

**From:** [Hendrickx, Jo-Ann </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JHENDRICKX>](mailto:Hendrickx,Jo-Ann@SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JHENDRICKX)

**To:** [Greider, Christine](mailto:Greider,Christine)

**CC:**

**Date:** 6/23/2010 9:14:56 AM

**Subject:** ?RE: Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

---

**GREAT**

**Jo-Ann Hendrickx**  
**Judicial Assistant to**  
**Honorable Christine Greider**  
**Circuit Court**  
**Tel: 863-675-5225**  
**Fax: 863-675-5361**

---

**From:** Greider, Christine  
**Sent:** Wednesday, June 23, 2010 10:14 AM  
**To:** Hendrickx, Jo-Ann  
**Subject:** RE: Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

Did it

---

**From:** Hendrickx, Jo-Ann  
**Sent:** Wednesday, June 23, 2010 7:15 AM  
**To:** Greider, Christine  
**Subject:** FW: Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott  
**Importance:** High

**Jo-Ann Hendrickx**  
**Judicial Assistant to**  
**Honorable Christine Greider**  
**Circuit Court**  
**Tel: 863-675-5225**  
**Fax: 863-675-5361**

---

**From:** Ann Luchini [<mailto:luchinia@flcourts.org>]  
**Sent:** Tuesday, June 22, 2010 8:33 PM  
**To:** Ann Luchini  
**Subject:** Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott  
**Importance:** High

***The following email is sent to you as a courtesy copy:***

You have received this e-mail because you have registered to attend the July 2010 Circuit Conference. We are requesting that you please take a few minutes to complete a survey to let us know which sessions you will most likely be attending. Your response is anonymous and does not require you to attend a particular session. We are gathering this information solely for the purpose of planning the room set-up and the printing of materials.

20TH CIR 02869

To complete the session selection survey, click the following link and enter the password **circuit**

<http://www.flcourts.org/checkbox/Survey.aspx?s=eb248d30998b45768cf712e9c60c0762>

Following is a copy of the table agenda for review before session selection.

Monday, July 26, 2010						
8:00 am – 8:15 am	Welcome and Introductions (Monday only)					
8:15 am – 9:30 am	Florida State Court's Budgeting Process: How Does It Work?					
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Speaking and Advocating for the Judicial Branch: What Can You Do Ethically?					
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:15 pm	Problem Solving in the Context of Judicial Branch Leadership					
12:15 pm – 1:15 pm	LUNCH					
1:15 pm – 4:00 pm	CONFERENCE BUSINESS MEETING					
Tuesday, July 27, 2010						
8:00 am – 9:30 am	Criminal Postconviction	Criminal HCC Handling Capital Cases Refresher Course	Civil After the Verdict	Probate Incapacity Hearings	UFC: Domestic Relations Family Law Update	UFC: Juvenile Decoding the Mysteries: DCF and DJJ
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Jury Instructions/ Verdict Forms	Handling Capital Cases Refresher Course	Civil Law Update	Guardianship: Guardian Advocates	Bankruptcy for Family Judges	Psychotropic Medications
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:00 pm	A Breakdown in Mental Health: Competency Issues	Handling Capital Cases Refresher Course	Bankruptcy for Civil Judges	Probate Law Update	Economic Sensitivity	Meaningful Access to Counsel
12:00 pm – 1:30 pm	LUNCH AND CONFERENCE SECTION MEETINGS					
1:30 pm – 2:45 pm	Sentencing	Handling Capital Cases Refresher Course	Roles of Duty Judges		Placement Issues in Family and Juvenile Cases: What Judge Need to Know About Grooming	
2:45 pm – 3:00 pm	BREAK					
3:00 pm – 4:30 pm	Hot Topics: Criminal Law Update	Handling Capital Cases Refresher Course	Nuts and Bolts of Foreclosure		Florida's Teen Courts: A Successful Model In Justice	
Wednesday July 28, 2010						
8:00 am – 9:30 am	Criminal Criminal Evidence		Civil Complex Litigation Rule		UFC: Domestic Relations Parent vs. Child	UFC: Juvenile Juvenile Law Update
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Tweets and Twitters: Troubles in the Courtroom?					
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:00 pm	The Perception of Fairness Some Practical Pointers (ethics)					

If you have any questions or need additional information, please contact me. Thank you!

Ann M. Luchini  
Court Education Program Coordinator  
Office of the State Courts Administrator  
Supreme Court Building  
500 South Duval Street

20TH CIR 02870

Tallahassee, Florida 32399-1900  
(850) 488-1423 fax: (850) 922-9185  
[luchinia@flcourts.org](mailto:luchinia@flcourts.org)

**From:** [Callanan, Richard <RCallanan@CA.CJIS20.ORG>](mailto:RCallanan@CA.CJIS20.ORG)

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

[Harkey, Sandra D](#)

**CC:**

**Date:** 6/7/2010 8:53:36 AM

**Subject:** ?FW: July 2010 Circuit Conference Registration Information and Welcome Letter from Conference Chair Peter Blanc

---

-----  
From: Ann Luchini[SMTP:LUCHINIA@FLCOURTS.ORG]

Sent: Monday, June 07, 2010 9:53:30 AM

To: Callanan, Richard

Subject: July 2010 Circuit Conference Registration Information and Welcome Letter from Conference Chair Peter Blanc

Auto forwarded by a Rule

Dear Colleague:

I am pleased to invite you to the Annual Education and Business Meeting of the Florida Conference of Circuit Judges which will be held at the Marco Island Marriott in Marco Island, Florida, from July 26 – 28, 2010. A welcome reception for all Conference members will be held Sunday evening, July 25, at 6:00 p.m. The conference officially commences on Monday, July 26 at 8:00 a.m., and concludes Wednesday, July 28 at noon. I urge you to make every effort to attend, as it is the first conference we have had in over eighteen months and our Monday business meeting will include the election of new officers.

Other committee meetings will be held during the lunch hour on Tuesday, July 27. As this is the only live meeting currently scheduled for our standing committees for the next 12 months, I encourage each of you to participate by attending the meeting of your choice. Your participation allows the committees to organize for the coming year, creates a venue for a healthy exchange of information and, ultimately, gives our Conference a greater voice in all subject areas.

Our Conference banquet will be held on Tuesday evening and, in keeping with recent tradition, will be casual. Your registration fee includes one banquet ticket and additional tickets will be available for purchase when you check in at the conference registration desk. Entertainment will be provided, the company will be outstanding and the speeches brief as we swear in our new Conference officers.

Please take time to read through the enclosed packet as it contains important information regarding course titles, agendas, travel and registration information. The conference registration deadline is July 15, 2010. The discounted online registration fee is \$140.00, of which \$112.00 is reimbursable. Anyone who misses this deadline can still attend and register at the conference registration desk. The non-discounted registration fee is \$165.00.

Hotel reservations should be made directly with the hotel prior to 5:00 p.m. on July 15, 2010. (The earlier the better to guarantee room availability). You will find the hotel contact information in the attached packet. Remember, travel policy does not permit us to pay for your lodging expenses if you reside within fifty (50) miles of the program site.

The Annual Business Meeting is a rare opportunity to get away from the daily routine of work while at the same time enhancing your legal knowledge and skills. We should each come away from the conference renewed and recharged by the spirit and camaraderie of our fellow judges. This conference is traditionally attended by our families, so children are welcome.

**20TH CIR 02872**

I would like to express my appreciation to Judge Scott Bernstein and Judge Scott Brownell as co-chairs of the Judicial Education Committee, as well as to the entire Committee, for their hard work and outstanding efforts in making our education program possible. I would also be remiss if I did not thank Martha Martin and the education staff at OSCA for their tireless support. I look forward to seeing you in Marco Island.

Sincerely,

Peter D. Blanc, Chair  
Florida Conference of Circuit Judges

**Annual Business and Education Program  
Florida Conference of Circuit Judges  
July 26-28, 2010  
Marco Island Marriott**

---

**CONFERENCE REGISTRATION:**

**The conference registration deadline is July 15, 2010.** The discounted on-line registration fee is \$140.00, of which \$112.00 is reimbursable. Anyone who misses this deadline can still attend and register at the conference registration desk. The non-discounted registration fee is \$165.00.

**The conference registration fee is payable at the registration desk. We accept cash and checks only - no credit cards.**

Instructions: The registration program will automatically create the attendee's name badge using the information you enter. It is very important that you use upper and lower case letters in the appropriate locations. Please verify that all of your information is accurate and spelled correctly before submitting the registration.

1. Go to [www.flcircuitconference.com](http://www.flcircuitconference.com)
2. Click the REGISTRATION button at the far right of the menu bar
3. Click the registration button again.
4. Enter the password: FCCJ2010 (Case sensitive)
5. Click the login button or press the enter key.
6. Complete all sections\*. The program will not allow you to proceed until all sections are marked appropriately. Press the SUBMIT button when you have completed the form.
7. Review the information for accuracy. Re-enter your email address and click the SUBMIT button once you are ready to proceed. If you made a mistake, press the BACK button to make changes.
8. Print the page for your records and proof of registration.

Please contact Chuck Hydovitz at [ctadch1@ocnjcc.org](mailto:ctadch1@ocnjcc.org) or 407-836-2244 if you have any questions or experience registration difficulties.

\* Due to the security settings on some registrant's computers, you may not see the date and event displayed properly. It may appear as Date 1, Date 2 etc. and Event 1, 2, etc. The corresponding dates/events are as follows:

<u>Date</u>	<u>Event</u>
Sunday, July 25	Reception
Monday, July 26	Lunch
Tuesday, July 27	Lunch & Dinner

**HOTEL RESERVATIONS:**

Reimbursement will be at the single room rate of \$135.00 per night, inclusive of all taxes, service charge, and self-parking, consistent with the Education Program schedule. Reservations can be made by contacting the Marco Island Marriott at (800) 438-4373 or (239) 394-2511 and referencing the Group Name which is "Florida Conference of Circuit Judges". **The reservation deadline is 5:00 p.m. on July 15, 2010.** Travel policy will not permit us to pay for your lodging expenses if you reside within 50 miles of the program site.

**TRAVEL INFORMATION:**

To view travel information and travel forms, click the following link:

[https://intranet.flcourts.org/osca/Judicial\\_Education/2010CircuitConference/travel.html](https://intranet.flcourts.org/osca/Judicial_Education/2010CircuitConference/travel.html)

**DRAFT AGENDA: (Please note: There is NO flex time at this program.)**

Monday, July 26, 2010						
8:00 am – 8:15 am – Welcome and Introductions (Monday only)						
8:15 am – 9:30 am	Florida Courts Budgeting Process: How Does It Work?					
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Speaking and Advocating for the Judicial Branch: What Can You Do Ethically?					
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:15 pm	Problem Solving in the Context of Judicial Branch Leadership					
12:15 pm – 1:15 pm	LUNCH					
1:15 pm – 4:00 pm	CONFERENCE BUSINESS MEETING					
Tuesday, July 27, 2010						
Criminal	Criminal HCC	Civil	Probate	UFC: Domestic Relations	UFC: Juvenile	
8:00 am – 9:30 am	Postconviction	Handling Capital Cases Refresher Course	After the Verdict	Incapacity Hearings	Family Law Update	Decoding the Mysteries: DCF and DJJ
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Jury Instructions/ Verdict Forms	Handling Capital Cases Refresher Course	Civil Law Update	Guardianship: Guardian Advocates	Bankruptcy for Family Judges	Psychotropic Medications
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:00 pm	A Breakdown in Mental Health: Competency Issues	Handling Capital Cases Refresher Course	Bankruptcy for Civil Judges	Probate Law Update	Economic Sensitivity	Meaningful Access to Counsel
12:00 pm – 1:30 pm	LUNCH AND CONFERENCE SECTION MEETINGS					
1:30 pm – 2:45 pm	Sentencing	Handling Capital Cases Refresher Course	Roles of Duty Judges		Placement Issues in Family and Juvenile Cases: What Judge Need to Know About Grooming	
2:45 pm – 3:00 pm	BREAK					
3:00 pm – 4:30 pm	Hot Topics: Criminal Law Update	Handling Capital Cases Refresher Course	Nuts and Bolts of Foreclosure		Florida's Teen Courts: A Successful Model In Justice	

Wednesday July 28, 2010	Criminal	Civil		UFC: Domestic Relations	UFC: Juvenile
8:00 am – 9:30 am	Criminal Evidence	Complex Litigation Rule		Parent vs. Child	Juvenile Law Update
9:30 am – 9:45 am	BREAK				
9:45am – 11:00 am	Tweets and Twitters: Troubles in the Courtroom?				
11:00 am – 11:05 am	STRETCH BREAK				
11:05 am – 12:00 pm	The Perception of Fairness Some Practical Pointers (ethics)				

**CONTACT INFORMATION:**

For additional information, please contact Ann Luchini, Court Education Program Coordinator, at [luchinia@flcourts.org](mailto:luchinia@flcourts.org) or 850-488-1423.



