time of loss or that it has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred.

§ 673.3091(1)(a), Fla. Stat. (2010); *MERS v. Badra*, 991 So. 2d 1037, 1039 (Fla. 4th DCA 2008).

(b) If plaintiff is not in possession of the original note and did not reestablish it, plaintiff cannot foreclose on the note and mortgage. § 673.3091(1), Fla. Stat. (2004); *Dasma Invest., LLC v. Realty Associates Fund III, L.P.* 459 F. Supp. 2d 1294, 1302 (S.D. Fla. 2006).

(c) The filing of a duplicate copy of the note is sufficient to satisfy statutory requirements in a foreclosure action. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725 (Fla. 5th DCA 2004). If there is no copy, Plaintiff should file a lost note affidavit, ledger or a summary of loan terms.

(1) **Checklist for lost note affidavit:**

- (a) original principal balance;
- (b) signators and date note executed;
- (c) rate of interest;
- (d) unpaid balance and default date;
- (e) affiant status must be banking representative with knowledge of the particular loan;
- (f) indemnity language, precluding subsequent foreclosure judgment on the same note.

(d) Where the original note is lost, the court may require indemnification of the borrower for subsequent prosecution on the note and may require a bond to secure same. *Lovingood v. Butler Construction Co.*, 131 So. 126, 135 (Fla. 1930). Consider bonds particularly where there is a securitized trust.

1. Mortgage – Copy of mortgage is sufficient. *Perry*, 888 So. 2d at 726.

(a) Mortgage must contain correct legal description. *Lucas v. Barnett Bank of Lee County*, 705 So. 2d 115, 116 (Fla. 2d DCA 1998). If not, final judgment must be set aside. However, this can be corrected prior to final judgment.

Fair Debt Collection Practices Act (FDCPA)

1. Purpose - eliminate abusive debt collection practices by debt collectors and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).
2. Some Florida courts held - attorneys engaged in regular foreclosure work met the general definition of debt collector and are subject to the FDCPA. *Sandlin v. Shapiro*, 919 F. Supp. 1564, 1567 (M.D. Fla. 1996), (law firm engaged in collection foreclosure work was considered a debt collector where the firm sent correspondence advising of payoff and reinstatement figures and directed mortgagors to pay the law firm).
3. Under FDCPA, a debt collector's obligation to send a Notice of Debt is triggered by an initial communication with the consumer. *McKnight v. Benitez*, 176 F. Supp. 1301, 1304 (M.D. Fla. 2001).

(a) Filing of suit is not "an initial communication which otherwise would have given rise to notice and verification rights." *Acosta v. Campbell*, 2006 WL 3804729 (M.D. Fla. 2006).

(b) Foreclosure law firms have adopted the practice of attaching to their complaint: "Notice Required under the Fair Debt Collection Practice Act." This notice held ineffective in *Martinez v. Law Offices of David J. Stern*, 266 B.R. 523 (Bank. S.D. Fla. 2001).

Mandatory Mediation of Homestead Foreclosures

1. Based on the exponential increase in filings of mortgage foreclosure cases in the Eleventh Judicial Circuit Court, the Chief Judge implemented four Administrative Orders in the following sequence:

(a) Administrative Order 09-08 applies to all residential foreclosure actions involving homestead properties filed on or after May 1, 2009. AO 09-08 established the 11th Circuit Homestead Access to Mediation Program (CHAMP) mandating mandatory mediation of homestead foreclosures prior to the matter being set for final hearing. At the time of filing the complaint, Plaintiff is required to transmit to the

Program Manager, the Collins Center, a notice form (Form A) with borrower's contact information. Within five days of filing the complaint, Plaintiff must tender a cost check in the amount of \$750.00 to cover the administrative costs of the mediation. The Collins Center responsibilities include: contacting the borrower, referring the borrower to financial counseling and making financial documentation available electronically to the Plaintiff. Plaintiff's counsel and the borrower are required to be physically present at mediation; the lender's representative must attend, but is allowed to participate by telephone. Within ten days of the completion of the mediation, the mediator must report the mediation results to the court.

(b) Administrative Order 09-09 revised the following forms: the civil cover sheet, Plaintiff's certification of settlement authority, Plaintiff's certification of residential mortgage foreclosure case status and the final judgment of foreclosure.

This Administrative Order specifically exempts condominium and homeowners' association fee foreclosures, private investor mortgage foreclosures, foreclosures of non-homestead properties and construction lien foreclosures.

(c) Administrative Order 09-09 A1 acknowledged the statutory authority of the Clerk of the Courts to conduct the sale of real or personal property by electronic means. This Administrative Order further proscribed adherence to certain procedures concerning tenant occupied residential properties under the "Protecting Tenants at Foreclosure Act of 2009." Amending the specific format of the final judgment of foreclosure, this Administrative Order prohibited the issuance of immediate writs of possession.

(d) Administrative Order 09-18 responded to the Clerk of the Court's request for formal approval to conduct on-line auctions, in lieu of on-site auctions for the sale of real property.

2. On December 28, 2009, the Florida Supreme Court issued Administrative Order 09-54, adopting the recommendations of the Task Force on Residential Mortgage Foreclosure Cases and establishing a uniform, statewide managed mediation program. The Florida Supreme Court approved the Task Force's Model Administrative Order, with minor changes to be implemented by each circuit chief judge.

3. On February 26, 2010, the Eleventh Judicial Circuit Court issued Administrative Order 10-03 A1 requiring mandatory mediation of all homestead mortgage foreclosure actions subject to the federal Truth in Lending Act, Regulation Z. Administrative Order 10-03 A 1 applies to actions filed after March 29, 2010. Specifically exempted from this Administrative Order are condominium and homeowners' association fee foreclosures and mechanics and construction lien foreclosures. This Administrative Order constitutes a formal referral to mediation through the Residential Mortgage Foreclosure Mediation (RMFM) Program; parties are ineligible for default judgment, a summary judgment or final hearing until they have fully complied with mediation requirements.

Basic Procedural Requirements of Administrative Order 10-03 A1 include:

(a) When suit is filed, plaintiff must file a completed Form A with the Clerk listing the last known mailing address and phone number for each party. One business day after filing the complaint, plaintiff must transmit Form A to the Program Manager of the RMFM along with the case number of the action. The Collins Center for Public Policy, Inc. is the contract Program Manager in the Eleventh Judicial Circuit. At the time of the filing of the complaint, the Plaintiff must tender RMFM fees in the amount of \$400.00; the balance of fees in the amount of \$350.00 must be paid by Plaintiff within 10 days after notice of the mediation conference.

(b) Upon receipt of Form A, the Program Manager must contact the borrower and refer the borrower an approved mortgage foreclosure counselor. Foreclosure counseling must be completed no later than 30 days from the Program Manager's initial contact with the borrower. If the Program Manager is unable to contact the borrower within this time frame, the borrower will have been deemed to elect nonparticipation in the RMFM Program.

(c) The Program Manager must transmit the borrower's financial disclosure for mediation no later than 60 days after the Program Manager receives Form A from Plaintiff.

(d) The Program Manager shall schedule a mediation session no earlier than 60 days and no later than 120 days after suit is filed.

(e) Plaintiff's representative may appear by telephone upon 5 days notice prior to the mediation; plaintiff's attorney, the borrower and the borrower's attorney, if any, must attend in person. The court may dismiss the action without prejudice or impose other sanctions for failure to attend. Within 10 days after completion of mediation, the mediator must issue a report advising the court as to the parties' attendance and result.

Service of Process

1. Due service of process is essential to satisfy jurisdictional requirements over the subject matter and the parties in a foreclosure action. Rule 1.070, Fla. R. of Civ. P. (2010) and Chapters 48 and 49 of the Florida Statutes.
2. Service of process must be made upon the defendant within 120 days after the filing of the initial pleading. Rule 1.070(j), Fla. R. Civ. P. (2010). Absent a showing of excusable neglect or good cause, the failure to comply with the time limitations may result in the court's dismissal of the action without prejudice or the dropping of the defendant.

Personal Service

1. Section 48.031 (1), Fla. Stat. (2010) requires that service of process be effectuated by a certified process server on the person to be served by delivery of the complaint or other pleadings at the usual place of abode or by leaving the copies at the individual's place of abode with any person residing there, who is 15 years of age or older and informing them of the contents. § 48.27, Fla. Stat. (2010).

(a) Ineffective service - Leaving service of process with a doorman or with a tenant, when the defendant does not reside in the apartment is defective service. *Grosheim v. Greenpoint Mortgage Funding, Inc.*, 819 So. 2d 906, 907 (Fla. 4th DCA 2002). Evidence that person resides at a different address from service address is ineffective service. *Alvarez v. State Farm Mut. Ins. Co.*, 635 So. 2d 131 (Fla. 3d DCA 1994).

(b) Judgment subject to collateral attack where plaintiff did not substantially comply with the statutory requirements of service.

2. Substitute service authorized by Section 48.031 (2), Fla. Stat. (2010).
~~Substitute service may be made upon the spouse of a person to be served, if the~~
cause of action is not an adversary proceeding between the spouse and the person to
be served, and if the spouse resides with the person to be served.

(a) Statutes governing service of process are strictly construed. *General de Seguros, S.A. v. Consol. Prop. & Cas. Ins. Co.*, 776 So. 2d 990, 991 (Fla. 3d DCA 2001). (reversed with directions to vacate default judgment and quash service of process since substituted service was not perfected).

