

Tallahassee FL 32301-1900  
(ph) 850.410.1523  
(fax) 850.414.1342

## Carol Dunaway

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**From:** Jan Shadburn  
**Sent:** Thursday, July 22, 2010 8:30 AM  
**To:** Carol Dunaway  
**Cc:** Stacy Pippin  
**Subject:** FW: sr. judge web-based system for payment for foreclosure caseload hours

Carol FYI Stacy please save and print out for Carol. Thanks JES

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**From:** Charlotte Jerrett [mailto:jerrettc@flcourts.org]  
**Sent:** Wednesday, July 21, 2010 10:00 PM  
**To:** Trial Court Administrators  
**Cc:** Lisa Goodner; Blan Teagle; Steven Hall; Gary Phillips; Delcynth Schloss; Mandy Couch  
**Subject:** sr. judge web-based system for payment for foreclosure caseload hours

Hi All -

I wanted to touch base with you on where we are at with updating the sr. judge web-based system to request payment for hours worked on foreclosure cases. The enhancements have been completed and minor corrections are being made to insure payments for this workload can be segregated from payments made from your regular sr. judge allotments.

We expect the final testing to be completed next week. I will e-mail you with another update and/or further instructions on or before Monday, August 3. Please pass this information along to staff as necessary.

Thanks for your patience and feel free to call me with any questions.  
C.

Charlotte Jerrett  
Administrative Services Division  
OSCA  
(850) 488-9922

## Carol Dunaway

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**From:** Robyn Gable  
**Sent:** Friday, July 30, 2010 9:39 AM  
**To:** Carol Dunaway  
**Cc:** Jan Shadburn; Amber Baggett  
**Subject:** RE: Conference Call - Sr. Judge System Payment Requests for Foreclosure Caseload

Sounds fine to me.

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**From:** Carol Dunaway  
**Sent:** Friday, July 30, 2010 9:27 AM  
**To:** Robyn Gable  
**Cc:** Jan Shadburn; Amber Baggett  
**Subject:** FW: Conference Call - Sr. Judge System Payment Requests for Foreclosure Caseload  
**Importance:** High

Amber can be available for this conference call. Are you okay with just her attending and getting all the info needed to process these invoices?

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**From:** Jan Shadburn  
**Sent:** Friday, July 30, 2010 9:09 AM  
**To:** Carol Dunaway  
**Subject:** FW: Conference Call - Sr. Judge System Payment Requests for Foreclosure Caseload  
**Importance:** High

FYI Will you coordinate who needs to be on the call. Remember hour difference in times. JES

---

**From:** Charlotte Jerrett [mailto:jerrettc@flcourts.org]  
**Sent:** Thursday, July 29, 2010 5:06 PM  
**To:** Trial Court Administrators  
**Cc:** Delcynth Schloss; Mandy Couch; Michelle Ogletree; Connie Sundquist; Don Lubbers  
**Subject:** Conference Call - Sr. Judge System Payment Requests for Foreclosure Caseload  
**Importance:** High

Hi All,

I have scheduled a conference call for Monday, August 2, 2010, to discuss changes to the web-based system to allow for payment requests to be made from the separate "foreclosure" allocation of sr. judge days. I am hopeful you will find that these changes are easy to use, but want to make sure we have covered all the bases and are available to answer any questions you may have. It is our intent to roll this system out for use by close of business on Monday, assuming all goes well on the call and there are no further adjustments that need to be made. It would be a good idea to have the staff that use this system attend the call as we will be discussing actual payment procedures/processes. We anticipate the call will take less than the scheduled hour.

Conference Call Information:  
Monday, August 2, 2010  
10am – 11am  
1-888-808-6959  
Access Code # 4889922

OSCA Staff – The Executive Conference Room has been reserved for this call.

Thanks,  
C.

Charlotte Jerrett  
Administrative Services Division  
Office of the State Courts Administrator  
(850) 488-9922  
(850) 488-3744 fax

## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Monday, August 02, 2010 8:53 AM  
**To:** Carol Dunaway  
**Cc:** Hentz McClellan; Brenda Johnson  
**Subject:** Discuss Items with Judge McClellan

Good Morning thought I would indicate some of the thoughts Judge McClellan and I had last week and for our discussion today at 1:30.