**From:** Golden, Diana </O=SAO20/OU=CACJIS/CN=RECEIPTS/CN=DG2228>

**To:** Winesett, Sherra

**CC:**

**Date:** 6/9/2010 8:39:10 AM

**Subject:** ?RE: Mortgage foreclosures (condo/homeowner association assessments)

---

Thank you.

---

**From:** Winesett, Sherra

**Sent:** Tuesday, June 08, 2010 5:05 PM

**To:** Golden, Diana

**Subject:** FW: Mortgage foreclosures (condo/homeowner association assessments)

As requested.

---

**From:** Winesett, Sherra

**Sent:** Tuesday, June 08, 2010 11:31 AM

**To:** Thompson, James; Rosman, Jay; Fuller, Joseph; Gerald, Lynn; McHugh, Michael

**Subject:** Mortgage foreclosures (condo/homeowner association assessments)

Many of the notices for trials we are getting are from condo/homeowner associations regarding the lender's liability for assessments prior to acquiring title. I just had one that was resolved by Judge McHugh's affirmance in **Coral Lakes Community Association, Inc. v. Busey Bank, N.A. , et. al., 30 So.3d 579 (Fla. 2d DCA 2010)**. That case held the institutional mortgagee had no liability under F.S. 720.3085(2) for assessments prior to the lender acquiring title by foreclosure because the declaration in effect when the loan was made subordinated those assessments to a first mortgage. Judge Casanueva wrote the opinion and it contains a good explanation of the changes in the statutory law. You will see from the opinion that the associations are already raising additional issues because in Coral Lakes the statutory changes the association wanted to use were made after the loan so it won't resolve all the issues. But reading it should help in understanding the issues.

**From:** Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>

**To:** Suhar, Sharon

**CC:**

**Date:** 7/30/2009 7:43:56 AM

**Subject:** ?Re: Questions from the Retrospective on the 2009 Legislative Session from the 20th.

---

Great, please send these to susan morley and also tell her that the feedback was that the program was outstanding, very well understood and much appreciated.

-- Sent from my Palm Pre

-----  
Suhar, Sharon wrote:

For your review.

Questions from our 20th Circuit group

1. What are we doing or what is the plan to adequately fund case management for civil, criminal, and family law?
2. What happens if foreclosure revenue declines and we don't meet the revenue projections or needs? Do we have a back-up plan?
3. If OPAGA gives us more duties where will the money come from to staff those responsibilities?

Sharon Suhar, SPHR  
Human Resources Manager  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
239.533.1710 telephone  
239.533-1701 fax  
ssuhar@ca.cjis20.org

P Before printing, think about the environment!

**From:** Suhar, Sharon </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=SHARON2624>

**To:** 'Susan Morley'

**CC:**

**Date:** 7/30/2009 8:07:06 AM

**Subject:** ?RE: Discussion at today's session

---

Good morning Susan,

I completed a survey and added these questions to the bottom of the page in the comment section. Our circuit employees and JAs really appreciated the session and the format worked great. Thank you to all of you who made it happen.

Questions from our 20th Circuit group

1. What are we doing or what is the plan to adequately fund case management for civil, criminal, and family law?
2. What happens if foreclosure revenue declines and we don't meet the revenue projections or needs? Do we have a back-up plan?
3. If OPAGA gives us more duties where will the money come from to staff those responsibilities?

---

From: Susan Morley [mailto:morleys@flcourts.org]

Sent: Wednesday, July 29, 2009 6:48 PM

To: Debbie Thomas; Mark Weinberg; Matthew Benefiel; Nick Sudzina; Andrew M. Graubard; Heather Thullberry; Mark Van Bever; Thomas Genung; Callanan, Richard; Suhar, Sharon; Mary Cay Blanks; Jo Haynes Suhr, Marshal; Glen Rubin, Marshal

Cc: Debbie Howells; Penni Griffith; Rashaunda Williams

Subject: RE: Discussion at today's session

Thank you again for agreeing to lead a discussion today. We hope you were pleased with the program, and particularly hope that it generated a helpful discussion experience at your locations! Please send us whatever information you are willing to share regarding your discussion of the legislative changes.

To provide feedback about the course generally, the distance learning format and suggestions for future courses, please take a moment to complete an electronic participant evaluation, at:

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=C1AB0012705643738F8EDF0AF9C0D6B4>

Password: session

20TH CIR 02879

We will look forward to hearing from you.

Susan

Susan Davis Morley

Senior Attorney, Court Education

Office of State Courts Administrator

500 S. Duval Street

Tallahassee, Florida 32399

850.922.5105

[morleys@flcourts.org](mailto:morleys@flcourts.org)

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

**To:** Carlin, John S.

**CC:** McHugh, Michael

**Date:** 7/30/2010 10:51:50 AM

**Subject:** foreclosures

---

John: FYI, stopped by and gave Jo Ann information received from the recent judicial conference, a "Residential Bench Book" and a Foreclosure Master Calendar brochure used in the 11<sup>th</sup> Circuit. Judge McHugh and I discussed, and we are providing Lee civil and senior judges that weren't at the conference and f/c magistrates with copies of the bench book.

Re the brochure, we think it would be helpful in our circuit/county to develop a similar brochure to assist our new magistrates/their assistants and Sharon. Sharon English indicated yesterday at our civil meeting that she is overwhelmed with the # of calls coming in on f/c cases and we think it would help eliminate some. Judge McHugh said he will work on it and get with you re it.

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

**To:** Crongeyer, Robert L.

Diamond, Stella

Hawthorne, Amy

**CC:** McHugh, Michael

Hamsharie, Deborah

**Date:** 7/30/2010 11:12:50 AM

**Subject:** Residential foreclosure bench book

---

If you would like a copy of the Residential Foreclosure Bench Book used at the recent judicial conference this week stop by and pick up a copy from Debbie. It covers lots of issues which I think you will find helpful. Also, there's been a # of recent cases on various f/c issues you will need to know.

**From:** Friedman, David </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=DFRIEDMAN>

**To:** Diamond, Stella

**CC:** Aloia, Nancy K

Mravic, Deborah

**Date:** 7/8/2010 9:10:42 AM

**Subject:** FORECLOSURE

---

Good morning Stella. I have been asked to supply a format for recommended orders and would like to help as much as I can. Since I do not have a template which I use I can supply examples of some reports in the areas you will be handling. Am I correct that, as here in Naples, the Senior Judges will handle the summary judgments while you will hear all other motions in foreclosure cases, both before and after judgment?

David Friedman

**From:** Friedman, David </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=DFRIEDMAN>

**To:** Diamond, Stella

**CC:** Aloia, Nancy K

Mravic, Deborah

**Date:** 7/8/2010 9:41:00 AM

**Subject:** ?RE: FORECLOSURE

---

I hope this is not too much of a hodge-podge. Some judges prefer that the Report include exactly who was present and representing which party, that there was an order of referral and the date it was filed, and also that the Report include at the end what procedures must be followed upon service in order to file an exception to the Report. As you can see I did not include much of that in my civil Reports.

If I can help in any way at all just ask. My reign handling foreclosure cases in Collier lasted two and a half years and if I can share my experience and help you I would be glad to.

David

---

**From:** Diamond, Stella

**Sent:** Thursday, July 08, 2010 10:28 AM

**To:** Friedman, David

**Subject:** RE: FORECLOSURE

Hi David: I don't think the question of who will handle the summary judgment hearings has been determined yet. I do have some on my calendar but we are having a meeting next week and I'm assuming more details will be worked out. Anything you can furnish me will be much appreciated. Thanks, Stella

---

**From:** Friedman, David

**Sent:** Thursday, July 08, 2010 10:11 AM

**To:** Diamond, Stella

**Cc:** Aloia, Nancy K; Mravic, Deborah

**Subject:** FORECLOSURE

Good morning Stella. I have been asked to supply a format for recommended orders and would like to help as much as I can. Since I do not have a template which I use I can supply examples of some reports in the areas you will be handling. Am I correct that, as here in Naples, the Senior Judges will handle the summary judgments while you will hear all other motions in foreclosure cases, both before and after judgment?

David Friedman



**From:** Carlin, John S. </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JSC5225>

**To:** Winesett, Sherra

**CC:** McHugh, Michael

**Date:** 8/1/2010 8:33:32 AM

**Subject:** ?Re: foreclosures

---

Sounds great.....thanks Sherra and Mike for working on this.

John

-- Sent from my Palm Pre

---

On Jul 30, 2010 11:51 AM, Winesett, Sherra <Fla. R. Court 2.420 > wrote:

John: FYI, stopped by and gave Jo Ann information received from the recent judicial conference, a "Residential Bench Book" and a Foreclosure Master Calendar brochure used in the 11<sup>th</sup> Circuit. Judge McHugh and I discussed, and we are providing Lee civil and senior judges that weren't at the conference and f/c magistrates with copies of the bench book.

Re the brochure, we think it would be helpful in our circuit/county to develop a similar brochure to assist our new magistrates/their assistants and Sharon. Sharon English indicated yesterday at our civil meeting that she is overwhelmed with the # of calls coming in on f/c cases and we think it would help eliminate some. Judge McHugh said he will work on it and get with you re it.

**From:** McLean, Craig </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=CRAIGM>

**To:** Thomas, Manuel

Judges-Charlotte

Judges-Collier

Judges-Glades

Judges-Hendry

Judges-Lee

Magistrates-All

**CC:** Kiesel, Lisa

Callanan, Richard

Ackerman, Paul

Woelfel, Joe

Friess, Joseph

Middlebrook, Mark

Embury, Jon

Goodpasture, Penelope

Rosemond, Larry

**Date:** 9/10/2009 2:52:12 PM

**Subject:** ?RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

---

All,

We have purchased through our CJIS agency a piece of equipment that will allow us to do video conferences to the state (or outside our network) from anywhere in our circuit. This will allow us to do these trainings from individual counties. We are in process of configuring this "bridge" and should have it up for the video conference training on the 17th. We are very happy with this new technology for our circuit and were able to share in the cost of the equipment with the State's Attorney and the Public Defender. We can also now do circuit wide calls with every county at the same time, before we could only do up to 4. Thanks to the CJIS and AOC networking staff for configuring this and installing the equipment. It was not an easy task.

If you have any questions, please give me a call.

Thanks,

Craig

Craig McLean

Information Services Director

20TH CIR 02886

20th Judicial Circuit Court

239.533.1722

cmclean@ca.cjis20.org

From: Thomas, Manuel

Sent: Thursday, September 10, 2009 10:20 AM

To: Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All

Cc: Kiesel, Lisa; McLean, Craig; Callanan, Richard

Subject: FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

Good Morning Your Honors and Magistrates:

Judges and Magistrates who are interested in attending the Videoconference on "Tenants' Rights in Foreclosures"

on October 2, 2009 in Conference Room B in the Lee Justice Center Annex may register by using the link

<http://caintra/events/login.asp> and selecting this videoconference.