(b) Use of private couriers or Federal Express held invalid. *Id.*; *FNMA v. Fandino*, 751 So. 2d 752, 753 (Fla. 3d DCA 2000), (trial courts voiding of judgment affirmed based on plaintiff's failure to strictly comply with substitute service of process which employed Fedex).

(c) Evading service of process – defined by statute as concealment of whereabouts. § 48.161(1), Fla. Stat. (2010); *Bodden v. Young*, 422 So. 2d 1055 (Fla. 4th DCA 1982).

(1) The Florida case which clearly illustrates concealment is *Luckey v. Smathers & Thompson*, 343 So. 2d 53 (Fla. 3d DCA 1977). In *Luckey*, the defendant had "for the purpose of avoiding all legal matters, secreted himself from the world and lived in isolation in a high security apartment refusing to answer the telephone or even to open his mail." *Id.* at 54. The Third District Court of Appeal affirmed the trial court's decision denying defendant's motion to vacate the writ of execution and levy of sale based on a record of genuine attempts to serve the defendant. The Third District Court further opined that "there is no rule of law which requires that the officers of the court be able to breach the self-imposed isolation in order to inform the defendant that a suit has been filed against him." *Id.*

(2) Effective proof of evading service must demonstrate plaintiff's attempts in light of the facts of the case (despite process server's 13 unsuccessful attempts at service, evasion was not proved based on evidence that the property was occupied and defendant's vehicle parked there.) *Wise v. Warner*, 932 So. 2d

591, 592 (Fla. 5th DCA 2006). Working whose place of employment was known to the sheriff was not concealing herself or avoiding process, sheriff only attempted service at the residence during work hours. *Styles v. United Fid. & Guaranty Co.*, 423 So. 2d 604 (Fla. 3d DCA 1982).

(3) Statutory requirements satisfied if papers left at a place from which the person to be served can easily retrieve them and if the process server takes reasonable steps to call the delivery to the attention of the person to be served. *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla 4th DCA 1971).

3. Service on a corporation - may be served on the registered agent, officer or director. Section 48.081(2)(b), Fla. Stat. (2010) - if the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service on the corporation may be made by serving the registered agent, officer or director in accordance with § 48.031, Fla. Stat. (2010).

Constructive Service by Publication

1. Section 49.011(1), Fla. Stat. (2010) identifies the enforcement of a claim of lien to any title or interest in real property such as foreclosure actions.

2. Sections 49.021-40.041, of the Florida Statutes govern constructive service or service by publication. Constructive service statutes are strictly construed against the party seeking to obtain service. *Levenson v. McCarty*, 877 So. 2d 818, 819 (Fla. 4th DCA 2004).

3. Service by publication - only available when personal service cannot be made. *Godsell v. United Guaranty Residential Insurance*, 923 So. 2d 1209, 1212 (Fla. 5th DCA 2006), (service by publication is void when plaintiff knew of the defendant's Canadian residency, but merely performed a skip trace in Florida and made no diligent search and inquiry to locate Canadian address); *Gross v. Fidelity Fed. Sav. Bank of Fla.*, 579 So. 2d 846, 847 (Fla. 4th DCA 1991), (appellate court reversed and remanded to quash service of process and default based on plaintiff's knowledge of defendant's out of state residence address and subsequent failure to attempt personal service).

(a) Plaintiff must demonstrate that an honest and conscientious effort, reasonably appropriate to the circumstances, was made to acquire the necessary information and comply with the applicable statute. *Dor Cha, Inc. v. Hollingsworth*, 8786 So. 2d 678, 679 (Fla. 4th DCA 2004), (default judgment reversed based on plaintiff's crucial misspelling of defendant's name and subsequent search on wrong individual).

(b) Condition precedent to service by publication - Section 49.041, Fla. Stat., (2010), requires that the plaintiff file a sworn statement that shows (1) a diligent search and inquiry has been made to discover the name and residence of such person, (2) whether the defendant is over the age of 18, or if unknown, the statement should set forth that it is unknown, and (3) the status of the defendant's residence, whether unknown or in another state or country. Section 49.051, Fla. Stat. (2010) applies to service by publication on a corporation.

(c) Plaintiff is entitled to have the clerk issue a notice of action subsequent to the filing of its sworn statement. Pursuant to § 49.09, Fla. Stat., (2010), the notice requires defendant to file defenses with the clerk and serve same upon the plaintiff's attorney within 30 days after the first publication of the notice.

(1) Notice - published once each week for two consecutive weeks, with proof of publication filed upon final publication.

§49.10(1)(c)(2), Fla. Stat. (2010).

(d) Affidavit of diligent search - need only allege that diligent search and inquiry have been made; it is not necessary to include specific facts. *Floyd v. FNMA*, 704 So. 2d 1110, 1112 (Fla. 5th DCA 1998), (final judgment and sale vacated based on plaintiff's failure to conduct diligent search to discover deceased mortgagor's heirs residence and possession of the subject property). However:

(1) Better practice is to file an affidavit of diligent search that contains all details of the search. *Demars v. Vill. of Sandalwood Lakes Homeowners Ass'n.*, 625 So. 2d 1219, 1222 (Fla. 4th DCA 1993), (plaintiff's attorney failed to conduct diligent search and

inquiry by neglecting to follow up on leads which he knew were likely to yield defendant's residence).

(a) **Diligent search and inquiry checklist**

Form 1.924, Fla. R. Civ. P. (2010) contains a basic checklist of a diligent search and inquiry to establish constructive service. This Form adds consideration of inquiry of tenants as to the location of the owner/landlord of tenant occupied property. Further, the Form utilizes the following sources:

- (1) Inquiry as to occupants in possession of the subject property;
- (2) Inquiry of neighbors;
- (3) Public records search of criminal/civil actions;
- (4) Telephone listings;
- (5) Tax collector records;
- (6) Utility Co. records;
- (7) Last known employer;
- (8) U. S. Post Office;
- (9) Local police department, correctional department;
- (10) Local hospitals;
- (11) Armed Forces of the U.S.;
- (12) Department of Highway Safety & Motor Vehicles;
- (13) School board enrollment verification, if defendant has children;
- (14) An inquiry of the Division of Corporations, State of Florida, to determine if the defendant is an officer, director or registered agent;
- (15) Voter registration records.

(f) The plaintiff bears the burden of proof to establish the legal sufficiency of the affidavit when challenged. *Id.* If constructive service of process is disputed, the trial court has the duty of determining: (1) if the affidavit of diligent search is legally sufficient; and (2) whether the plaintiff conducted an adequate search to locate the defendants. *First Home View Corp. v. Guggino*, 10 So. 3d 164, 165 (Fla. 3d DCA 2009).

(g) **Diligent search test** - whether plaintiff reasonably employed the knowledge at his command, made diligent inquiry, and exerted an honest and conscientious effort appropriate to the circumstances. *Shepherd v. Deutsche Bank Trust Co. Am.s*, 922 So. 2d 340, 343 (Fla. 5th DCA 2006), (reversed and voided judgment as to defendant wife based on plaintiff's failure to strictly comply with statute, when they had been informed of defendant's correct address in England). Plaintiff's reliance on constructive service, when a doorman in New York repeatedly informed the process server of the Defendant's location in Florida, reflects an insufficient amount of reasonable efforts to personally serve the defendant to justify the use of constructive service. *De Vico v. Chase Manhattan Bank*, 823 So. 2d 175, 176 (Fla. 3d DCA 2002). Similarly, failure to inquire of the most likely source of information concerning whereabouts of a corporation, or an officer or agent, does not constitute reasonable diligence. *Redfield Investments, A. V. V. v. Village of Pinecrest*, 990 So. 2d 1135, 1139 (Fla. 3d DCA 2008).

(h) Defective service of process - judgment based on lack of diligent search and inquiry constitutes improper service and lacks authority of law. *Batchin v. Barnett Bank of Southwest Fla.*, 647 So. 2d 211,213 (Fla. 2d DCA 1994).

(1) Judgment rendered void - when defective service of process amounts to no notice of the proceedings. *Shepherd*, 922 So. 2d at 345. Void judgment is a nullity that cannot be validated by the passage of time and may be attacked at any time. *Id.*

(2) Judgment rendered voidable - if regular or defective service actually gives notice of the proceedings. *Id.*

(i) Limitations of constructive service – only confers in rem or quasi in jurisdiction; restricted to the recovery of mortgaged real property.

(1) No basis for deficiency judgment - constructive service of process cannot support a judgment that determines an issue of personal liability. *Carter v. Kingsley Bank*, 587 So. 2d 567, 569 (Fla. 1st DCA 1991), (deficiency judgment cannot be obtained absent personal service of process).

Service of Process outside the State of Florida and in Foreign Countries

1. Section 48.194(1), Fla. Stat., (2010) - authorizes service of process in the same manner as service within the state, by an officer in the state where the person is being served. Section states that service of process outside the United States may be required to conform to the provisions of Hague Convention of 1969 concerning service abroad of judicial and extrajudicial documents in civil or commercial matters.

2. The Hague Convention creates - appropriate means to ensure that judicial and extra-judicial documents to be served abroad shall be brought to the addressee in sufficient time. *Koechli v. BIP Int'l.*, 861 So. 2d 501, 502 (Fla. 5th DCA 2003).

(a) Procedure - process sent to a designated central authority, checked for compliance, served under foreign nation's law, and certificate prepared which documents the place and date of service or an explanation as to lack of service. *Id.* (return by the central authority of a foreign nation of completed certificate of service was prima facie evidence that the authority's service on a defendant in that country was made in compliance with the Hague Convention and with the law of that foreign nation).