- A. Emphasis on insuring Judge Ellinor has increased the # hearings over what the civil judges were hearing and how far out are is his schedule. Are attorneys having trouble getting on calendar timely.
- B. Judge McClellan is prepared to add foreclosure cases to civil judges workload should there be a need to insure # & timely hearings occur.
- C. Foreclosure goal is 62% or greater for the Economic Recovery Effort. How the % is being counted and insuring that our numbers of closed foreclosure cases and what the clerk is reporting is consistent. Discuss what obstacles could occur and what steps does Judge McClellan need to do to assist.
- D. Brief update on Mediated Foreclosures and how you evaluate our progress.
- E. Set up a follow up meeting from today either for issues from today's meeting that need attention or a monthly meeting to brief Chief Judge and TCA on progress toward our goal and other discussion items.
- F. Other TBD

## Carol Dunaway

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**From:** Jan Shadburn  
**Sent:** Monday, August 02, 2010 12:20 PM  
**To:** Everyone-Circuit-DL  
**Subject:** Foreclosure and Economy Recovery Initiative OPS Positions On Board

On behalf of Chief Judge, Hentz McClellan, please welcome Doreen Brett, Senior Secretary, and Betty Grammer, Court Programs Specialist II. Both Doreen and Betty occupy OPS positions that will assist through June 30, 2011, as part of the Foreclosure and Economy Recovery Initiative. We welcome both Doreen and Betty to the 14<sup>th</sup> Judicial Circuit Team.

**Office of the State Courts Administrator**

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

**M E M O R A N D U M**

**TO:** Trial Court Administrators

**FROM:** Charlotte Jerrett *Charlotte*

**DATE:** August 3, 2010

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

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

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

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

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

Attachments

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



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

Senior Judge Days Cost Center - 630	
Circuit	FY 2010-11 Allotment
0	100
1	249
2	162
3	89
4	359
5	298
6	440
7	281
8	151
9	442
10	263
11	761
12	196
13	398
14	138
15	348
16	47
17	549
18	276
19	197
20	343
<b>Total</b>	<b>6,087</b>

Foreclosure and Economic Recovery Funding Proposal Cost Center - 375	
Circuit	FY 2010-11 Allotment
0	0
1	106
2	60
3	0
4	493
5	206
6	237
7	260
8	50
9	705
10	52
11	490
12	270
13	557
14	92
15	716
16	142
17	250
18	744
19	240
20	438
<b>Total</b>	<b>6,108</b>

**2010 SUPPLEMENTAL PAYROLL DEADLINES FOR  
PERSONNEL PROCESSING**

<b>MONTH</b>	<b>PAYROLL DEADLINE</b>	<b>SUPPLEMENTAL PAY DATE</b>
JANUARY	12/31/09	01/11/10
	01/14/10	01/25/10
FEBRUARY	01/28/10	02/08/10
	02/11/10	02/22/10
MARCH	02/25/10	03/08/10
	03/11/10	03/22/10
APRIL	03/25/10	04/05/10
	04/08/10	04/19/10
MAY	04/22/10	05/03/10
	05/06/10	05/17/10
JUNE	05/20/10	06/01/10
	06/03/10	06/14/10
	06/17/10	06/28/10
JULY	07/01/10	07/12/10
	07/15/10	07/26/10
AUGUST	07/29/10	08/09/10
	08/12/10	08/23/10
SEPTEMBER	08/26/10	09/07/10
	09/09/10	09/20/10
OCTOBER	09/23/10	10/04/10
	10/07/10	10/18/10
NOVEMBER	10/21/10	11/01/10
	11/04/10	11/16/10
	11/18/10	11/29/10
DECEMBER	12/02/10	12/13/10
	12/16/10	12/27/10
JANUARY	12/30/10	01/10/11
	01/13/11	01/24/11
	01/27/11	02/07/11