Tenants' Rights in Foreclosures Videoconference

for County Court Judges and Senior Judges

Friday, October 2, 2009

12:15 p.m. – 1:30 p.m. ET

Faculty and Course Content

**20TH CIR 02887**

- Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- Identify issues that may be raised that are not answered by the recent federal legislation.

#### Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

#### Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

#### How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link –

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

#### Contact Information

Bart Moore, Court Education Senior Attorney  
850-413-9642 or [mooreb@flcourts.org](mailto:mooreb@flcourts.org)

#### Website

[http://intranet.flcourts.org/osca/Judicial\\_Education/DistanceLearning/2009TenantsRights/main.html](http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html)

**From:** Paul Alessandroni <Paul.Alessandroni@co.charlotte.nc.us>

**To:** McLean, Craig  
Thomas, Manuel  
Judges-Charlotte  
Judges-Collier  
Judges-Glades  
Judges-Hendry  
Judges-Lee  
Magistrates-All

**CC:** Kiesel, Lisa  
Callanan, Richard  
Ackerman, Paul  
Woelfel, Joe  
Friess, Joseph  
Middlebrook, Mark  
Embury, Jon  
Goodpasture, Penelope  
Rosemond, Larry

**Date:** 9/10/2009 2:53:38 PM

**Subject:** ?RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

---

Excellent work Craig and ALL!

Judge Alessandroni

From: McLean, Craig [mailto:CMcLean@CA.CJIS20.ORG]

Sent: Thursday, September 10, 2009 3:52 PM

To: Thomas, Manuel; Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All

Cc: Kiesel, Lisa; Callanan, Richard; Ackerman, Paul; Woelfel, Joe; Friess, Joseph; Middlebrook, Mark; Embury, Jon; Goodpasture, Penelope; Rosemond, Larry

Subject: RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

All,

We have purchased through our CJIS agency a piece of equipment that will allow us to do video conferences to the state (or outside our network) from anywhere in our circuit. This will allow us to do these trainings from individual counties. We are in process of configuring this "bridge" and should have it up for the video conference training on the 17th. We are very happy with this new technology for our circuit and were able to share in the cost of the equipment with the State's Attorney and the Public Defender. We can also now do circuit wide calls with every county at the same time, before we could only do up to 4. Thanks to the CJIS and AOC networking staff for configuring this and installing the equipment. It was not an easy task.

20TH CIR 02889

If you have any questions, please give me a call.

Thanks,

Craig

Craig McLean

Information Services Director

20th Judicial Circuit Court

239.533.1722

cmclean@ca.cjis20.org

From: Thomas, Manuel

Sent: Thursday, September 10, 2009 10:20 AM

To: Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All

Cc: Kiesel, Lisa; McLean, Craig; Callanan, Richard

Subject: FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

Good Morning Your Honors and Magistrates:

Judges and Magistrates who are interested in attending the Videoconference on "Tenants' Rights in Foreclosures"

on October 2, 2009 in Conference Room B in the Lee Justice Center Annex may register by using the link

<http://caintra/events/login.asp> and selecting this videoconference.

for County Court Judges and Senior Judges

Friday, October 2, 2009  
12:15 p.m. – 1:30 p.m. ET

### Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- Identify issues that may be raised that are not answered by the recent federal legislation.

### Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

### Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

### How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link –

<http://www.flcourts.org/UlimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

### Contact Information

**20TH CIR 02891**

Website

[http://intranet.flcourts.org/osca/Judicial\\_Education/DistanceLearning/2009TenantsRights/main.html](http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html)

\_\_\_\_\_

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

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

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

\*\*\*\*\*

Under Florida Law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic email to this entity. Instead, contact this office by phone or in writing. -- F.S. 668.606

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

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

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





**From:** Thomas, Manuel </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=MTHOMAS>

**To:** Judges-Charlotte

Judges-Collier

Judges-Glades

Judges-Hendry

Judges-Lee

Magistrates-All

**CC:** Kiesel, Lisa

McLean, Craig

Callanan, Richard

**Date:** 9/10/2009 9:20:18 AM

**Subject:** ?FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

---

Good Morning Your Honors and Magistrates:

Judges and Magistrates who are interested in attending the Videoconference on "Tenants' Rights in Foreclosures" on October 2, 2009 in Conference Room B in the Lee Justice Center Annex may register by using the link <http://caintra/events/login.asp> and selecting this videoconference.

Tenants' Rights in Foreclosures Videoconference

for County Court Judges and Senior Judges

Friday, October 2, 2009

12:15 p.m. – 1:30 p.m. ET

Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- Identify the issues facing renters whose homes are in mortgage or association foreclosure;

**20TH CIR 02894**

- Correctly apply 12 USC Sec. 5220 to ameliorate some of these issues; and

- Identify issues that may be raised that are not answered by the recent federal legislation.

## Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

## Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

## How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link –

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

## Contact Information

Bart Moore, Court Education Senior Attorney  
850-413-9642 or [mooreb@flcourts.org](mailto:mooreb@flcourts.org)

## Website

[http://intranet.flcourts.org/osca/Judicial\\_Education/DistanceLearning/2009TenantsRights/main.html](http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html)

**From:** Thomas, Manuel </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=MTHOMAS>

**To:** Judges-Charlotte

Judges-Collier

Judges-Glades

Judges-Hendry

Judges-Lee

Magistrates-All

**CC:** Kiesel, Lisa

McLean, Craig

Callanan, Richard

**Date:** 9/11/2009 10:51:58 AM

**Subject:** ?FW: Register for Foreclosure 101 Videoconference 9/30/09

---

---

Good Morning Your Honors and Magistrates:

This is to alert you to another videoconference opportunity available for viewing on September 30, in Conference B, Justice Center Annex. Again please register by using the link <http://caintra/events/login.asp> and selecting this class.

ext Box: Foreclosure 101 Videoconference??for Circuit Judges and Senior Judges??Wednesday, September 30, 2009??12:15 p.m. ? 1:30 p.m. ET??Course Content??This course will provide a basic overview of mortgage foreclosure actions and give judges the tools they need to efficiently and effectively handle their foreclosure caseload. Participants will also be provided access to the Foreclosure Benchbook, which was prepared by The Honorable Jennifer Bailey and Assistant General Counsel Doris Bermudez-Goodrich, both from the Eleventh Judicial Circuit.??Faculty ??Thomas H. Bateman, III, Esquire, Messer, Caparelo ? Self, P.A., Tallahassee (2009-present). B.S., Nova University; J.D., George Mason University. Formerly Circuit Judge, Second Judicial Circuit (2001-2008); County Court Judge, Leon County (1990-2001); General Counsel, Florida Department of Transportation (1987-90); Florida Office of the Attorney General, Assistant Attorney General, Civil Division (1985-87); Criminal Appeals Division (1984-85); Assistant Public Defender, Ninth Judicial Circuit (1982-84).??Location??This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit. ??Continuing Judicial Education Credit (CJE) and Evaluation??A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.??How to Register??Space may be limited in some locations so registration is required. Use the password 101 to register at this link ? ??http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=AE8056A4D7C84109A4950611CA3F084C ??The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or brownb@flcourts.org. ??Contact Information??Danica Winter, Court Education Senior Attorney??(850) 488-2842 or winterd@flcourts.org??Website ??http://intranet.flcourts.org/osca/Judicial\_Education/DistanceLearning/2009Foreclosure101/main.html????

**From:** Hayes, Hugh </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=HUGHH>

**To:** McLean, Craig

**CC:** Callanan, Richard

Cary, G. Keith

**Date:** 9/12/2009 7:07:00 AM

**Subject:** ?RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

---

Craig:

Many thanks to you and your staff!

Hugh

---

From: McLean, Craig

Sent: Thursday, September 10, 2009 3:52 PM

To: Thomas, Manuel; Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All

Cc: Kiesel, Lisa; Callanan, Richard; Ackerman, Paul; Woelfel, Joe; Friess, Joseph; Middlebrook, Mark; Embury, Jon;

Goodpasture, Penelope; Rosemond, Larry

Subject: RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

All,

We have purchased through our CJIS agency a piece of equipment that will allow us to do video conferences to the state (or outside our network) from anywhere in our circuit. This will allow us to do these trainings from individual counties. We are in process of configuring this "bridge" and should have it up for the video conference training on the 17th. We are very happy with this new technology for our circuit and were able to share in the cost of the equipment with the State's Attorney and the Public Defender. We can also now do circuit wide calls with every county at the same time, before we could only do up to 4. Thanks to the CJIS and AOC networking staff for configuring this and installing the equipment. It was not an easy task.

If you have any questions, please give me a call.

Thanks,

Craig

Information Services Director

20th Judicial Circuit Court

239.533.1722

cmclean@ca.cjis20.org

From: Thomas, Manuel

Sent: Thursday, September 10, 2009 10:20 AM

To: Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All

Cc: Kiesel, Lisa; McLean, Craig; Callanan, Richard

Subject: FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

Good Morning Your Honors and Magistrates:

Judges and Magistrates who are interested in attending the Videoconference on "Tenants' Rights in Foreclosures"

on October 2, 2009 in Conference Room B in the Lee Justice Center Annex may register by using the link

<http://caintra/events/login.asp> and selecting this videoconference.

Tenants' Rights in Foreclosures Videoconference

for County Court Judges and Senior Judges

Friday, October 2, 2009

12:15 p.m. – 1:30 p.m. ET

**20TH CIR 02899**

12\_1\_2010

## Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- Identify issues that may be raised that are not answered by the recent federal legislation.

## Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

## Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

## How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link –

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

## Contact Information

Bart Moore, Court Education Senior Attorney  
850-413-9642 or [mooreb@flcourts.org](mailto:mooreb@flcourts.org)

## Website

[http://intranet.flcourts.org/osca/Judicial\\_Education/DistanceLearning/2009TenantsRights/main.html](http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html)



**From:** Hayes, Hugh </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=HUGHH>

**To:** Callanan, Richard

**CC:**

**Date:** 9/14/2009 8:54:54 AM

**Subject:** ?RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

---

Good Morning Rick:

I actually think that these programs will work fine. I've participated in some of the Appellate Practice telephone conferences and they have worked out pretty well.

Will keep you informed...HDH

---

From: Callanan, Richard

Sent: Monday, September 14, 2009 9:42 AM

To: Hayes, Hugh

Subject: RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

Thanks Judge..I guess we are now officially moving into the 21st century? Please let me know how valuable you actually think these distance learning workshops are for the judges..Thanks again

Rick

From: Hayes, Hugh

Sent: Saturday, September 12, 2009 8:07 AM

To: McLean, Craig

Cc: Callanan, Richard; Cary, G. Keith

Subject: RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

Craig:

Many thanks to you and your staff!

Hugh

From: McLean, Craig  
Sent: Thursday, September 10, 2009 3:52 PM  
To: Thomas, Manuel; Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All  
Cc: Kiesel, Lisa; Callanan, Richard; Ackerman, Paul; Woelfel, Joe; Friess, Joseph; Middlebrook, Mark; Embury, Jon; Goodpasture, Penelope; Rosemond, Larry  
Subject: RE: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

All,

We have purchased through our CJIS agency a piece of equipment that will allow us to do video conferences to the state (or outside our network) from anywhere in our circuit. This will allow us to do these trainings from individual counties. We are in process of configuring this "bridge" and should have it up for the video conference training on the 17th. We are very happy with this new technology for our circuit and were able to share in the cost of the equipment with the State's Attorney and the Public Defender. We can also now do circuit wide calls with every county at the same time, before we could only do up to 4. Thanks to the CJIS and AOC networking staff for configuring this and installing the equipment. It was not an easy task.

If you have any questions, please give me a call.

Thanks,

Craig

Craig McLean

Information Services Director

20th Judicial Circuit Court

239.533.1722

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

From: Thomas, Manuel  
Sent: Thursday, September 10, 2009 10:20 AM  
To: Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All  
Cc: Kiesel, Lisa; McLean, Craig; Callanan, Richard  
Subject: FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09 **20TH CIR 02902**

Good Morning Your Honors and Magistrates:

Judges and Magistrates who are interested in attending the Videoconference on "Tenants' Rights in Foreclosures" on October 2, 2009 in Conference Room B in the Lee Justice Center Annex may register by using the link <http://caintra/events/login.asp> and selecting this videoconference.