(b) Compliance issues - see *Diz v. Hellman Int'l. Nat'l. Forwarders*, 611 So. 2d 18 (Fla. 3d DCA 1992), (plaintiff provided a faulty address to the Spanish authorities and the trial judge entered a default judgment, which appellate court reversed).

3. Service by registered mail - authorized by Section 48.194(2), Fla. Stat. (2010). Permits service by registered mail to nonresidents where the address of the person to be served is known.

(a) Section 48.192(2)(b), Fla. Stat. (2010), provides that plaintiff must file an affidavit which sets forth the nature of the process, the date on which the process was mailed by registered mail, the name and address on the envelope containing the process that was mailed, the fact that the process was mailed by registered mail and was accepted or refused by endorsement or stamp. The return envelope from the attempt to mail process should be attached to the affidavit.

Service of process and timeshare real property:

1. Foreclosure proceedings involving timeshare estates may join multiple defendants in the same action. § 721.83, Fla. Stat. (2010).
2. There are additional options to effectuating service of process for a timeshare foreclosure.

(a) Substitute service may be made upon the obligor's appointed registered agent. § 721.85(1), Fla. Stat. (2010).

(b) When quasi in rem or in rem relief only is sought, service may be made on any person whether the person is located inside or outside the state by certified or registered mail, addressed to the person to be served at the notice address. § 721.85(a), Fla. Stat. (2010).

Substitution of Parties

1. Substitution is not mandatory; the action may proceed in the name of the original party. However, to substitute a new party based on a transfer of interest requires a court order. *Tinsley v. Mangonia Residence 1, Ltd.*, 937 So. 2d 178, 179 (Fla. 4th DCA 2006), Rule 1.260, Fla. R. Civ. P.
2. Order of substitution must precede an adjudication of rights of parties, including default. *Floyd v. Wallace*, 339 So. 2d 653 (Fla. 1976); *Campbell v. Napoli*, 786 So. 2d 1232 (Fla. 2d DCA 2001), (error to enter judgment without a real party against whom judgment could be entered).
3. When substitution is permitted, plaintiff must show the identity of the new party's interest and the circumstances.

Entry of Default

1. Without proof of service demonstrating adherence to due process requirements, the Plaintiff is not entitled to entry of default or a default final judgment.

(a) Failure to effectuate service - places the jurisdiction in a state of dormancy during which the trial court or clerk is without authority to enter a default. *Armet*

S.N.C. di Ferronato Giovanni & Co. v. Hornsby, 744 So. 2d 1119, 1121 (Fla. 1st DCA 1999); *Tetley v. Lett*, 462 So. 2d 1126 (Fla. 4th DCA 1984).

2. Legal effect of default - admission of every cause of action that is sufficiently well-pled to properly invoke the jurisdiction of the court and to give due process notice to the party against whom relief is sought. *Fiera.Com, Inc. v. Digicast New Media Group, Inc.*, 837 So. 2d 451, 452 (Fla. 3d DCA 2003). Default terminates the defending party's right to further defend, except to contest the amount of unliquidated damages. *Donohue v. Brightman*, 939 So. 2d 1162, 1164 (Fla. 4th DCA 2006).

3. Plaintiff is entitled to entry of default if the defendant fails to file or serve any paper 20 days after service of process. Rule 1.040(a)(1), Fla. R. Civ. P. (2010).

(a) State of Florida has 40 days in which to file or serve any paper in accordance with Section 48.121, Fla. Stat. (2008).

(b) United States of America has 60 days to file under the provisions of 28 U.S.C.A. § 2410(b); Rule 12(a)(3), Fed. R. Civ. P.

4. **Service Members Civil Relief Act of 2003 (formerly, Soldier's & Sailors Act)**

(a) Codified in 50 App. U. S. C. A. § 521 - tolls proceedings during the period of time that the defendant is in the military service.

(b) Act precludes entry of default; there is no need for the service member to demonstrate hardship or prejudice based on military service. *Conroy v. Aniskoff*, 507 U.S. 511, 512 (1993). Service member with notice of the foreclosure action, may obtain a stay of the proceedings for a period of 9 months. 50 App. U. S. C. A. § 521 (d) was superseded by the Housing and Economic Recovery Act of 2008, § 2203, which expires on 12/31/10. Upon expiration, the original 90 day period will re-take effect.

(c) Determination of military status – to obtain default, plaintiff must file an affidavit stating:

(1) defendant is not in military service; or

(2) plaintiff is unable to determine if the defendant is in the military service. 50 App. U. S. C. A. § 521(b)(1).

(d) Unknown military status -the court may require the plaintiff to file a bond prior to entry of judgment. 50 App. U. S. C. A. § 521(b)(3).

5. Plaintiff is required to serve the defendant with notice of the application for default. Failure to notice defendant's attorney entry of subsequent default is invalid; rendering resulting judgment void. *U.S. Bank Nat'l. Ass'n. v. Lloyd*, 981 So. 2d 633, 634 (Fla. 2d DCA 2008).

6. Non-Military Affidavit required -must be based on: personal knowledge, attest to the fact that inquiry was made of the Armed Forces, and affiant must state that the defendant is not in the armed forces. *The Fla. Bar Re: Approval of Forms*, 621 So. 2d 1025, 1034 (Fla. 1993). Affidavits based on information and belief are not in compliance.

(a) Non-military affidavit is valid for one year.

Appointment of a Guardian ad Litem

1. The best practice is appointment when unknown parties are joined and service effected through publication. For example, a guardian ad litem should be appointed to represent the estate of a deceased defendant or when it is unknown if the defendant is deceased. § 733.308, Fla. Stat. (2010).

(a) Section 65.061(2), Fla. Stat. (2010) states that a "guardian ad litem shall not be appointed unless it affirmatively appears that the interest of minors, persons of unsound mind, or convicts are involved."

(b) Rule 1.210(b), Fla. R. Civ. P. (2010) provides that the court "shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented...for the protection of the minor or incompetent person." Similarly, Rule 1.511(e), Fla. R. Civ. P. (2010) maintains that "final judgment after default may be entered by the court at any time, but no judgment may be entered against an infant or incompetent person unless represented by a guardian."

Appointment of a Receiver

1. During a foreclosure, appointment of a receiver for condominium and homeowners' associations is governed by statute, although it may also be authorized by association by-laws.

(a) Section 718.116(6)(c), Fla. Stat. (2010), provides that the court in its discretion may require the resident condominium unit owner to pay a reasonable rental for the unit. During the "pendency of the foreclosure action, the condominium association is entitled to the appointment of a receiver to collect the rent." *Id.*

(b) Similarly, Section 720.3085(1)(d), Fla. Stat. (2010) governs homeowners' associations. Post judgment, this Section provides that the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure, the homeowners' association is entitled to the appointment of a receiver. *Id.*

(c) Blanket motions for appointment of a receiver for units prior to the filing of a foreclosure action do not meet the requirements of either statutory provision.

2. The movant for appointment of a receiver for real property which does not qualify under the condominium or homeowners' association statutes must satisfy basic prerequisites. These basic prerequisites are the same legal standards applicable to non-foreclosure proceedings, as injunctive relief.

(a) This equitable prejudgment remedy must be exercised with caution as it is in derogation of the legal owner's fundamental right of possession of his property and only warranted if there is a showing that the secured property is being wasted or otherwise subject to serious risk of loss. *Alafaya Square Association, Ltd. v. Great Western Bank*, 700 So. 2d 38, 41 (Fla. 5th DCA 1997); *Twinjay Chambers Partnership v. Suarez*, 556 So. 2d 781, 782 (Fla. 2d DCA 1990); *Electro Mechanical Products, Inc. v. Borona*, 324 So. 2d 638 (Fla. 3d DCA 1976).

(b) In the absence of a showing that the property is being wasted or otherwise subject to serious risk of loss, appointment of a receiver is unjustified. *Seasons P'ship 1 v. Kraus-Anderson, Inc.*, 700 So. 2d 6061, 6062 (Fla. 2d DCA 1997).

(c) The party seeking appointment must show that there is a substantial likelihood that it will prevail on the merits at the conclusion of the case and must present sufficient proof that appointment of a receiver is warranted. *Keybank National Association v. Knuth, Ltd.*, 2009 WL 2448160, 2448161 (Fla. 3d DCA, Aug. 12, 2009).

(d) A final prerequisite to appointment of a receiver is that the movant must post a bond, for either the plaintiff or the receiver. Rule 1.620(c), Fla. Rules of Civ. P. (2010); *Boyd v. Banc One Mortgage Corp.*, 509 So. 2d 966,967 (Fla. 3d DCA 1987).

Summary Final Judgment of Foreclosure

1. Legal standard – No genuine issue of material fact and movant is entitled to a judgment as a matter of law. Also, outstanding discovery can preclude summary judgment.

2. Burden of Proof - The plaintiff bears the burden of proof to establish the nonexistence of disputed issues of material fact. *Delandro v. Am.'s. Mortgage Servicing, Inc.*, 674 So. 2d 184, 186 (Fla. 3d DCA 1996); *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966).

3. Content of motion for summary judgment – plaintiff should allege:

1) execution of note and mortgage; 2) plaintiff's status as owner and holder (or representative); 3) date of default; 4) notice of default and acceleration; 5) amount due and owing; 6) relief sought; and 7) address affirmative defenses, if any.