Tenants' Rights in Foreclosures Videoconference

for County Court Judges and Senior Judges

Friday, October 2, 2009  
12:15 p.m. – 1:30 p.m. ET

Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- Identify issues that may be raised that are not answered by the recent federal legislation.

Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

**20TH CIR 02903**

## Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

### How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link –

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

### Contact Information

Bart Moore, Court Education Senior Attorney  
850-413-9642 or [mooreb@flcourts.org](mailto:mooreb@flcourts.org)

### Website

[http://intranet.flcourts.org/osca/Judicial\\_Education/DistanceLearning/2009TenantsRights/main.html](http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html)

## Starnes, Hugh E

---

**From:** Aloia, Nancy K  
**Sent:** Thursday, October 14, 2010 1:16 PM  
**To:** McHugh, Michael; Winesett, Sherra; Rosman, Jay; Fuller, Joseph; Gerald, Lynn; Starnes, Hugh E; Thompson, James; Diamond, Stella; Hawthorne, Amy; Crongeyer, Robert L.  
**Subject:** FW: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee  
**Attachments:** Foreclosure Bench Book.pdf

New Bench Book on residential foreclosures being sent to us by OSCA. *Link below*

20th Circuit - Integrity, Fairness, Service

---

**From:** Melissa Henderson <[HendersM@flcourts.org](mailto:HendersM@flcourts.org)>  
**Date:** Oct 14, 2010 12:11 PM  
**Subject:** New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee  
**To:** Trial Court Chief Judges <[TrialCourtChiefJudges@flcourts.org](mailto:TrialCourtChiefJudges@flcourts.org)>; Trial Court Administrators <[TrialCourtAdministrators@flcourts.org](mailto:TrialCourtAdministrators@flcourts.org)>  
**CC:** Susan Leseman <[LesemanS@flcourts.org](mailto:LesemanS@flcourts.org)>; OSCA-JUDED <[JUDED@flcourts.org](mailto:JUDED@flcourts.org)>; Blan Teagle <[teagleb@flcourts.org](mailto:teagleb@flcourts.org)>

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

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

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

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

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

A PDF of the bench book is attached, but you can also access it from the Court Education Resource Library, at [https://intranet.flcourts.org/osca/Judicial Education/Library/librarymain.shtml](https://intranet.flcourts.org/osca/Judicial%20Education/Library/librarymain.shtml) (As the bench book will be periodically updated to reflect changes in foreclosure law and procedure, please visit the site for update notifications.)

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

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

**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** Judges-Charlotte  
Judges-Collier  
Judges-Glades  
Judges-Hendry  
Judges-Lee  
Magistrates-All  
Staff Attorney Offices  
Davis, Dana  
'Judge Daniel Monaco'  
'Judge Donald Pellecchia'  
'Judge George Brescher'  
'Judge Harry Rapkin'  
'Judge Hugh Starnes'  
'Judge James Thompson'  
'Judge Stephen Dakan'  
'Judge Theodore Brousseau'  
McIver, William

**CC:** JA-Charlotte  
JA-Collier  
JA-Glades  
JA-Hendry  
JA-Lee  
Callanan, Richard  
Thomas, Manuel  
Suhar, Sharon  
HelpDesk

**Date:** 9/24/2009 11:22:56 AM

**Subject:** 9/30/09 Foreclosure 101 Videoconference

---

The Foreclosure 101 videoconference is on Wednesday 9/30/09. The program runs from 12:15 – 1:30 and is presented by Thomas H. Bateman, III, Esquire from Messer, Caparello & Self, PA. The course content includes a basic overview of mortgage foreclosure actions and gives Judges the tools they need to efficiently and effectively handle their foreclosure caseload. Participants will also be provided access to the Foreclosure Benchbook, which was prepared by Judge Jennifer Bailey and Assistant General Counsel Doris Bermudez-Goodrich, both from the 11th Circuit.

If you have not already registered and would like to attend, please register at <http://caintra/events/login.asp>. If you do not have access to the Court's intranet site, you can reply to this email to register.

If you have any questions, please let me know.

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street

**20TH CIR 02907**

Office (239) 533-1711

Fax (239) 533-1701

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



**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** 'winterd@flcourts.org'

**CC:** Suhar, Sharon

**Date:** 9/24/2009 11:25:28 AM

**Subject:** Foreclosure 101 video conference

---

Danica,

Can you please let me know if anyone from the 20th Circuit has registered for this training?

Thanks,

Lisa Kiesel, Chief Deputy Court Administrator

Twentieth Judicial Circuit

Administrative Office of the Courts

1700 Monroe Street

Fort Myers, FL 33901

Office (239) 533-1711

Fax (239) 533-1701

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

**From:** Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>

**To:** Kiesel, Lisa

Harkey, Sandra D

**CC:**

**Date:** 9/11/2009 6:19:44 AM

**Subject:** ?FW: Register for Foreclosure 101 Videoconference 9/30/09

---

-----  
From: Beverly Brown[SMTP:BROWNB@FLCOURTS.ORG]

Sent: Friday, September 11, 2009 7:19:37 AM

To: Abdiel Ortiz; Bill Hale; Brett Arquette; McLean, Craig;  
Craig Van Brussel; Dennis Menendez; Doug Smith; Fred Buhl; Gary Hagan;  
Gerald Land; Jannet Lewis; Jeff Sourbeer; John Lake; Jon Lin; Ken Nelson;  
Noel Chessman; Ray Green; Sharon Abrams; Stephen Shaw; Sunil Nemade;  
Wayne Fountain

Cc: Trial Court Administrators; 'brooke.jones@flcourts1.gov';  
'ctadsg1@ocnjcc.org'; Vivian Gonzalez; Danica Winter; Lynne Winston;  
Tenisha Lewis

Subject: FW: Register for Foreclosure 101 Videoconference 9/30/09

Auto forwarded by a Rule

FYI - We sent the following email to all circuit judges and senior judges. There are a number of senior judges who do not use email so we would appreciate your assistance in notifying senior judges in your circuit of this educational opportunity.

**From:** Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>

**To:** Kiesel, Lisa

Harkey, Sandra D

**CC:**

**Date:** 9/9/2009 11:08:44 AM

**Subject:** ?FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

---

-----  
From: Beverly Brown[SMTP:BROWNB@FLCOURTS.ORG]

Sent: Wednesday, September 09, 2009 12:08:36 PM

To: Abdiel Ortiz; Bill Hale; Brett Arquette; McLean, Craig;  
Craig Van Brussel; Dennis Menendez; Doug Smith; Fred Buhl; Gary Hagan;  
Gerald Land; Jannet Lewis; Jeff Sourbeer; John Lake; Jon Lin; Ken Nelson;  
Noel Chessman; Ray Green; Sharon Abrams; Stephen Shaw; Sunil Nemade;  
Wayne Fountain

Cc: 'brooke.jones@flcourts1.gov'; 'ctadsg1@ocnjcc.org'; Vivian Gonzalez;  
Trial Court Administrators; Trial Court Chief Judges; Bart Moore

Subject: FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

Auto forwarded by a Rule

R

FYI - We sent the following email to all county court judges and senior judges this morning. There are a number of senior judges who do not use email so we would appreciate your assistance in notifying senior judges in your circuit of this educational opportunity.

Tenants' Rights in Foreclosures Videoconference

for County Court Judges and Senior Judges

Friday, October 2, 2009

12:15 p.m. – 1:30 p.m. ET

20TH CIR 02911

## Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- Identify issues that may be raised that are not answered by the recent federal legislation.

## Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

## Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

## How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link –

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

## Contact Information

Bart Moore, Court Education Senior Attorney  
850-413-9642 or [mooreb@flcourts.org](mailto:mooreb@flcourts.org)

## Website

[http://intranet.flcourts.org/osca/Judicial\\_Education/DistanceLearning/2009TenantsRights/main.html](http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html)

**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** Suhar, Sharon

**CC:**

**Date:** 9/24/2009 11:28:08 AM

**Subject:** training emails

---

Foreclosure 101 email...

Tenant's Rights email...

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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

**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** Middlebrook, Mark

Embury, Jon

**CC:** Mause, Denise

Williams, Diane

Callanan, Richard

Smith, Carrie

Harkey, Sandra D

**Date:** 9/29/2009 1:12:12 PM

**Subject:** ?FW: 9/30/09 Foreclosure 101 video conference

---

FYI

---

From: Kiesel, Lisa

Sent: Tuesday, September 29, 2009 12:27 PM

To: HelpDesk; Suhar, Sharon

Subject: 9/30/09 Foreclosure 101 video conference

Participants for Wednesday's Foreclosure 101 video conference:

Employee Name	Location	Position	Title
Brescher, George Lee		Senior Judge	
Brousseau, Theodore Collier		Senior Judge	
Friedman, David Collier		Magistrate	
Gagliardi, Josephine Lee	County	Judge	
Hayward, Archie Lee	County	Judge	
Lundy, Jack Glades	County	Judge	
Manalich, Ramiro Lee	Circuit	Judge	
McGarity, James Collier		Magistrate	
Pellecchia, Donald Lee		Senior Judge	
Richards, George Lee	Circuit	Judge	

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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

**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** McGarity, James

**CC:**

**Date:** 9/29/2009 9:02:22 AM

**Subject:** ?RE: 9/30/09 Foreclosure 101 Videoconference

---

We have to get special approval from OSCA for anyone other than Judges to register. I have asked for approval for you to register and will let you know when I hear back. I am not anticipating any problems.

Thanks,

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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

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

**From:** McGarity, James  
**Sent:** Monday, September 28, 2009 8:38 PM  
**To:** Kiesel, Lisa  
**Subject:** RE: 9/30/09 Foreclosure 101 Videoconference

Lisa:  
If it is not too late I'd like to register for this class / videoconference this Wednesday.  
Thanks,  
Jim McGarity  
G.M.  
(239)252-8388

---

**From:** Kiesel, Lisa  
**Sent:** Thursday, September 24, 2009 12:22 PM  
**To:** Judges-Charlotte; Judges-Collier; Judges-Glades; Judges-Hendry; Judges-Lee; Magistrates-All; Staff Attorney Offices; Davis, Dana; 'Judge Daniel Monaco'; 'Judge Donald Pellecchia'; 'Judge George Brescher'; 'Judge Harry Rapkin'; 'Judge Hugh Starnes'; 'Judge James Thompson'; 'Judge Stephen Dakan'; 'Judge Theodore Brousseau'; McIver, William  
**Cc:** JA-Charlotte; JA-Collier; JA-Glades; JA-Hendry; JA-Lee; Callanan, Richard; Thomas, Manuel; Suhar, Sharon; HelpDesk  
**Subject:** 9/30/09 Foreclosure 101 Videoconference

The Foreclosure 101 videoconference is on Wednesday 9/30/09. The program runs from 12:15 – 1:30 and is presented by Thomas H. Bateman, III, Esquire from Messer, Caparello & Self, PA. The course content includes a basic overview of mortgage foreclosure actions and gives Judges the tools they need to efficiently and effectively handle their foreclosure caseload. Participants will also be provided access to the Foreclosure Benchbook, which was prepared by Judge Jennifer Bailey and Assistant General Counsel Doris Bermudez-Goodrich, both from the 11th Circuit.

20TH CIR 02915

If you have not already registered and would like to attend, please register at <http://caintra/events/login.asp>. If you do not have access to the Court's intranet site, you can reply to this email to register.

If you have any questions, please let me know.

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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



**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** HelpDesk

Suhar, Sharon

**CC:**

**Date:** 9/29/2009 11:27:08 AM

**Subject:** 9/30/09 Foreclosure 101 video conference

---

Participants for Wednesday's Foreclosure 101 video conference:

Employee Name	Location	Position	Title
Brescher, George Lee		Senior Judge	
Brousseau, Theodore Collier		Senior Judge	
Friedman, David Collier		Magistrate	
Gagliardi, Josephine Lee	County	Judge	
Hayward, Archie Lee	County	Judge	
Lundy, Jack Glades	County	Judge	
Manalich, Ramiro Lee	Circuit	Judge	
McGarity, James Collier		Magistrate	
Pellecchia, Donald Lee		Senior Judge	
Richards, George Lee	Circuit	Judge	

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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

**From:** [Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>](mailto:Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>)

**To:** [Middlebrook, Mark](#)  
[Embury, Jon](#)

**CC:** [Mause, Denise](#)  
[Williams, Diane](#)  
[Callanan, Richard](#)  
[Smith, Carrie](#)  
[Harkey, Sandra D](#)

**Date:** 9/29/2009 1:12:12 PM

**Subject:** ?FW: 9/30/09 Foreclosure 101 video conference

---

FYI

---

From: Kiesel, Lisa  
Sent: Tuesday, September 29, 2009 12:27 PM  
To: HelpDesk; Suhar, Sharon  
Subject: 9/30/09 Foreclosure 101 video conference

Participants for Wednesday's Foreclosure 101 video conference:

Employee Name	Location	Position	Title
Brescher, George Lee	Senior Judge		
Brousseau, Theodore Collier	Senior Judge		
Friedman, David Collier	Magistrate		
Gagliardi, Josephine Lee	County Judge		
Hayward, Archie Lee	County Judge		
Lundy, Jack Glades	County Judge		
Manalich, Ramiro Lee	Circuit Judge		
McGarity, James Collier	Magistrate		
Pellecchia, Donald Lee	Senior Judge		
Richards, George Lee	Circuit Judge		

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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

**From:** Kiesel, Lisa </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=LKIESEL>

**To:** Hayward Jr., Archie

Lundy, Jack

Gagliardi, Josephine

Mañalich, Ramiro

Friedman, David

'tedbrousseau@netscape.net'

'sabelpalm@aol.com'

'pellecchiade@yahoo.com'

Richards, George

McGarity, James

**CC:** Wilkinson, Kathy

Brantley, Kelly

Walsh, Carol

Ferreira, Nicole

Davis, Dana

**Date:** 9/30/2009 8:51:38 AM

**Subject:** Foreclosure 101 Handbook

---

Attached you will find the handbook mentioned in the course description for today's video conference. Any other training materials will be sent directly from OSCA.

If you have any questions, please let me know.

Thanks,

Lisa Kiesel, Chief Deputy Court Administrator  
Twentieth Judicial Circuit  
Administrative Office of the Courts  
1700 Monroe Street  
Fort Myers, FL 33901  
Office (239) 533-1711  
Fax (239) 533-1701

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

# **FORECLOSURE BENCHBOOK**

Prepared by

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

and

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

## **Introduction**

1. Foreclosure is the enforcement of a security interest by judicial sale of collateral.

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. (2003).

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. (2008); *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. (2000).

(c) **Mortgagor:** refers to the obligor; the individual or entity who has assumed the obligation secured by the mortgage lien. § 721.82(7), Fla. Stat. (2000). The mortgagor holds legal title to the mortgaged property. *Hoffman v. Semet*, 316 So. 2d 649, 652 (Fla. 4th DCA 1975).

3. To foreclose the mortgage lien and extinguish equities of redemption, secured parties must file a civil action. § 45.0315, Fla. Stat. (2008).

## **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. (2006); *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. (2003); *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. (2008); *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. (2004). *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).

## **Parties to the Foreclosure Action**

### **Plaintiff**

1. Must be the owner/holder of the note.

(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. (2008).

(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. (2008) 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.

(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).

(a) No requirement of a written and recorded assignment of the mortgage to maintain foreclosure action. *WM Specialty Mortgage, LLC v. Salomon*, 874 So. 2d 680, 682 (Fla. 4th DCA 2004); *Chem. Residential Mortgage v. Rector*, 742 So. 2d 300 (Fla. 1st DCA 1998); *Clifford v. Eastern Mortg. & Sec. Co.*, 166 So. 562



(Fla. 1936).

3. 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. (2008); *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. (2004). Reestablishment of the note is governed by § 673.3091(2), Fla. Stat. (2004).

### **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.*

(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 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. (2008) 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.

2. Homeowners' Association's - Section 720.3085(2)(c)(1), Fla. Stat. (2008) 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. (2008).

(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 homeowner's associations have subordination language in their declaration of covenants providing that their lien is subordinate to the mortgage. However, the subordination language is not standard in all declarations. Any challenge to the priority if the mortgage will likely be resolved on the basis of impairment of contract.

### **Judgment Liens**

1. Section 55.10(1), Fla. Stat. (2004) 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. (2004).

### **Filing of the Lis Pendens**

1. Filing of lis pendens - cuts off the rights of any person whose interest arises after filing.

(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. (2007).

2. Validity of a notice of lis pendens is one year from filing. § 48.23(2), Fla. Stat. (2007).

(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.

(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 - Rule 1.944, Fla. R. Civ. Proc. Requisite allegations assert: jurisdiction, default, acceleration and the legal description of the real property.

(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. (2008). 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. Proc. 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 not required since the cause of action is based on the mortgage; not the assignment. Rule 1.130(a), Fla. R. Civ. P., *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. (2003).

(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) Legal description of the subject real property.

(j) 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.

### **Original Document Filing and Reestablishment of the Note**

1. 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.

(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.

### **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).

### **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. (2008) 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. (2008). 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 with prejudice or the dropping of the defendant.



## **Personal Service**

1. Section 48.031 (1), Fla. Stat. (2004) requires that service of process be effectuated 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.

(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. (2004). 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 (Fedex) 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. (2004); *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 defendant 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. (2004) - 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. (2003).

### **Constructive Service**

1. Section 49.011(1), Fla. Stat. (2008) 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., (2008), 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. (2006) 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., (2008), 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. (2003).

(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).

(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**

A basic checklist of a diligent search and inquiry to establish constructive service generally 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 Corps, 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.*

(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 - irregular 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., (2008) - 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. *Koehli 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. (2008). 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. (2008), 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.

### **Mortgage Workout Options**

1. Reinstatement: Repayment of the total amount in default or payments behind and restoration to current status on the note and mortgage.
2. Forbearance: The temporary reduction or suspension of mortgage payments.
3. Repayment Plan: Agreement between the parties whereby the homeowner repays the regularly scheduled monthly payments, plus an additional amount over time to reduce arrears.
4. Loan Modification: Agreement between the parties whereby one or more of the mortgage terms are permanently changed.
5. Short Sale: Sale of real property for less than the total amount owed on the note and mortgage.

(a) If the lender agrees to the short sale, the remaining portion of the mortgage debt may be forgiven by the lender.

(1) However, the amount of debt forgiven may be considered income imputed to the seller and taxable as a capital gain by the IRS. *Parker Delaney*, 186 F. 2d 455, 459 (1st Cir. 1950).

6. Deed-in-lieu of Foreclosure: The homeowner's voluntary transfer of the home's title in exchange for the lender's agreement not to file a foreclosure action.

### **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.

(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 90 days, provided he has a defense which requires his presence and despite due diligence, counsel has been unable to contact the servicemember. 50 App. U. S. C. A. § 521(d).

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

(1) the defendant is not in military service; or

(2) the 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.

7. **Appointment of a Guardian ad Litem** - 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. (2002).

(a) Section 65.061(2), Fla. Stat. (2004) 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. 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. 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."

(c) Apparent conflict between the statute and the rules discussed herein, must be resolved in favor of the rules. Art. V, § 2, Fla. Const.; *State v. Raymond*, 906 So. 2d 1045, 1047 (Fla. 2005).

## **Summary Final Judgment of Foreclosure**

1. 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. The motion for summary judgment, supporting affidavits and notice of hearing must be served on a defendant at least 20 days before the summary judgment hearing. Rule 1.510(c), Fla. R. Civ. P.

(a) Other discovery materials and evidence used in support of or in opposition to a motion for summary judgment are subject to the same notice requirements. *Dept. of Revenue v. B & L Concepts, Inc.*, 612 So. 2d 720, 722 (Fla. 5th DCA 1993), (Court declined to consider depositions in opposition to summary judgment that were untimely filed in the day of the hearing.); *San Hueza v. Nat'l. Found. Life Ins. Co.*, 545 So. 2d 321 (Fla. 3d DCA 1989), (nonmoving party's answers to interrogatories filed at time of summary judgment hearing could be considered when "they were served within the time required by Fla. Rule of Procedure 1.510(c) and received at least one day before hearing.)

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

2. 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).

### **3. Affidavits in support of Summary Judgment**

(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). ,

(4) late charges (pre-acceleration only), *Fowler v. First Fed. Sav. & Loan Ass'n.*, 643 So. 2d 30, 33(Fla. 1st DCA 1994).),

(5) property inspections & appraisals,

(6) 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.*

(1) 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.

#### 4. 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).

## **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. 1 st DCA 1983).

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). 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.

(c) Estoppel – elements include: 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 vendors 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 vendor 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. (2008), 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. (2008).

(1) A usurious contract is unenforceable according to the provisions of Section 687.071(7), Fla. Stat. (2003).

(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 519, 520 (Fla. 3d DCA 2006).

(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. (2002); *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. (2008) 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).

(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. 23d 1257 (11th Circ. 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. *Nat'l. Loan Investors, L. P. v. Joymar Assoc.*, 767 So. 2d 549, 550 (Fla. 3d DCA 2000).

### **Final Judgment**

1. Section 45.031, Fla. Stat. (2008) governs the contents of the final judgment.

2. AO 09- \_\_\_\_ incorporates statutory requirement and requires the use of the adopted form for final summary judgment of foreclosure. Supplemental language must be submitted for review by separate order in the Eleventh Judicial Circuit.



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

4. 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).

5. Checklist

(a) Final Judgment:

(1) 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.

(2) Check principal, rate & calculation of interest through date of judgment.

(3) 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).

(4) 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.

(5) Beware - hidden charges & fees for default letters, correspondence related to workout efforts. Court's discretion to deny recovery.

(6) 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. (2001).

(7) 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.

(8) 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. (2008), *JRBL Dev., Inc. v. Maiello*, 872 So. 2d 362, 363 (Fla. 2d DCA 2004).

6. 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. (2008).

### **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. (2008).

(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**

### **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. (2008). The second publication shall be at least five days before the sale. § 45.031(2), Fla. Stat. (2008).

(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. (2008).

### **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. (2006). 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. (2008). The court may hold a hearing – within judicial discretion.

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).

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). 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).

### **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. (2008).

(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.

### 3. **Summary of 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.

(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.

### **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. (2007). Disbursement of surplus funds is governed by Section 45.031, Fla. Stat. (2006).

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).

### **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. Trial court has discretion to enter deficiency decree. § 702.06, Fla. Stat. (2008); *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.

3. 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).

4. 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).

## **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.

4. Foreclosure cannot proceed until relief from automatic stay is obtained or otherwise terminated, or upon dismissal of the bankruptcy case.

## **Florida's Expedited Foreclosure Statute**

1. Enacted by § 702.10, Fla. Stat. (2001).

2. Upon filing of verified complaint, plaintiff moves for immediate review of foreclosure by an order to show cause. (These complaints are easily distinguishable from the usual foreclosure by the order to show cause).

3. Not the standard practice among foreclosure practitioners, due to limitations:



- (a) Statute does not foreclose junior liens;
- (b) Procedures differ as to residential and commercial properties; and
- (c) Statute only provides for entry of an *in rem* judgment; deficiency must be sought in separate action.

### **Common Procedural Errors**

1. Incorrect legal description contained in the:

(a) Original mortgage – requires a count to reformation count. An error in the legal description of the deed requires the joinder of the original parties as necessary parties to the reformation proceedings. *Chanrai Inv., Inc., v. Clement*, 566 So. 2d 838, 840 (Fla. 5th DCA 1990).