4. Filing of the Motion - at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. Rule 1.510(a), Fla. R. Civ. P. (2010). The motion for summary judgment, supporting affidavits and notice of hearing must be served on a defendant at least (20) twenty days before the summary judgment hearing. Rule 1.510(c), Fla. R. Civ. P. (2010); *Verizzo v. Bank of New York*, 2010 WL 711862 (Fla. 2 DCA Mar. 3, 2010); *Mack v. Commercial Industrial Park, Inc.*, 541 So. 2d 800, 801 (Fla. 4th DCA 1989).

(a) Opposition materials and evidence supportive of a denial of a motion for summary judgment must be identified. Rule 1.510(c), Fla. R. Civ. P. (2010). Notice of opposition must be mailed to the movant's attorney at least five days prior to the day of hearing or delivered no later than 5:00 P. M., (2) two business days prior to the day of the hearing on the summary judgment.

(b) The movant for summary judgment must factually refute or disprove the affirmative defenses raised, or establish that the defenses are insufficient as a matter of law. *Leal v. Deutsche Bank Nat'l. Trust Co.*, 21 So. 3d 907, 908 (Fla. 3d DCA 2009).

(c) Filing of cross motions is subject to the 20-day notice period. *Wizikowski v. Hillsborough County*, 651 So. 2d 1223 (Fla. 2d DCA 1995).

5. Requirement for motion for summary judgment - due notice and a hearing. Proof of mailing of notice of the final summary judgment hearing created presumption that notice of hearing was received. *Blanco v. Kinas*, 936 So. 2d 31, 32 (Fla. 3d DCA 2006).

6. **Affidavits in support of Summary Judgment**

Affidavits in support of the motion must be made based on personal knowledge and set forth facts that would be admissible in evidence, and demonstrate that the affiant is competent to testify on the matters presented.

(a) Affidavit of Indebtedness – Must be signed by a custodian of business record with knowledge. In general, the plaintiff's affidavit itemizes:

- (1) property address,
- (2) principal balance,
- (3) interest (calculated from default up until the entry of judgment, when the mortgage provides for automatic acceleration upon default, *THFN Realty Co. v. Kirkman/Conroy, Ltd.*, 546 So. 2d 1158 (Fla. 5th DCA 1989). (best practice is to include per diem interest),
- (4) late charges (pre-acceleration only), *Fowler v. First Fed. Sav. & Loan Ass'n.*, 643 So. 2d 30, 33(Fla. 1st DCA 1994).),
- (5) prepayment penalties – unavailable in foreclosure actions, *Fla. Nat'l*

Bank v. Bankatlantic, 589 So. 2d 255, 259 (Fla. 1991), unless specifically authorized in note in the event of acceleration and foreclosure. *Feinstein v. Ashplant*, 961 So. 2d 1074 (Fla. 4th DCA 2007).

- (6) property inspections & appraisals,
- (7) hazard insurance premiums and taxes.

(b) Affidavit of Costs - This affidavit details:

- (1) the filing fee,
- (2) service of process,
- (3) and abstracting costs.

(c) Affidavit of attorney's time - references the actual time the attorney expended on the foreclosure file and references the actual hourly billable rate or the flat fee rate which the client has agreed to pay. The Fla. Supreme Court endorsed the lodestar method. *Bell v. U. S. B. Acquisition Co.*, 734 So. 2d 403, 406 (Fla. 1999). The hours may be reduced or enhanced in the discretion of the court, depending on the novelty and difficulty of questions involved. *Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985). With regard to uncontested time, plaintiff is not required to keep contemporaneous time records since the lender is contractually obligated to pay a flat fee for that time. *Id.*

(d) Affidavit as to reasonableness of attorneys' fee - Affidavit of attorney's fee must be signed by a practicing attorney not affiliated with the plaintiff's firm, attesting to the rate as reasonable and customary in the circuit. Affiant should reference and evaluate the attorney fee claim based on the eight factors set forth in Rule 4-1.5(b)(1) Rules Regulating the Fla. Bar. Of these, relevant factors, such as the time and labor required, the customary fee in the locality for legal services of a similar nature, and the experience and skill of the lawyer performing the service must be examined. An award of attorney fees must be supported by expert evidence. *Palmetto Federal Savings and Loan Association v. Day*, 512 So. 2d 332 (Fla. 3d DCA 1987).

- (1) Where there is a default judgment and the promissory note or mortgage contains a provision for an award of attorney fees,

Section 702.065(2), Fla. Stat. (2010) provides that "it is not necessary for the court to hold a hearing or adjudge the requested attorney's fees to be reasonable if the fees do not exceed 3 per cent of the principal amount owed at the time of the filing of the complaint." *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985). *Id.* This statutory provision confirms that "such fees constitute liquidated damages in any proceeding to enforce the note or mortgage." *Id.*

(2) The judgment must contain findings as to the number of hours and the reasonable hourly rate. *Id.* at 1152. The requirements of *Rowe* are mandatory and failure to make the requisite findings is reversible error. *Home Insurance Co. v. Gonzalez*, 648 So. 2d 291, 292 (Fla. 3d DCA 1995). "An award of attorneys' fees must be supported by competent substantial evidence in the record and contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved." *Stack v. Homeside Lending, Inc.* 976 So. 2d 618, 620 (Fla. 2d DCA 2008).

Affirmative Defenses

1. Genuine existence of material fact - precludes entry of summary judgment. *Manassas Investments Inc. v. O'Hanrahan*, 817 So. 2d 1080 (Fla. 2d DCA 2002).
2. Legal sufficiency of defenses - Certainty is required when pleading affirmative defenses; conclusions of law unsupported by allegations of ultimate fact are legally insufficient. *Bliss v. Carmona*, 418 So. 2d 1017, 1019 (Fla. 3d DCA 1982) "Affirmative defenses do not simply deny the facts of the opposing party's claim; they raise some new matter which defeats an otherwise apparently valid claim." *Wiggins v. Protmay*, 430 So. 2d 541, 542 (Fla. 1st DCA 1983). Plaintiff must either factually refute affirmative defenses or establish that they are legally insufficient. *Frost v. Regions Bank*, 15 So. 3d 905, 906 (Fla. 4th DCA 2009).

3. **Affirmative defenses commonly raised:**

(a) Payment – Where defendants alleged advance payments and plaintiff failed to refute this defense, plaintiff not entitled to summary judgment. *Morrone v. Household Fin. Corp. III*, 903 So. 2d 311, 312 (Fla. 2d DCA 2005). Equally, if the affidavit of indebtedness is inconclusive (for example, includes a credit for unapplied funds without explanation), and the borrower alleges a the defense of inaccurate accounting, then summary judgment should be denied. *Kanu v. Pointe Bank*, 861 So. 2d 498 (Fla. 4th DCA 2003). However, summary judgment will be defeated if payment was attempted, but due to misunderstanding or excusable neglect coupled with lender's conduct, contributed to the failure to pay. *Campbell v. Werner*, 232 So. 2d 252, 256 (Fla. 3d DCA 1970); *Lieberbaum v. Surfcomber Hotel Corp.*, 122 So. 2d 28, 29 (Fla. 3d DCA 1960), (Court dismissed foreclosure complaint where plaintiffs knew that some excusable oversight was the cause for non-payment, said payment having been refused and subsequently deposited by defendants into the court registry).

(b) Failure to comply with conditions precedent – such as Plaintiff's failure to send the Notice of Default letter. Failure to receive payoff information does not preclude summary judgment. *Walker v. Midland Mortgage Co.*, 935 So. 2d 519, 520 (Fla. 3d DCA 2006).

(c) Estoppel is usually based on: a representation as to a material fact that is contrary to a later-asserted position; reliance on that representation; and a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon. *Harris v. Nat'l. Recovery Agency*, 819 So. 2d 850, 854 (Fla. 4th DCA 2002); *Jones v. City of Winter Haven*, 870 So. 2d 52, 55 (Fla. 2d DCA 2003), (defendant defeated city's foreclosure based on evidence presented which indicated that the city had agreed to stop fines for noncompliance with property code if homeowner hired a licensed contractor to make repairs).

(d) Waiver – the knowing and intentional relinquishment of an existing right. *Taylor v. Kenco Chem. & Mfg. Co.*, 465 So. 2d 581, 588 (Fla. 1st DCA 1985). When properly pled, affirmative defenses that sound in waiver (and estoppel) present

genuine issues of material fact which are inappropriate for summary judgment.

Schiebe v. Bank of Am., 822 So. 2d 575 (Fla. 5th DCA 2002).

(1) Acceptance of late payments - common defense asserting waiver is the lenders acceptance of late payments. However, the lender has the right to elect to accelerate or not to accelerate after default. *Scarfo v. Peever*, 405 So. 2d 1064, 1065 (Fla. 5th DCA 1981). Default predicated on defendant's failure to pay real estate taxes, could not be overcome by defendant's claim of estoppel due to misapplication of non-escrow payments. *Lunn Woods v. Lowery*, 577 So. 2d 705, 707 (Fla. 2d DCA 1991).

(e) Fraud in the inducement - defined as situation where parties to a contract appear to negotiate freely, but where in fact the ability of one party to negotiate fair terms and make an informed decision is undermined by the other party's fraudulent behavior. *HTP, Ltd. v. Lineas Aereas Costarricenses, S. A.*, 685 So. 2d 1238, 1239 (Fla. 1996).