(b) Complaint and lis pendens – requires amendment.

(c) Judgment – Rule 1.540 (a), Fla. R. Civ. P. governs. For example, an incorrect judgment amount which omitted the undisputed payment of real estate taxes could be amended. *LPP Mortgage Ltd. v. Bank of America*, 826 So. 2d 462, 463 (Fla. 3d DCA 2002).

(d) Notice of Sale – requires vacating the sale and subsequent resale of property. *Hyte Development Corp. v. General Electric Credit Corp.*, 356 So. 2d 1254 (Fla. 3d DCA 1978).

(e) Certificate of title – a “genuine” scrivener’s error in the certificate of title can be amended. However, there is no statutory basis for the court to direct the clerk to amend the certificate of title based on post judgment transfers of title, faulty assignments of bid or errors in vesting title instructions.

(1) An error in the certificate of title which originates in the mortgage and is repeated in the deed and notice of sale requires the cancellation of the certificate of title and setting aside of the final judgment. *Lucas v. Barnett Bank of Lee County*, 705 So. 2d 115 (Fla. 2d DCA 1998). (For example, plaintiff’s omission of a mobile home and its vehicle identification number (VIN) included in the mortgage legal description, but overlooked throughout the pleadings, judgment and notice of sale, cannot be the

amended in the certificate of title.) Due process issues concerning the mobile home require the vacating of the sale and judgment.

### **Hope for Homeowner's Act of 2008**

1. The Nat'l. Housing Act, also known as the Hope for Homeowner's Act of 2008, became effective on October 1, 2008 and sunsets on September 1, 2011. 12 U. S. C. A. § 1701 (2001). According to a recent NBC News report, only 312 homeowners nationwide have been helped.
2. Under the provisions of this new Act, eligible homeowners can refinance their primary residence with a FHA guaranteed 30-year fixed rate mortgage. When the homeowner sells the primary residence or refinances the FHA loan, he must share his profit on a sliding scale with the FHA.
3. To qualify: (a) the homeowner must demonstrate the inability to afford their mortgage payment; (b) only the homeowner's primary residence is eligible, not investment property; (c) any existing subordinate liens, such as a home equity loans must be paid off; (d) the homeowner must spend 31% of gross monthly income on housing as of March 1, 2008; and (e) the homeowner must meet the same guidelines as an FHA mortgage, such as credit and income verification.
4. Lender participation in the program is entirely voluntary. The lender must be willing to accept a discounted value on its current mortgage.

**From:** Davis, Dana </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=DDAVIS>

**To:** Schreiber, Lee Ann

**CC:**

**Date:** 1/21/2010 12:58:22 PM

**Subject:** ?RE: mortgage foreclosure bench book

---

I will put a note on my calendar to get the bench book for you. Would you like a copy of your own?

We are in Charlotte the week of 2/1. He has foreclosures on Mondays and Wednesdays. The morning session starts at 9:00 and the afternoon begins at 1:00.

Dana Davis

Judicial Assistant to Hon. George C. Richards

Lee County 239-533-2705

Charlotte County 941-637-2375

From: Schreiber, Lee Ann

Sent: Thursday, January 21, 2010 11:43 AM

To: Davis, Dana

Subject: mortgage foreclosure bench book

Judge Richards asked me to send a email reminder to look for the mortgage foreclosure bench book in the Charlotte County office when you're there next. He was going to loan it to me.

Also, will you be in Charlotte the week of Feb 1? It is the first FULL week. I'd like to watch how he does the Charlotte County foreclosure docket if you can let me know what date that is.

Just saw you email - offer to help the new JA. I gotta know for sure what my assignment will be before deciding on a JA> We'll definitely take you u on the offer though. Thanks

**From:** Embury, Jon </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JEMBURY>

**To:** Richards, George  
Schreiber, Lee Ann  
Shelton, Jeremy  
Porter, Lisa

**CC:**

**Date:** 10/14/2010 11:41:10 AM

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

---

---

**From:** Callanan, Richard  
**Sent:** Thursday, October 14, 2010 12:28 PM  
**To:** Aloia, Nancy K; Embury, Jon; Middlebrook, Mark; Mann, Sheila  
**Cc:** Cary, G. Keith; Carlin, John S.; Kyle, Keith; Pivacek, Cynthia; Sloan, James D; Lundy, Jack  
**Subject:** Fw: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

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

Thank you.

20th Circuit - Integrity, Fairness, Service

---

**From:** Melissa Henderson <HendersM@flcourts.org>  
**Date:** Oct 14, 2010 12:11 PM  
**Subject:** New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee  
**To:** Trial Court Chief Judges <TrialCourtChiefJudges@flcourts.org>; Trial Court Administrators <TrialCourtAdministrators@flcourts.org>  
**CC:** Susan Leseman <LesemanS@flcourts.org>; OSCA-JUDED <JUDED@flcourts.org>; Blan Teagle <teagleb@flcourts.org>

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

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

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

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

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

20TH CIR 02960

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

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

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

**From:** Embury, Jon </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JEMBURY>

**To:** Schreiber, Lee Ann

**CC:** Conderman, Ellen

Mause, Denise

**Date:** 4/23/2010 9:00:28 AM

**Subject:** ?FW: Circuitwide Civil Case Management Meeting - Prior to 6/11/10 CBC meeting

---

Not sure if this is something you would like to attend. I wanted to invite you if you are interested and available. I know that you are helping us out with our planning committee.

Thank you.

Jon

From: Callanan, Richard

Sent: Thursday, April 22, 2010 12:45 PM

To: Cary, G. Keith; McHugh, Michael; Pivacek, Cynthia; Kyle, Keith; Carlin, John S.; Sloan, James D

Cc: Aloia, Nancy K; Embury, Jon; Middlebrook, Mark; Mann, Sheila; Fishbeck, Eric; Mravic, Deborah

Subject: FW: Circuitwide Civil Case Management Meeting - Prior to 6/11/10 CBC meeting

Dear Judges

As Judge Pivacek suggested, I would like to schedule a Civil Case Management meeting for 6/11/10 at 10:00 AM, prior to the next CBC meeting, to review status of the Civil Case management plans and initiatives underway in each county.

The working groups in Collier and Lee have made a lot of progress and there appears to be a good consensus on standardized orders and procedures. Charlotte's Civil Case Management Stakeholder working group is just getting started. This meeting will give us a chance to discuss civil case management plans, areas for circuit uniform procedures/orders and bring you up to date on the Civil backlog reduction funding expected for 2010-11.

The meeting is tentatively set for 6/11/10 at 10:00 AM in Ft Myers to occur prior to the CBC meeting set for 1:30 PM that day. A tentative agenda is attached. Please feel free to invite any staff or civil judges from your local working groups to the meeting.

Best regards

20TH CIR 02962

11\_16\_2010

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

## ***CIVIL CASEFLOW MANAGEMENT***

**A Workshop for the 20<sup>th</sup> Judicial Circuit of Florida  
January 14, 2010**

**Edison State College, Lee Campus Conference Center, Fort Myers, Florida**

### **PRELIMINARY AGENDA**

**8:30 – 9:15 Opening Session: Welcome, Introductions, Overview of the Workshop**

- Judge Cary and Rick Callanan
- Barry Mahoney
- Participant Introductions – Name, Role, One or two factors that you feel can make it difficult for courts to achieve timely resolution of civil cases
- Overview of the current situation **OR** Feedback on results of Caseflow Management Self-Assessment

**9:15 – 10:00 Plenary: The Fundamentals of Civil Caseflow Management**

- Purposes of Courts
- What Do We Mean by “Caseflow Management?”
- Goals of Caseflow Management
- Basic Premises of Effective Caseflow and Docket Management
- ABA Standard on Delay Reduction (Standards 2.50)
- FL Rules of Judicial Administration – Rule 2.545
- Key Findings from Research on Court Delay
- Leadership – Focus on Leadership re Backlogs and Delays
- Common Elements of Successful Programs
- Possible Operational Goals for Case Processing
- Case Processing Time Standards
  - Why are Case Processing Time Standards Important
  - Examples of Civil Case Processing Time Standards
    - ABA Standards
    - Washington and Minnesota (with data on actual performance in relation to standards)
    - District of Columbia
  - Common Obstacles to Achieving Time Standards

**10:00 – 10:15 BREAK**

**10:15 – 11:00 Plenary: Key Components of Effective Civil Caseflow Management**

- Using Caseload Management Information
  - Key Questions about Pending Cases
  - Information for Managing a Judge’s Civil Caseload
  - Possible Indicators of Caseflow Management Effectiveness



- The Impact of Continuances
- Techniques for Successful Civil Caseflow Management
- Characteristics of Traditional Case Processing
- Early Intervention in Civil Cases – Comparison of Alternative Approaches (Orange County, CA)
- DCM
- Operational Components of DCM
- Benefits of DCM
- Civil DCM – Examples of Tracks
- Types of Pretrial Conferences in Civil Cases
- Checklist for Early Case Conferences
- The Trial Management Conference

**11:00 – 12:00 County Team Planning Session # 1: Designing a Civil DCM System for Your County**

- What tracks should be established?
- What criteria for assigning cases to tracks?
- What time objectives for resolution of cases on each track?

**12:00 – 12:30 Plenary: Reports Back from the Team Planning Sessions; Discussion**

**12:30 – 1:15 LUNCH**

**1:15 – 1:45 Plenary: Managing Complex Cases**

**1:45 – 2:15 Plenary: Attacking Old Case Backlogs**

- Definitions: Backlog and Delay
- Planning for Backlog Reduction: First Steps
- Backlog Reduction: After an Inventory has Been Completed, What Should Be Done?

**2:15 – 2:30 BREAK**

**2:30 – 3:30 County Team Planning Session # 2: Addressing the Backlog and Planning for Management of Complex Cases**

**3:30 – 4:15 Plenary: Reports Back from Team Planning Sessions; Discussion**

**4:15 – 4:45 Concluding Session**

- Caseflow and Docket Management Summary: Key Ideas
- Axioms of Caseflow Management

**4:45 ADJOURN**

# ***CIVIL CASEFLOW MANAGEMENT***

**Barry Mahoney**  
***The Justice Management Institute***

**Materials for a Workshop for Practitioners in the  
20<sup>th</sup> Judicial Circuit of Florida  
Fort Myers, Florida  
January 15, 2010  
***REVISED DRAFT – 31 DEC 2009*****

# **CIVIL CASEFLOW MANAGEMENT WORKSHOP FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT OF FLORIDA AGENDA**

- 8:30 – 9:15**      **Opening Session: Welcome, Introductions, Overview**
- 9:15 – 10:00**      **Plenary: The Fundamentals of Caseflow Management**
- 10:00 – 10:15**      **BREAK**
- 10:15 – 11:00**      **Plenary: Key Components of Effective Civil Caseflow Management**
- 11:00 – 12:00**      **County Team Planning Session # 1; Designing a Civil DCM System for Your County**
- 12:00 – 1:15**      **LUNCH**
- 1:15 – 1:45**      **Plenary: Managing Complex Cases**
- 1:45 – 2:15**      **Plenary: Attacking Old Case Backlogs**
- 2:15 – 2:30**      **BREAK**
- 2:30 – 3:30**      **County Team Planning Session # 2: Addressing the Backlog and Planning for Management of Complex Cases**
- 3:30 – 4:15**      **Plenary: Reports Back from Team Planning Sessions**
- 4:15 – 4:45**      **CONCLUDING SESSION**

# ***PURPOSES OF COURTS***

- 1. To do individual justice in individual cases**
- 2. To appear to do justice in individual cases**
- 3. To provide a forum for the resolution of legal disputes**
- 4. To protect against the arbitrary use of government power**
- 5. To make a formal record of legal status**
- 6. To deter criminal behavior**
- 7. To help rehabilitate persons convicted of crime**
- 8. To separate persons convicted of serious offenses from society**