Affirmative defense of fraud in the inducement based on allegation that seller failed to disclose extensive termite damage resulted in reversal of foreclosure judgment. *Hinton v. Brooks*, 820 So. 2d 325 (Fla. 5th DCA 2001). (Note that purchasers had first filed fraud in the inducement case and seller retaliated with foreclosure suit). Further, the appellate court opined in the *Hinton* case that fraud in the inducement was not barred by the economic loss rule. *Id.*

(f) Usury – defined by § 687.03, Fla. Stat. (2010), as a contract for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest. If the loan exceeds \$500,000 in amount or value, then the applicable statutory section is § 687.071, Fla. Stat. (2010). A usurious contract is unenforceable according to the provisions of Section 687.071(7), Fla. Stat. (2010).

(g) Forbearance agreement - Appellate court upheld summary judgment based on Defendant's failure to present any evidence as to the alleged forbearance

agreement of prior servicer to delay foreclosure until the settlement of his personal injury case. *Walker v. Midland Mortgage Co.*, 935 So. 2d at 520. If evidence of forbearance is submitted, it may defeat summary judgment.

(h) Statute of limitations - Property owner successfully asserted that foreclosure filed five years after mortgage maturity date was barred by statute of limitations; mortgage lien was no longer valid and enforceable under Section 95.281(1)(a), Fla. Stat. (2010); *American Bankers Life Assurance Co. of Fla. v. 2275 West Corp.*, 905 So. 2d 189, 191 (Fla. 3d DCA 2005).

(i) Failure to pay documentary stamps – Section 201.08, Fla. Stat. (2010) precludes enforcement of notes and mortgages absent the payment of documentary stamps. *WRJ Dev., Inc. v. North Ring Limited*, 979 So. 2d 1046, 1047 (Fla. 3d DCA 2008); *Bonifiglio v. Banker's Trust Co. of Calif.*, 944 So. 2d 1087, 1088 (Fla. 4th DCA 2007).

(1) This is a limitation on judicial authority; not a genuine affirmative defense.

(j) Truth in Lending (TILA) violations – Technical violations of TILA do not impose liability on lender or defeat foreclosure. *Kasket v. Chase Manhattan Mortgage Corp.*, 759 So. 2d 726 (Fla. 4th DCA 2000); 15 U. S. C. A. § 1600. Exception to TILA one year statute of limitations applies to defenses raised in foreclosure. *Dailey v. Leshin*, 792 So. 2d 527, 532 (Fla. 4th DCA 2001); 15 U. S. C. A. § 1640(e).

TILA issues include:

(1) Improper adjustments to interest rates (ARMS);

(2) Borrower must be given 2 copies of notice of rescission rights. Written acknowledgement of receipt is only a rebuttable presumption. *Cintron v. Bankers Trust Co.*, 682 So. 2d 616 (Fla. 2d DCA 1996).

(3) TILA rescission for up to 3 years after the transaction for failure to make material disclosures to borrower. Such as, APR of loan, amount financed, total payment and payment schedule. Rescission relieves borrower only for payment of interest. Must be within three years of closing. 15 U. S. C. § 1601-166 (1994); *Beach v. Great Western Bank*, 692 So. 2d 146, 153 (Fla. 1997).

(a) Wife's homestead interest in mortgaged property gives her right to

TILA disclosure. *Gancedo v. DelCarpio*, 17 So. 3d 843, 844 (Fla. 4th DCA 2009).

(k) Res judicata – Foreclosure and acceleration based on the same default bars a subsequent action unless predicated upon separate, different defaults. *Singleton v. Greymar Assoc.*, 882 So. 2d 1004, 1007 (Fla. 2004).

Additional cases: *Limehouse v. Smith*, 797 So. 2d 15 (Fla. 4th DCA 2001), (mistake); *O'Brien v. Fed. Trust Bank, F. S. B.*, 727 So. 2d 296 (Fla. 5th DCA 1999), (fraud, RICO and duress); *Biondo v. Powers*, 743 So. 2d 161 (Fla. 4th DCA 1999), (usury); *Heimmermann v. First Union Mortgage Corp.*, 305 F. 2d 1257 (11th Cir. 2002), (Real Estate Settlement Procedures Act (RESPA) violations).

Summary Judgment Hearing

1. Plaintiff must file the original note and mortgage at or before the summary judgment hearing. Since the promissory note is negotiable, it must be surrendered in the foreclosure proceeding so that it does not remain in the stream of commerce. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725, 726 (Fla. 5th DCA 2001). Copies are sufficient with the exception that the note must be reestablished. *Id.* Best practice is for judge to cancel the signed note upon entry of summary judgment.

(a) Failure to produce note - can preclude entry of summary judgment. *Natl. Loan Investors, L. P. v. Joymar Assoc.*, 767 So. 2d 549, 550 (Fla. 3d DCA 2000).

Final Judgment

1. Section 45.031, Fla. Stat. (2010) governs the contents of the final judgment. Final Judgment Form 1.996, Fla. R. Civ. P. (2010).

2. Amounts due - Plaintiff's recovery limited to items pled in complaint or affidavit or based on a mortgage provision.

3. Court may award costs agreed at inception of contractual relationship; costs must be reasonable. *Nemours Found. v. Gauldin*, 601 So. 2d 574, 576 (Fla. 5th DCA 1992), (assessed costs consistent with mortgage provision rather than prevailing party statute); *Maw v. Abinales*, 463 So. 2d 1245, 1247 (Fla. 2d DCA 1985), (award of costs governed by mortgage provision).

4. Checklist for Final Summary Judgment

(a) Final Judgment:

- (1) Check service, defaults, dropped parties.
- (2) Check for evidence of ownership of note.
- (3) Check affidavits – signed and correct case number/parties.
- (4) Amounts due and costs should match affidavits filed. If interest has increased due to resets a daily interest rate should be indicated so you can verify it.
- (5) Check principal, rate & calculation of interest through date of judgment.
- (6) Late fees – pre-acceleration is recoverable; post acceleration is not. *Fowler v. First Fed. Sav. & Loan Assoc. of Defuniak Springs*, 643 So. 2d 30, 33 (Fla. 1st DCA 1994).
- (7) All expenses and costs, such as service of process should be reasonable, market rates. Items related to protection of security interest, such as fencing and boarding up property are recoverable if reasonable.
- (8) Beware - hidden charges & fees for default letters, correspondence related to workout efforts. Court's discretion to deny recovery.
- (9) Attorney fees must not exceed contract rate with client and be supported by an affidavit as to reasonableness. Attorney fee cannot exceed 3% of principal owed. § 702.065(2), Fla. Stat. (2010). Beware – add-ons for litigation fees – make sure that they are not double-billing flat fee.
- (10) Bankruptcy fees not recoverable - Correct forum is bankruptcy court. *Martinez v. Giacobbe*, 951 So. 2d 902, 904 (Fla. 3d DCA 2007); *Dvorak v. First Family Bank*, 639 So. 2d 1076, 1077 (Fla. 5th DCA 1994). Bankruptcy costs incurred to obtain stay relief - recoverable. *Nemours*, 601 So. 2d at 575.

(11) Sale date – may not be set in less than 20 days or more than

35 days, unless parties agree. § 45.031(1)(a), Fla. Stat. (2010),

JRBL Dev., Inc. v. Maiello, 872 So. 2d 362, 363 (Fla. 2d DCA 2004).

5. If summary judgment denied, foreclosure action proceeds to trial on contested issues.

(a) Trial is before the court without a jury. § 702.01, Fla. Stat. (2010).

6. Motion for rehearing – abuse of discretion to deny rehearing where multiple legal issues, including prepayment penalties and usury, remain unresolved by the trial court. *Bonilla v. Yale Mortgage Corporation*, 15-So. 3d 943, 945 (Fla. 3d DCA 2009).

7. After entry of final judgment and expiration of time to file a motion for rehearing or for a new trial, the trial court loses jurisdiction of the case. *Ross v. Damas*, 2010 WL 532812 (Fla. 3d DCA Feb. 17, 2010); 459 So. 2d 435 (Fla. 3d DCA 1984). Exception: when the trial court reserves in the final judgment the jurisdiction of post judgment matters, such as deficiency judgments. *Id.*

Right of Redemption

1. Mortgagor may exercise his right of redemption at any time prior to the issuance of the certificate of sale. § 45.0315, Fla. Stat. (2010).

(a) Court approval is not needed to redeem. *Indian River Farms v. YBF Partners*, 777 So. 2d 1096, 1100 (Fla. 4th DCA 2001); *Saidi v. Wasko*, 687 So. 2d 10, 13 (Fla. 5th DCA 1996).

(b) Court of equity may extend time to redeem. *Perez v. Kossow*, 602 So. 2d 1372 (Fla. 3d DCA 1992).

2. To redeem, mortgagor must pay the entire mortgage debt, including costs of foreclosure and attorney fees. *CSB Realty, Inc. v. Eurobuilding Corp.*, 625 So. 2d 1275, 1276 (Fla. 3d DCA 1993); §45.0315, Fla. Stat. (2008).

3. Right to redeem is incident to every mortgage and can be assigned by anyone claiming under him. *VOSR Indus., Inc. v. Martin Properties, Inc.*, 919 So. 2d 554, 556 (Fla. 4th DCA 2006). There is no statutory prohibition against the assignment, including the assignment of bid at sale.

(a) Right of redemption extends to holders of subordinate interests. Junior mortgage has an absolute right to redeem from senior mortgage. *Marina Funding Group, Inc. v. Peninsula Prop. Holdings, Inc.*, 950 So. 2d 428, 429 (Fla. 4th DCA 2007); *Quinn Plumbing Co. v. New Miami Shores Corp.*, 129 So. 690, 694 (Fla. 1930).

4. Fed. right of redemption – United States has 120 days following the foreclosure sale to redeem the property if its interest is based on an IRS tax lien. For any other interest, the Fed. government has one year to redeem the property. 11 U. S. C. § 541, 28 U. S. C. § 959.

Judicial Sale

Scheduling the judicial sale

1. The statutory proscribed time frame for scheduling a sale is “not less than 20 days or more than 35 days after the date” of the order or judgment. § 45.031(1) (a), Fla. Stat. (2010). The statute applies unless agreed otherwise.

2. Cancellations, continuances and postponements are within the discretion of the trial court. Movant must have reasons. Judicial action based on benevolence or compassion constitutes an abuse of discretion. *Republic Federal Bank v. Doyle*, 2009 WL 3102130 (Fla. 3d DCA 2009), (Appellate court reversed trial court’s continuance of sale based on compassion to homeowners claiming they needed additional time to sell the home). There should be no across the board policy. But see, *Wells Fargo v. Lupica*, 2010 WL 2218584 (Fla. 5th DCA 6/4/10) – denial of lender’s unopposed motion to cancel and subsequent motion to vacate sale reversed. Counsel alleged a loan modification agreement had been reached. Court rejected asking for evidence of agreement. The Fifth District Court ruled, “there was no basis for the trial court to reject Wells Fargo’s counsels representation, as an officer of the court, that an agreement had been reached.” *Id.* Look at language in motions, “HAMP Review” and “loss mitigation” do not constitute an agreement. Include language in the order indicating the court’s rationale, even if you have a form order. Ask counsel to make a personal representation as an “officer of the court.” See also, *Chemical Mortgage v. Dickson*, 651 So. 2d 1275, 1276 (Fla. 4th DCA 1995). Error not to cancel sale and

reschedule where plaintiff did not receive bidding instructions on a federally-guaranteed mortgage. However, this case found "no extraordinary circumstances" preventing rescheduling. Suggestion: we live in extraordinary times.

Notice of sale

1. Notice of sale must be published once a week, for 2 consecutive weeks in a publication of general circulation. § 45.031(1), Fla. Stat. (2010). The second publication shall be at least five days before the sale. § 45.031(2), Fla. Stat. (2010).

(a) Notice must include: property description; time and place of sale; case style; clerk's name and a statement that sale will be conducted in accordance with final judgment.

(b) Defective notice can constitute grounds to set aside sale. *Richardson v. Chase Manhattan Bank*, 941 So. 2d 435, 438 (Fla. 3d DCA 2006); *Ingorvaia v. Horton*, 816 So. 2d 1256 (Fla. 2d DCA 2002).

Judicial sale procedure

1. Judicial sale is public, anyone can bid. *Heilman v. Suburban Coastal Corp.*, 506 So. 2d 1088 (Fla. 4th DCA 1987). Property is sold to the highest bidder.

2. Plaintiff is entitled to a credit bid in the amount due under final judgment, plus interest and costs through the date of sale. *Robinson v. Phillips*, 171 So. 2d 197, 198 (Fla. 3d DCA 1965).

3. Amount bid is conclusively presumed sufficient consideration. § 45.031(8), Fla. Stat. (2010).

Certificate of sale

1. Upon sale completion - certificate of sale must be served on all parties not defaulted. The right of redemption for all parties is extinguished upon issuance of certificate of sale. §45.0315, Fla. Stat. (2008).

2. Documentary stamps must be paid on the sale. §201.02(9), Fla. Stat. (2010). The amount of tax is based on the highest and best bid at the foreclosure sale. *Id.*

(a) Assignment of successful bid at foreclosure sale - is a transfer of an interest in realty subject to the documentary stamp tax. Fla. Admin. Code Rule 12B-4.013(25). (Rule 12B-4.013(3) provides that the tax is also applicable to the certificate of title

issued by the clerk of court to the holder of the successful foreclosure bid, resulting in a double stamp tax if the bid is assigned and the assignee receives the certificate of title.)

(b) Assignment prior to foreclosure sale - holder of a mortgage foreclosure judgment that needs to transfer title to a different entity and anticipates that the new entity would be the highest bidder, should assign prior to the foreclosure sale to avoid double tax.

(c) Documentary stamps are due only if consideration or an exchange of value takes place. *Crescent Miami Center, LLC v. Fla. Dept. of Revenue*, 903 So. 2d 913, 918 (Fla. 2005), (Transfer of unencumbered realty between a grantor and wholly-owned grantee, absent consideration and a purchaser, not subject to documentary stamp tax); *Dept. of Revenue v. Mesmer*, 345 So. 2d 384, 386 (Fla. 1st DCA 1977), (based on assignment of interest and tender of payment, documentary stamps should have been paid).

(d) Exempt governmental agencies, which do not pay documentary stamps include: Fannie Mae, Freddie Mac, Fed. Home Administration and the Veteran's Administration. Fla. Admin. Code Rules 12B-4.014(9)-(11); 1961 Op. Atty. Gen. 061-137, Sept. 1, 1961.

Objection to sale

1. Any party may file a verified objection to the amount of bid within 10 days. § 45.031(8), Fla. Stat. (2010). The court may hold a hearing – within judicial discretion. Hearing must be noticed to everyone, including third party purchasers. *Shlishey the Best v. Citifinancial Equity Services, Inc.*, 14 So. 3d 1271 (Fla. 2d DCA 2009).

2. Court has broad discretion to set aside sale. *Long Beach Mortgage Corp. v. Bebble*, 985 So. 2d 611, 614 (Fla. 4th DCA 2008), (appellate court reversed sale - unilateral mistake resulted in outrageous windfall to buyer who made *de minimis* bid). The court may consider a settlement agreement in considering whether to vacate a sale. *JRBL Development, Inc. v. Maiello*, 872 So. 2d 362, 363 (Fla. 2d DCA 2004).

3. **Test:** sale may be set aside if:

(1) bid was grossly or startlingly inadequate; and (2) inadequacy of bid resulted from some mistake, fraud, or other irregularity of sale. *Blue Star Invs., Inc. v. Johnson*, 801 So. 2d 218 (Fla. 4th DCA 2001); *Mody v. Calif. Fed. Bank*, 747 So. 2d 1016, 1017 (Fla. 3d DCA 1999). Mere inadequacy of price is not enough. *Arlt v. Buchanan*, 190 So. 2d 575, 577 (Fla. 1960). Burden on party seeking to vacate sale.

(a) Plaintiff's delay in providing payoff information cannot be sole basis for setting aside sale. *Action Realty & Invs., Inc. v. Grandison*, 930 So. 2d 674, 676 (Fla. 4th DCA 2006).

(b) Stranger to foreclosure action does not have standing to complain of defects in the absence of fraud. *REO Properties Corp. v. Binder*, 946 So. 2d 572, 574 (Fla. 2d DCA 2006).

(c) Sale may be set aside if plaintiff misses sale, based on appropriate showing. *Wells Fargo Fin. System Fla., Inc. v. GRP Fin. Services Corp.*, 890 So. 2d 383 (Fla. 2d DCA 2004).

(d) Court may refuse to set aside sale where objection is beyond statutory period. *Ryan v. Countrywide Home Loans, Inc.*, 7453 So. 2d 36, 38 (Fla. 2d DCA 1999), (untimely motion filed 60 days following the sale).

Sale vacated

1. If sale vacated – mortgage and lien “relieved with all effects” from foreclosure and returned to their original status. §702.08, Fla. Stat. (2010).

(a) Upon readvertisement and resale, a mortgagor's lost redemptive rights temporarily revest. *YEMC Const. & Development, Inc., v. Inter Ser, U. S. A., Inc.*, 884 So. 2d 446, 448 (Fla. 3d DCA 2004).

Post Sale Issues

Certificate of title

1. No objections to sale – Sale is confirmed by the Clerk's issuance of the certificate of title to purchaser. Title passes to the purchaser subject to parties whose interests were not extinguished by foreclosure, such as omitted parties.

(a) Plaintiff may reforeclose or sue to compel an omitted junior lienholder to redeem within a reasonable time. *Quinn*, 129 So. 2d at 694.

(b) Foreclosure is void if titleholder omitted. *England v. Bankers Trust Co. of Calif., N. A.*, 895 So. 2d 1120, 1121 (Fla. 4th DCA 2005).

Right of possession

1. Purchaser has a right to possess the property - upon the issuance of the certificate of title, provided the interest holder was properly joined in the foreclosure.

2. Right of possession enforced through writ of possession. Rule 1.580, Fla. R. Civ. P. (2010)

3. **Summary writ of possession procedure:**

(a) Purchaser of property moves for writ of possession;

(b) The writ can be issued against any party who had actual or constructive knowledge of the foreclosure proceedings and adjudication; *Redding v. Stockton, Whatley, Davin & Co.*, 488 So. 2d 548, 549 (Fla. 5th DCA 1986);

(c) Best practice is to require notice and a hearing before issuance of a writ.

(1) Protecting Tenants at Foreclosure Act of 2009 provides for a 90 day pre-eviction notice applicable to bona fide tenants. (See following section)

(d) At hearing, judge orders immediate issuance of writ of possession unless a person in possession raises defenses which warrant the issuance of a writ of possession for a date certain;

(e) The order for writ of possession is executed by the sheriff and personal property removed to the property line.

Protecting Tenants at Foreclosure Act of 2009

1. Federal legislation, known as Senate Bill 896, P. L. 111-22, provides for a nationwide 90 day pre-eviction notice requirement for bona fide tenants in foreclosed properties. The provisions of the original bill were extended under HR 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act, which became law on 7/21/10.