# ***CASEFLOW MANAGEMENT***

## ***What is it?***

- **Caseflow management is the coordination of court processes and resources to ensure that cases move from filing to resolution in a timely manner.**
  - It involves the entire set of actions that a court takes to monitor and supervise the progress of cases, from initiation to conclusion.
- **It has both micro and macro aspects**
  - Organization and management of daily dockets
  - Management of individual cases
  - Management of the court's overall pending caseload
  - Visioning and strategic planning
  - Budgeting and resource utilization
  - Court and justice system leadership
- **The core purpose of caseflow management is to enable justice to be done promptly and fairly in all cases.**

# ***GOALS OF CASEFLOW MANAGEMENT***

- 1. Fair treatment of all litigants**
  - Similar cases treated similarly
  - Greater access to justice for all
- 2. Timely disposition of cases**
  - Time frames can vary, depending on case complexity and other circumstances
- 3. Adequate time and opportunity for**
  - Case preparation and negotiation
  - Consideration of difficult issues
- 4. Predictability/certainty in scheduling**
- 5. High quality litigation process**
- 6. Effective use of limited resources**
- 7. Public confidence in the court and the justice system**

# ***BASIC PREMISES OF EFFECTIVE CASEFLOW AND DOCKET MANAGEMENT***

- 1. Courts should manage the pretrial and trial processes.**
  - Non-management leads to chaos, unpredictability, and increased expense
  - BUT – courts should not *over-manage*
- 2. Preparation and opportunity to discuss possible disposition leads to appropriate case resolution.**
- 3. Courts can encourage counsel and litigant preparation and thus**
  - Facilitate early non-trial dispositions
  - Make hearings and trials more effective
- 4. Early dispositions lead to manageable caseloads**

***Continued >>***

## ***BASIC PREMISES OF EFFECTIVE CASEFLOW AND DOCKET MANAGEMENT (Continued – 2)***

- 5. Caseflow systems should be designed to meet the needs of cases that vary by case type, complexity and court resource requirements.**
- 6. Performance goals are important. E.g.:**
  - Case processing time standards**
  - Pending caseload size and age**
  - Certainty in holding events on date scheduled**
- 7. Operational performance should be measured, in relation to goals**
- 8. Courts – judges and staff - must pay attention to individual cases *and* the overall caseload**
- 9. The basic concepts and skills can be learned**



# ***ABA STANDARD ON DELAY REDUCTION***

## **Standard 2.50 *Caseflow Management and Delay Reduction: General Principle***

**From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.**

# FLORIDA RULES OF JUDICIAL ADMINISTRATION

## Rule 2.545. Case Management

**(a) Purpose.** Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. However, parties and counsel shall be afforded a reasonable time to prepare and present their case.

**(b) Case Control.** The trial judge shall take charge of all cases at an early stage of the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation, including the following:

(1) assuming early and continuous control of the court calendar; . . .

# ***KEY FINDINGS FROM RESEARCH ON COURT DELAY***

- 1. Case processing times (inception to disposition) vary widely across courts.**
- 2. Statutes, rules, and case law do not explain the differences**
- 3. Caseload complexity or “seriousness” does not explain the differences.**
- 4. Approaches based on adding resources or adopting formal rules and procedures are *NOT SUFFICIENT* to reduce delays.**
  - Need judicial commitment to active management of the caseload *and* other basic elements of effective caseflow management**
- 5. Where trials and case processing times are too lengthy, improvements can be made.**
  - Court delay is not inevitable**
  - Cases can be resolved fairly in a timely fashion**
  - Trials can be conducted expeditiously and fairly**
- 6. There is no “one best way” to reduce backlogs and delays.**
  - BUT: There are common elements of successful programs**

# ***COMMON ELEMENTS OF SUCCESSFUL PROGRAMS TO ELIMINATE BACKLOGS AND REDUCE DELAYS***

- 1. LEADERSHIP**
- 2. GOALS**
- 3. INFORMATION**
- 4. COMMUNICATIONS**
- 5. CASEFLOW MANAGEMENT PROCEDURES**
- 6. JUDICIAL COMMITMENT**
- 7. STAFF INVOLVEMENT**
- 8. EDUCATION AND TRAINING**
- 9. MECHANISMS FOR ACCOUNTABILITY**
- 10. BACKLOG REDUCTION/ CONTROL OF PENDING CASELOAD**

# **LEADERSHIP**

***“The ability to translate ideas into reality and sustain them over time” - Warren Bennis***

## **Successful leadership in backlog and delay reduction requires:**

- Understanding what needs to be done**
- Making the decision to do it.**
- Making a public commitment to eliminating the backlog and reducing delays**
- Communicating the need for action**
- Marshalling the resources needed for success**
- Monitoring progress and fixing problems**
- Persisting in moving toward the goals**
- Rewarding those who make success possible**

# ***POSSIBLE OPERATIONAL GOALS FOR CASE PROCESSING IN COURTS***

- **Eliminate old case backlogs**
- **Achieve case processing time standards**
- **Improve case scheduling efficiency**
  - **Reduce unnecessary court appearances**
  - **Low rate of continuances of court events**
- **Dispositions per year consistently exceed new filings**
- **Pending caseloads at manageable level**

# ***WHY ARE CASE PROCESSING TIME STANDARDS IMPORTANT?***

- 1. Provide a statement of purpose and intent**
  - Set forth what the court will seek to accomplish**
- 2. Acknowledge the public interest in prompt and fair resolution of cases**
- 3. Establish expectations**
  - Lawyers, parties, and court staff will know how long cases are expected to take**
- 4. Provide a framework for scheduling case events in individual cases**
- 5. Provide a foundation for measuring overall effectiveness in caseflow management**
- 6. Stimulate self-examination and continuing assessment of case management practices**

# ***ABA and FLORIDA CASE PROCESSING TIME STANDARDS***

## **ABA: CIVIL CASES**

- **90% concluded within 12 months from filing**
- **98% concluded within 18 months**
- **100% concluded within two years**

## **FLORIDA: Rule 2.250 (a) (1) (A) (Civil Cases)**

- **Jury cases: 18 months (filing to final disposition)**
- **Non-jury cases: 12 months (filing to final disposition)**



**EXAMPLES OF CIVIL CASE PROCESSING TIME  
STANDARDS AND MONITORING DATA  
States of Washington and Minnesota**

**General Civil Cases**

**Washington:**

**ACTUAL (KING Co) – Q4 08**

90% within 12 months from filing	89%
98% within 18 months	93%
100% within 24 months	97%

**Minnesota:**

**ACTUAL - 2007**

90% within 12 months from filing	91.0%
97% within 18 months	96.5%
99% within 24 months	98.2%

# **EXAMPLES OF CIVIL CASE PROCESSING TIME STANDARDS**

## ***District of Columbia Superior Court***

### **Civil I (Major Civil):**

50% within 24 months; 100% within 36 months

### **Civil II (Minor Civil):**

75% within 12 months; 90% within 18 months; 100% within 24 months

### **Landlord Tenant cases:**

Non-Jury: 65% within 45 days; 85% within 100 days; 100% within 150 days

Jury: 100% within 9 months

### **Small Claims and Conciliation cases:**

Non-Jury: 98% within 240 days; 100% within 1 year

Jury: 100% within 9 months

# **COMMON OBSTACLES TO ACHIEVING CASE PROCESSING TIME STANDARDS**

**Existing practices may make achievement impossible. For example:**

**No procedures for dealing with complex cases separately from other cases**

**First in-first out approach – priority always given to oldest case**

**All cases follow same procedures**

**No way to identify cases that can be resolved easily and quickly with early court intervention**

**Judges and staff may not be familiar with techniques for effective case management.**

**Lawyers and parties may resist implementation of standards**

**Existing caseload may be so large that judges and staff are discouraged from attempting to achieve rigorous standards.**

**Court may be unable to produce timely and reliable information about caseloads and individual cases**

**Court may not have enough judge and/or staff resources**

# **USING CASELOAD MANAGEMENT INFORMATION**

## ***Key Questions About Pending Caseloads***

### **1. What are the trends?**

- Size of total pending caseload
- Number of cases pending longer than the applicable time standard

### **2. What are the old cases on the docket?**

- Which cases are over the time standard?
- Which cases will be over the time standard soon unless action is taken?
- What needs to be done?

### **3. Are there specific categories of cases that consistently take a long time?**

### **4. Are there specific attorneys who consistently have a large number of old pending cases?**

# ***INFORMATION FOR MANAGING A JUDGE'S CIVIL CASELOAD***

- **Total pending caseload**
  - **By case type**
  - **By age since filing, in increments (0-60, 61-120, etc)**
  - **Number exceeding time standard**
- **Names / case numbers of specific cases exceeding case processing time standard**
- **Filings in last month and last 12 months**
- **Dispositions in last month and last 12 months**
- **Number of court appearances/continuances per case in last month and last 12 months**
- **Percentage of scheduled hearings that take place on date scheduled**
- **WHAT ELSE?**

# **USING CASELOAD MANAGEMENT INFORMATION POSSIBLE INDICATORS OF CASEFLOW MANAGEMENT EFFECTIVENESS**

1. ***Clearance rate:*** Annual dispositions equal to or greater than annual filings.
2. ***Pending Caseload:***
  - Total size decreasing over time
  - Few (or no) cases pending longer than applicable time standard
3. ***Time to Disposition:***
  - Few (or no) cases taking longer than times called for by time standard
  - Times for median and 80th percentile cases decreasing over time
4. ***Judicial Productivity:*** Dispositions per judge increasing over time
5. ***Case Scheduling Effectiveness:*** High percentage of scheduled hearings take place on date scheduled (Few continuances)
6. ***Quality of Justice:*** Difficult to measure but important to ascertain perceptions of quality

\* \* \*

**IMPORTANT TO USE MULTIPLE INDICATORS!!!**

# ***THE IMPACT OF CONTINUANCES***

- **Delay in resolution of the case**
- **Wasted time of the judge and court staff**
- **Disruption of the schedules of parties and witnesses**
- **Dis-incentive to lawyer preparation**
- **Additional costs to the parties**
- **Added work for court clerks**
- **Additional slot taken on future docket**
- **Added work for lawyers' support staff**
- **Increased overall congestion and delay in the caseflow system**

# ***TECHNIQUES FOR SUCCESSFUL CIVIL CASEFLOW MANAGEMENT***

- 1. Use of case processing time standards**
- 2. EARLY INTERVENTION – Court attention to the case at the earliest possible point**
- 3. Adequate information about the nature and complexity of the case**
- 4. Court monitoring of the pleadings stage**
- 5. Early case conferences**
- 6. Case differentiation for track assignment and differential management**
- 7. Reasonable accommodation of lawyers' schedules**
- 8. Deadlines for completion of discovery and other court events**
- 9. Early disposition of motions**
- 10. Firm trial dates [Q: Schedule before or after discovery is complete?]**
- 11. Trial management conferences held 10-21 days before trial date**
- 12. Small trial calendars**



# ***CHARACTERISTICS OF TRADITIONAL CASE PROCESSING***

- All cases are treated as if they will go to trial.
- No way to identify cases that need early judicial attention.
- “First in-first-out approach to calendaring: try (or otherwise resolve) the oldest case first.
- Reliance on counsel to determine when activities, events, and dispositions should occur.
- Information on case status is determined through general calendar call.
- Trial and hearing calendars contain many more cases than the court can handle during that day, week, or term.
- Lawyer scheduling conflicts are common.
- Continuances/adjournments are easily obtained by counsel.
- No guidelines or incentives to encourage early disposition

# ***EARLY INTERVENTION IN CIVIL CASES Comparison of Alternative Approaches***

## ***TIME TO DISPOSITION UNDER TWO PROGRAMS IN ORANGE COUNTY, CALIFORNIA***

### ***Plan A: Initial Conference 90 Days After Filing***

- 25% disposed within 90 days after filing
- 78% disposed within 12 months after filing

### ***Plan B: No Conference for 195 Days After Filing***

- 8% disposed within 90 days after filing
- 48% disposed within 12 months after filing