2. The application of the new law is restricted to any dwelling or residential property that is being foreclosed under a federally-related mortgage loan as defined by Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U. S. C. 2602). In short, the originating lender must be the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation or a financial institution insured by the Federal Government.

2. Three prerequisites must be satisfied to qualify as a bona fide tenant under the new Act:

- (1) The tenant cannot be the mortgagor or a member of his immediate family;
- (2) The tenancy must be an arms length transaction; and
- (3) The lease or tenancy requires the receipt of rent that is not substantially lower than the fair market rent for the property.

4. The buyer or successor in interest after foreclosure sale must provide bona fide tenants:

- (a) With leases – the right to occupy the property until the expiration of the lease term. The exception is if the buyer intends to occupy the property as a primary residence, in which case he must give 90 days notice.
- (b) Without leases – the new buyer must give the tenant 90 days notice prior to lease termination.

5. The single other exception to the foregoing is Section 8 Housing. In this case, the buyer assumes the interest of the prior owner and the lease contract. The buyer cannot terminate in the absence of "good cause."

6. This provisions of the new law went into effect on May 20, 2009. The bill sunsets on 12/31/2014.

Disbursement of Sale Proceeds

Surplus

1. Surplus - the remaining funds after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements. § 45.032(1)(c), Fla. Stat. (2010). Disbursement of surplus funds is governed by Section 45.031, Fla. Stat. (2010).

2. Entitlement to surplus is determined by priority; in order of time in which they became liens. *Household Fin. Services, Inc. v. Bank of Am., N. A.*, 883 So. 2d 346, 347 (Fla. 4th DCA 2004). It is the duty of the court to prioritize the interests of the competing junior lien holders and the amounts due each. *Citibank v. PNC Mortgage Corp. of America*, 718 So. 2d 300, 301 (Fla. 2d DCA 1998).

(a) Default does not waive lienholder's rights to surplus funds. *Golindano v. Wells Fargo Bank*, 913 So. 2d 614 (Fla. 3d DCA 2005). A junior lienholder has priority over the property holder for surplus funds. *Id.*, 615.

(b) A senior lienholder is not entitled to share in surplus funds. *Garcia v. Stewart*, 906 So. 2d 1117, 1121 (Fla. 4th DCA 2005), (senior lienholder liens unaffected; improper party to junior lienholder foreclosure).

(c) Entitlement to balance of surplus after payment of priority interests - payable to the record owner as of the date of the filing of the lis pendens. *Suarez v. Edgehill*, 2009 WL 3271350 (Fla. App. 3d DCA Oct. 14, 2009).

Deficiency Judgment

1. Deficiency - is the difference between the fair market value of the security received and the amount of the debt. *Mandell v. Fortenberry*, 290 So. 2d 3, 6 (Fla. 1974); *Grace v. Hendricks*, 140 So. 790 (Fla. 1932).

2. A deficiency can be obtained only if a request for that relief is made in the pleadings and if personal jurisdiction has been obtained over the defendant or defendants against whom the deficiency is sought. *Bank of Florida in South Florida v. Keenan*, 519 So. 2d 51, 52 (Fla. 3d DCA 1988). The granting of a deficiency judgment is the rule rather than the exception. *Thomas v. Premier Capital, Inc.*, 906 So. 2d 1139, 1140 (Fla. 3d DCA 2005).

(a) Deficiency judgment not allowable if based on constructive service of process.

(b) New service of process on defendant was not required for deficiency judgment where personal jurisdiction had been originally conferred by service of foreclosure complaint. *L. A. D. Property Ventures, Inc. v. First Bank*, 2009 WL 3270846 (Fla. App. 2d DCA Oct. 14, 2009). "The law contemplates a continuance of the proceedings for entry of a deficiency judgment as a means of avoiding the expense and inconvenience of an additional suit at law to obtain the balance of the obligation owed by a debtor." *Id.*

3. Trial court has discretion to enter deficiency decree. § 702.06, Fla. Stat. (2008); *Thomas*, 906 So. 2d at 1140. The court needs to hold an evidentiary hearing. *Merrill v. Nuzum*, 471 So. 2d 128, 129 (Fla. 3d DCA 1985). The court can enter a default judgment provided the defendant was properly noticed. *Semlar v. Savings of Florida*, 541 So 2d 1369, 1370 (Fla. 4th DCA 1989).

(a) The exercise of discretion in denial of a deficiency decree must be supported by disclosed equitable considerations which constitute sound and sufficient reasons for such action. *Larsen v. Allocca*, 187 So. 2d 903, 904 (Fla. 3d DCA 1966).

4. A cause of action for deficiency cannot accrue until after entry of final judgment and a sale of the assets to be applied to the satisfaction of the judgment. *Chrestensen v. Eurogest, Inc.*, 906 So. 2d 343, 345 (Fla. 4th DCA 2005). The amount of deficiency is determined at the time of the foreclosure sale. *Estepa v. Jordan*, 678 So. 2d 878 (Fla. 5th DCA 1996). The amount bid at foreclosure sale is not conclusive evidence of the property's market value. *Century Group, Inc. v. Premier Financial Services*, 724 So. 2d 661, (Fla. 2d DCA 1999).

(a) The appraisal determining the fair market value must be properly admitted into evidence and be based on the sale date. *Flagship State Bank of Jacksonville v. Drew Equipment Company*, 392 So. 2d 609, 610 (Fla. 5th DCA 1981).

(b) The formula to calculate a deficiency judgment is the final judgment of foreclosure total debt minus the fair market value of the property. *Morgan v. Kelly*, 642 So. 2d 1117 (Fla. 3d DCA 1994).

(c) The amount paid by a mortgage assignee for a debt is "legally irrelevant" to the issue of whether the assignee is entitled to a deficiency award after a foreclosure sale. *Thomas*, 906 So. 2d at 1141.

4. Burden: The secured party has the burden to prove that the fair market value of the collateral is less than the amount of the debt. *Chidnese v. McCollem*, 695 So. 2d 936, 938 (Fla. 4th DCA 1997), *Estepa* 678 So. 2d at 878. However, the Third District Court has held that the burden is on the mortgagor resisting a deficiency judgment to demonstrate that the mortgagee obtained property in foreclosure worth more than the bid price at the foreclosure sale. *Addison Mortgage Co. v. Weit*, 613 So.2d 104 (Fla. 3d DCA 1993). See also, *Thunderbird, Ltd. v. Great American Ins. Co.*, 566 So. 2d 1296, 1299 (Fla. 1st DCA 1990), (court held that introduction of the certificate of sale from the foreclosure sale showing that the bid amount at the foreclosure sale was less than the amount of the debt shifted the burden to the mortgagee to go forward with other evidence concerning the fair market value of the property.)

5. Denial of deficiency decree in foreclosure suit for jurisdictional reasons, as distinguished from equitable grounds, is not res judicata so as to bar an action for deficiency. *Frumkes v. Mortgage Guarantee Corp.*, 173 So. 2d 738, 740 (Fla. 3d DCA 1965); *Klondike, Inc. v. Blair*, 211 So. 2d 41, 42 (Fla. 4th DCA 1968).

6. Reservation of jurisdiction in the final judgment of foreclosure – If jurisdiction is reserved, new or additional service of process on defendant is not required. *Estepa*, 678 So. 2d at 878. The motion and the notice of hearing must be sent to the attorney of record for the mortgagor. *Id.*, *NCNB Nat'l. Bank of Fla. v. Pyramid Corp.*, 497 So. 2d 1353, 1355 (Fla. 4th DCA 1986), (defaulted defendant entitled to notice of deficiency hearing). However, the motion for deficiency must be timely filed. If untimely, the deficiency claim could be barred upon appropriate motion by the defendant under Rule 1.420(e), Fla. R. Civ. P. (2010), *Frohman v. Bar-Or*, 660 So. 2d 633, 636 (Fla. 1995); *Steketee v. Ballance Homes, Inc.*, 376 So. 2d 873, 875 (Fla. 2d DCA 1979).

(a) No reservation of jurisdiction in the final judgment - motion for deficiency must be made within ten (10) days of issuance of title. *Frumkes*, 173 at 740.

(b) The lender can file a separate action for post-foreclosure deficiency. Section 702.06, Fla. Stat (2010). In a separate action, the defendant has the right to demand a trial by jury. *Hobbs v. Florida First Nat.'l Bank of Jacksonville*, 480 So. 2d 153, 156 (Fla. 1st DCA 1985); *Bradberry v. Atlantic Bank of St. Augustine*, 336 So. 2d 1248, 1250 (Fla. 1st DCA 1976), (no jury trial right within foreclosure action). Section 55.01(2), Fla. Stat. (2010) mandates that final judgments in a separate action for deficiency contain the address and social security number of the judgment debtor, if known. This requirement is not imposed in a mortgage foreclosure action, in which an *in rem* judgment is sought.

7. Statute of limitations –

(a) A deficiency judgment or decree is barred when an action on the debt secured by the mortgage is barred. *Barnes v. Escambia County Employees Credit Union*, 488 So. 2d 879, 880 (Fla. 1st DCA 1986), abrogated on other grounds.

(b) Section 95.11, Fla. Stat. (2010) imposes a five-year statute of limitations for a foreclosure deficiency judgment.

(c) "A cause of action for deficiency does not accrue, and thus the statute of limitations does not begin to run, until the final judgment of foreclosure and subsequent foreclosure sale." *Chrestensen*, 906 So. 2d at 345.

8. There are statutory limitations imposed on a deficiency judgment when a purchase money mortgage is being foreclosed. Section 702.06, Fla. Stat. (2010) includes language that impairs the entitlement to a deficiency judgment with respect to a purchase money mortgage, when the mortgagee becomes the purchaser at foreclosure sale. Specifically, this statutory limitation provides: "the complainant shall also have the right to sue at common law to recover such deficiency, provided no suit at law to recover such deficiency shall be maintained against the original mortgagor in cases where the mortgage is for the purchase price of the property involved and where the original mortgagee becomes the purchaser thereof at foreclosure sale and also is granted a deficiency decree against the original mortgagor." Essentially, if the

lender purchases the subject property he has not incurred the damages and in fact may recoup or profit at a later sale. See also, *United Postal Savings Ass'n v. Nagelbush*, 553 So. 2d 189(Fla. 3d DCA 1989), *Taylor v. Prine*, 132 So. 2d 464, 465 (Fla. 1931).

(a) One Florida court ruled in a case where the purchase money mortgagee was also the purchaser that the "all important distinction" in the case was that "the purchaser at the foreclosure sale was not the mortgagee but ... an utter stranger to the parties," a third party purchaser, warranting reversal of the trial court's denial of deficiency judgment. *Lloyd v. Cannon*, 399 So. 2d 1095, 1096 (Fla. 1st DCA 1981).

Bankruptcy

1. The automatic stay provisions of 11 U. S. C. §362 enjoins proceedings against the debtor and against property of the bankruptcy estate.

(a) To apply, the subject real property must be listed in the bankruptcy schedules as part of the estate. 11 U. S. C. § 541.

2. Foreclosure cannot proceed until the automatic stay is lifted or terminated. If property ceases to be property of the bankruptcy estate, the stay is terminated.

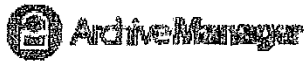
(a) The automatic stay in a second case filed within one year of dismissal of a prior Chapter 7, 11 or 13 automatically terminates 30 days after the second filing, unless good faith is demonstrated. 11 U. S. C. § 362(c)(3).

(b) The third filing within one year of dismissal of the second bankruptcy case, lacks entitlement to the automatic stay and any party in interest may request an order confirming the inapplicability of the automatic stay.

(c) Multiple bankruptcy filings where the bankruptcy court has determined that the debtor has attempted to delay, hinder or defraud a creditor may result in the imposition of an order for relief from stay in subsequent cases over a two year period. 11 U. S. C. §362(d)(4).

3. Debtor's discharge in bankruptcy only protects the subject property to the extent that it is part of the bankruptcy estate.

Robin Wright, Trial Court Administrator



This message was sent with High Importance.

From: [osca](#) **Sent:** Wed, 11 Mar 2009 09:45:24 GMT
To: [Trial Court Administrators](#); [OSCA-MANAGERS](#); [Trial Court Chief Judges](#); [DCA Chief Judges](#); [DCA Marshals](#); [DCA Clerks](#); [Thomas D. Hall](#); [Kevin White](#); [Chris Korn](#);
Subject: The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) - Court Access to the Stimulus Funding

FYI, see below.

Debbie Howells
 Office of the State Courts Administrator
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 Phone 850-922-4370
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From: COSCA List [<mailto:COSCA@LISTSERV.NCSCONLINE.ORG>] **On Behalf Of** Farley, Kay
Sent: Wednesday, March 11, 2009 10:24 AM
To: COSCA@LISTSERV.NCSCONLINE.ORG
Subject: [COSCA] The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) - Court Access to the Stimulus Funding
Importance: High

This is a follow-up to our 2/13/09 alert that was sent via the CCJ and COSCA listservs regarding the contents of the economic stimulus package that are of the most interest to state courts.

In that first alert, we provided an overview of Department of Justice and employee related provisions. We now want to alert you to a provision in the Department of Education section of the Act. In Section 14002 in Title XIV, there is a reference to "public safety and other government services" regarding the State Fiscal Stabilization Fund, which will be administered by the Department of Education. The language says the Governor "shall use 18.2 percent of the State's allocation "... "for public safety and other government services ". While the following examples are education-related, we understand that the funds are not limited to education projects. We are trying to obtain additional information and will alert you as we learn more.

The Department of Justice is trying to move pretty quickly. Solicitations are now open for the Byrne-JAG formula grant program and the discretionary funds for Victims Compensation and Assistance. We will let you know as other solicitations are opened.

Resource and additional information is listed below. As we get more information, we will post additional alerts. If you have questions or we can be of assistance, please feel free to contact Jose Dimas or me. I can be contacted at (703) 841-5601 or kfarley@ncsc.org. Jose can be reached at (703) 841-5610 or jdimas@ncsc.org.

Resources

- 1) The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) - http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.txt
- 2) US Department of Justice dedicated webpage to recovery efforts - <http://www.usdoj.gov/recovery/>
- 3) Office of Justice Programs (OJP) dedicated webpage to recovery efforts - <http://www.ojp.gov/recovery/>
- 4) Office on Violence Against Women (OVW) dedicated webpage to recovery efforts - <http://www.usdoj.gov/recovery.htm>
- 5) Community Oriented Policing Services (COPS) dedicated webpage to recovery efforts - <http://www.cops.usdoj.gov/Default.asp?Item=2108>
- 6) US Department of Education dedicated webpage to recovery efforts - <http://www.ed.gov/policy/gen/leg/recovery/index.html>
- 7) White House dedicated webpage to recovery efforts - www.recovery.gov

General Guidelines for States

- **Deadline for Requesting Funds:** Within forty-five days after enactment (2/17/09), governors must certify that they will request and use the economic stimulus funds to create jobs and promote economic growth
- **Alternative for Making Request for Funds:** If a governor does not request the funds allocated to his/her state before the deadline (4/3/09), the state's legislature has the option of requesting the funds and certifying that the funds will be used to create jobs and promote economic growth.
- **Preference for Quick-Start Activities:** Authorities will show a preference for "shovel ready" projects meaning that planning is complete, approvals are secured and people could be put to work right away once funding is in place.
- **Prohibited Uses:** No funds can be used for zoos, aquariums, golf courses, swimming pools or casinos.
- **Prevailing Wage Rate Policy Applies:** The Davis-Bacon Act requires federal contractors to pay laborers and mechanics not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on similar projects in the same area.
- **Buy America Provisions:** These provisions prevail, but can be waived by the federal

agencies. They generally bar using stimulus funds for construction, repair or maintenance of a public building or public work unless all of the project's iron, steel and manufactured goods used are made in the United States.

Available Funding

JUSTICE			
Federal Program	Funding	Distribution	Timing
OJP Byrne JAG Formula	\$2 billion	Formula – 60% to state level entities (60%) and 40% to local government entities	Applications by state and local administering agencies are due to OJP by April 9, 2009
OJP Byrne JAG Competitive	\$225 million	Discretionary	TBD, but 60 day window for accepting applications
OJP Assistance to Rural Law Enforcement to Combat Crime and Drugs	\$125 million	Discretionary	TBD, but 60 day window for accepting applications
OJP Assistance for Law Enforcement along the Southern Border and in High Intensity Drug Trafficking Areas (HIDTA)	\$40 million	Discretionary	TBD, but 60 day window for accepting applications
OJP Grants for Internet Crimes Against Children Initiatives	\$50 million	Discretionary	Preregistration due 3/16/09; Final deadline is 4/6/09
OJP Grants for Victim Compensation and Assistance - state agencies that administer Victims of Crime Act (VOCA) funded crime victim compensation programs	\$47.5 million	Formula	TBD, but 30 day window for accepting applications
OJP Grants for Victim Compensation and Assistance - state agencies that administer VOCA funded crime victim assistance programs	\$47.5 million	Formula	TBD, but 30 day window for accepting applications
OJP Grants for Victim Compensation and	\$5 million	Discretionary	Application are due to the Office of Victims

Assistance			of Crime by March 17, 2009
OVW Services • Training • Officers • Prosecutors (STOP) Grant Program	\$140 million	Formula	TBD, but 60 day window for accepting applications
OVW State Sexual Assault and Domestic Violence Coalitions	\$8.75 million	Formula	TBD, but 30 day window for accepting applications
OVW Transitional Housing Assistance Program	\$43 million	Discretionary	TBD, but 60 day window for accepting applications
COPS	\$1 billion	Discretionary	Application materials will be available before end of March
EDUCATION			
Federal Program	Funding	Distribution	Timing
State Fiscal Stabilization Fund	\$8.8 billion	Formula	Governors will be able to apply for 67% off Education General Fiscal Stabilization Fund dollars by end of March. Funds will be available to governors 2 weeks after applications are received.

OJP has published stimulus law state/local allocations at <http://www.ojp.usdoj.gov/BJA/recoveryJAG/recoveryallocations.html>.

Some of the allowable uses of Byrne JAG funds include the following:

- Problem-solving and specialty courts
- Planning, evaluation, and technology improvement programs
- Judicial training
- Prosecution and court programs
- Drug treatment and enforcement programs
- Corrections and community corrections programs
- Sexual offender registration assistance
- Re-entry programs

How to Access the Funding

- Through State Administering Agencies for formula grant programs, e.g. Byrne JAG formula program and STOP grants
- Through Federal Agencies for discretionary grant programs e.g. Byrne JAG competitive program and Community Oriented Policing Services (COPS) Program
- Through State Governors, e.g. Education Economic Stabilization Program

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