# ***DIFFERENTIATED CASE MANAGEMENT (DCM)***

**Differentiated case management (DCM) is an approach to organizing caseloads that seeks to:**

- **Take account of the varying degrees of complexity of the different cases in a court's caseload;**
- **Enable completion of work on simple cases rapidly and allowing more time for completion of work on complex cases; and**
- **Allocate court resources (including judge time, staff time, and courtroom time) to reflect the relative complexity of different cases.**

# ***OPERATIONAL COMPONENTS OF DCM***

- 1. Identification of factors that differentiate cases**
  - Subject matter**
  - Number of parties**
  - Amount of discovery anticipated**
  - Likelihood of trial**
  - WHAT ELSE?**
- 2. Tracks for each major category or group**
- 3. Criteria for assignment of cases to a track**
- 4. Procedures for screening cases and assigning them to the appropriate track**
- 5. Management procedures appropriate for each track**
- 6. Use of management information reports to monitor progress of cases on each track**

# ***BENEFITS OF DCM***

- **Explicit recognition that cases vary in time and resource requirements for appropriate disposition.**
- **Provides for appropriate allocations of court time and resources for cases that vary in seriousness and complexity**
  - **Clustering cases with similar characteristics facilitates efficient management of the caseload**
- **Focuses court and attorney attention on cases most in need of attention.**
- **Enables court, lawyers, and parties to have realistic schedules and foreseeable time frames for case resolution**
  - **Less complex cases resolved more rapidly**
  - **Adequate time allowed for all cases**
- **Helps achieve firm trial calendars.**

# ***CIVIL DCM – EXAMPLES OF TRACKS***

## **Expedited Track**

- Simple cases (e.g., liquidated damages) Little or no discovery involved; little or no judicial attention needed prior to trial
- Depositions only by leave of court
- Discovery period limited to [3] months
- GOAL: Cases resolved in [6] months or less

## **Standard Track**

- Most cases (e.g., personal injury)
- Some judicial attention may be required (e.g., motions, status conferences)
- Discovery period limited to 6-8 months
- Number of interrogatories and depositions may be limited
- GOAL: Cases resolved in [12 months] or less

## **Complex Track**

- Exceptional cases (Estimate: 5%) - no cases presumed to be complex
- Lawyers can show why case should be assigned to complex track
- GOAL: Cases resolved within [2 years]

# ***TYPES OF PRETRIAL CONFERENCES IN CIVIL CASES***

## **1. SCHEDULING CONFERENCE**

- Assess case complexity; assign case track
- Resolve issues arising from pleadings
- Establish discovery schedule
- Fix dates for future conferences (if needed)
- Explore possibilities of early settlement
- Explore possible use of ADR
- Possibly fix [tentative] trial date or month

## **2. STATUS CONFERENCE**

- Confirm or revise case schedule
- Review status of discovery, negotiations, motions
- Resolve open issues

*Continued >>*

# ***TYPES OF PRETRIAL CONFERENCES IN CIVIL CASES (Continued – 2)***

## **3. SETTLEMENT CONFERENCE**

- Evaluate the case
- Seek to catalyze non-trial resolution
- Narrow the areas of dispute

## **4. TRIAL MANAGEMENT CONFERENCE**

- Ensure completion of discovery
- Ensure exchange of exhibits and witness lists
- Resolve pending motions
- Establish ground rules for trial
- Minimize surprises



# ***CHECKLIST FOR EARLY CASE CONFERENCES***

- 1. What is the appropriate track for this case? How long should it take?**
- 2. Have the parties discussed possible negotiated resolution? What is the status of discussions?**
- 3. What factual issues are agreed upon? Which are in dispute?**
- 4. What evidence is necessary to adjudicate the issues in dispute?**
- 5. What legal issues are agreed? Which are in dispute?**
- 6. What is necessary to resolve the legal issues in dispute?**
- 7. What arrangements should be made for exchange of information by the parties (disclosure/discovery)?**
- 8. Will any expert witnesses be needed? If so, what expertise is needed? By when should the expert report's) be completed?**
- 9. What future conferences/hearings are likely to be necessary? If needed, when should they be scheduled?**
- 10. Are there language or physical barriers that will require an interpreter or other assistance at court hearings?**
- 11. Will any audio/visual equipment be required at court hearings?**

# ***THE TRIAL MANAGEMENT CONFERENCE***

**Ensure completion of discovery**

**Ensure exchange of exhibits and witness lists**

**Resolve pending motions**

**Resolve disputes about admissibility of evidence**

**Set expectations for submission of requested jury instructions**

**Establish ground rules for trial**

- Time required for segments – voir dire, jury selection, opening and closing arguments, etc**
- Order of witnesses**
- Use of stipulation**
- Need for interpreters**
- Internet/A-V requirements**

**Minimize surprises at trial**

# **COUNTY TEAM PLANNING SESSION # 1** **DESIGNING A CIVIL DCM SYSTEM FOR YOUR COUNTY**

## **QUESTIONS FOR CONSIDERATION**

- 1. What tracks should be established?**
- 2. What criteria should be used for assigning cases to each of the tracks?**
- 3. What should be the time expectations for resolution of cases on each track?**
- 4. What are the key issues to be addressed in planning for the identification of cases to be governed by the new complex litigation rules?**
- 5. How can case managers, magistrates, and judges best be utilized in implementing a DCM system?**

# ***THE NEW FLORIDA RULES ON MANAGING COMPLEX CASES – KEY COMPONENTS***

- 1. New civil case cover sheet – includes information that can assist in gauging case complexity.**
- 2. Party or Court may move to have case declared complex .**
- 3. Hearing to be held to determine whether complex case procedures are to be used unless all parties stipulate.**
- 4. Initial case mgt conference to be held within 60 days following order declaring a case complex.**
- 5. Case management order to be issued, addressing key issues and setting trial date 6 months – 2 years after conference.**
- 6. Final case management conference to be held at least 90 days before trial date**

# ***DEFINITION OF COMPLEX LITIGATION***

## ***[R. 1.201(a)]***

- (1) A “complex action” is one that is likely to involve complicated legal or case management issues and may require extensive judicial management to expedite the action, keep costs reasonable, or promote judicial efficiency.**
- (2) In deciding whether an action is complex, the court is to consider whether the action is likely to involve:**
  - Numerous pretrial motions raising difficult or novel legal issues**
  - Management of a large number of separately represented parties**
  - Coordination with related actions pending in other courts**
  - Management of a large number of witnesses or lots of documents**
  - Substantial time to complete the trial**
  - Management at trial of a large number of experts, witnesses, attorneys, or exhibits**
  - Substantial post-judgment supervision**
  - Other factors that tend to complicate comparable actions and are likely to arise in this case.**

# ***THE INITIAL CASE MANAGEMENT CONFERENCE IN COMPLEX CASES [R. 1.201(b) and (c)] – KEY ASPECTS***

- 1. To be held within 60 days after action is declared complex**
- 2. Parties to meet at least 20 days before conference; prepare joint statement outlining:**
  - Discovery plan**
  - Brief facts, including claims and defenses**
  - Likelihood of settlement**
  - Proposed limits on time for pleadings, motions, discovery, etc.**
  - Proposals for simplifying issues**
  - Estimates of time needed for trial**
  - Requested dates for future conferences and trial**
- 3. Case Management Order [R. 1.201 (c)]– to be issued following the initial case management conference**
  - Set schedule for events prior to trial, including deadlines conducting ADR, disclosing of experts, and completing of discovery conferences/hearings**
  - Set dates for future conferences/hearings and trial date**

## ***THE FINAL CASE MANAGEMENT CONFERENCE IN COMPLEX CASES [R. 1.201(d)] – KEY ASPECTS***

- 1. FCMC to be scheduled for not less than 90 days prior to trial date.**
- 2. 10 days prior to FCMC: parties to confer and prepare case status report – to be filed before or at the FCMC and include:**
  - List of all pending motions and dates set for hearing**
  - Any change in estimated trial time**
  - Lists of all non-expert witnesses**
  - List of all exhibits to be offered at trial**
  - Deadline for filing amended lists of witnesses and exhibits**
  - Any other matter that could impact timely and effective trial of the action**

# **DEFINITIONS: BACKLOG and DELAY**

- **Backlog**: The number of cases pending for more than an acceptable period of time  
  
*or*
- the number of cases pending for more than the case processing time standard applicable to that category of cases  
  
\* \* \*
- **Delay**: Any elapsed time other than reasonably necessary required for pleadings, discovery, and court events.



# ***PLANNING FOR BACKLOG REDUCTION: FIRST STEPS***

- 1. Define “backlog” for the court, by major case categories.  
Use time standards as benchmark for identifying backlog cases**
- 2. Set priorities for case categories. Which components of the backlog should be eliminated first?**
- 3. Take inventory of top priority category.  
Review caseload information reports to identify cases exceeding time standards; review case files if necessary.**
- 4. Record, for each case on each list, the information needed to take action to resolve the case.**
- 5. Develop a plan for resolving the backlog cases.**
- 6. Identify and organize the resources needed to resolve the cases in the backlog.**
- 7. At the same time, develop a plan to prevent recently filed and newly filed cases from falling into backlog status.**

# ***BACKLOG REDUCTION***

## ***After an inventory has been completed, what should be done?***

### **Identify and organize the resources needed**

- Who will lead the backlog reduction effort?
- What resources - personnel / space / equipment - will be necessary?

### **Identify all cases with no activity for at least [one year]**

- Notify parties/lawyers of intent to dismiss or place on inactive list with expectation of dismissal

### **For cases that are active:**

1. Classify by age. Begin with oldest
2. Classify by complexity: simple, standard, complex
3. Create separate calendars/dockets for each set or “track”
4. Cluster cases involving same lawyers/parties
5. If needed action is clear: set next action date, with instructions
6. If needed action is unclear: set case for conference; notify lawyers / parties to provide information about case status and readiness for trial
7. Conduct case conference. Set schedule for completion of case if not resolved at the conference. Refer to ADR if appropriate
8. If party does not appear for conference or hearing/trial: dismiss or default
9. Use regular information reports to track progress and identify problems

# **COUNTY TEAM PLANNING SESSION # 2** **ADDRESSING THE BACKLOG AND PLANNING FOR MANAGEMENT OF COMPLEX CASES**

1. Develop a first rough draft plan for:
  - (a) ascertaining the size and composition of any existing backlog in the court and taking initial steps to address it; AND
  - (b) instituting a complex case track, including:
    - (1) Establishing criteria and procedures to enable early identification **by the court** of cases that may potentially be declared complex
    - (2) Preparing a “model” Joint Statement/Report to be submitted by parties in advance of an initial case management conference
    - (3) Preparing a “model” case management order
    - (4) Preparing a “model” Joint Case Status Report to be submitted by parties in advance of the Final Case Management Conference
    - (5) Establishing other procedures, consistent with the new Complex Litigation Rules, that may facilitate the effective management of complex cases.
    - (6) Defining roles/responsibilities of clerks, case managers, magistrates, and judges
2. Designate a reporter to summarize the plan at the plenary session.

# ***CASEFLOW AND DOCKET MANAGEMENT SUMMARY: KEY IDEAS***

- 1. Caseflow management standards and goals**
- 2. Meaningful events**
- 3. Realistic case schedules**
- 4. Early intervention**
  - Identify case needs and problems**
  - Resolve at an early stage when feasible and fair**
- 5. Case differentiation (DCM)**
- 6. Trial setting strategy**
- 7. Time lines**
- 8. Effective use of conferences and hearings**

# ***AXIOMS OF CASEFLOW MANAGEMENT***

- 1. Early and continuous control of case progress helps minimize delays.**
- 2. Differentiated case management works.**
- 3. Dispositions take place when key decision-makers have the necessary information.**
- 4. Every case must always have a date certain, *for a purpose certain*, assigned.**
- 5. Achieving dispositions before trial dates are set conserves time and resources.**
- 6. Accurate and timely information is essential.**
- 7. What you count *counts*. Information reports influence behavior.**