## Carol Dunaway

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**From:** Jan Shadburn  
**Sent:** Friday, August 06, 2010 4:24 PM  
**To:** Carol Dunaway  
**Subject:** FW: Foreclosure and Economic Recovery Initiative  
**Attachments:** 62% Estimated RPF Backlog.pdf

FYI

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**From:** Kristine Slayden [mailto:slaydenk@flcourts.org]  
**Sent:** Friday, August 06, 2010 1:53 PM  
**To:** Trial Court Chief Judges; Trial Court Administrators  
**Cc:** Lisa Goodner; Judge John Laurent; Judge Margaret O. Steinbeck; P.J. Stockdale; Arlene Johnson; Charlotte Jerrett  
**Subject:** Foreclosure and Economic Recovery Initiative

Chief Judges and Trial Court Administrators – As mentioned at the JAC meeting in Marco Island, the OSCA plans to provide you with monthly feedback on your progress in achieving the 62% backlog reduction goal. As a reminder, I have attached the target backlog reduction statistics for the foreclosure and economic recovery initiative. We have received a number of inquiries from judges requesting these statistics. You may want to forward the attachment to those judges who are directly working on the initiative.

We plan to send you the following two reports monthly so that you can monitor the statistics that we get in Tallahassee:

- 1) As data comes in from the clerks of court on their SRS reports of filings and dispositions, we will provide you with your circuit's progress in reducing the backlog by 62%. We will send the first report out to you on August 30<sup>th</sup> and then monthly from then on.
- 2) As data comes in from court administration on the status of the cases from the tracking system, we will provide you with analysis of the status and age of cases currently being handled as part of the initiative. We will send the first report out to you on September 30<sup>th</sup>, and then monthly from then on.

These monthly statistics will be provided to you only for internal use and will not be released externally without prior approval. Please let me know if you have any questions. Thanks. Kris

Kris Slayden  
Research and Data  
Office of the State Courts Administrator  
Florida Supreme Court  
500 S. Duval Street  
Tallahassee, Florida 32399  
850-922-5106 (wk)  
850-556-2335 (cell)  
850-414-1342 (fax)

**Target Backlog Reduction**  
**Foreclosure and Economic Recovery Funding**  
**Backlog Cases**  
**FY 2006/07 through Estimated FY 2010/11**

<b>Circuit</b>	<b>Estimated Real Property/ Mortgage Foreclosure Backlog Cases</b>	<b>62% of Estimated Real Property/ Mortgage Foreclosure Backlog Cases</b>
1	12,960	8,035
2	4,385	2,719
3	1,325	822
4	21,523	13,344
5	19,931	12,357
6	39,394	24,424
7	21,585	13,383
8	2,575	1,597
9	50,600	31,372
10	12,979	8,047
11	87,955	54,532
12	25,557	15,845
13	38,180	23,672
14	4,634	2,873
15	63,402	39,309
16	2,671	1,656
17	57,514	35,659
18	31,052	19,252
19	20,717	12,844
20	41,005	25,423
<b>Total</b>	<b>559,945</b>	<b>347,165</b>

## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Wednesday, August 18, 2010 3:28 PM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure Excel Spreadsheets

In visiting with Judge Ellinor this pm re his wife, she is out of hospital, I updated him on the fact that you were populating the database and from there the intent is to determine the age of these cases, what action we might have to do to get the attorney's to move cases through or Judge McClellan would sent out notice and discharge after a period of time,. Our focus was to determine if we needed to add any additional resources once we got them moving. He asked about the scheduling of hearings was Doreen waiting for attorneys to call and schedule or was she calling out to attys and scheduling. The reason is he has seen a drop off in the cases he is hearing. I also told him we were wanting to partner with the clerk's to insure their reporting of disposed cases, reopened, and how the measurement toward the 62% goal was the same. Am I correct in this info. JES

---

**From:** Carol Dunaway  
**Sent:** Wednesday, August 18, 2010 3:21 PM  
**To:** Jan Shadburn  
**Subject:** RE: Foreclosure Excel Spreadsheets

Tomorrow is fine. Let him see what he gets out of them.

---

**From:** Jan Shadburn  
**Sent:** Wednesday, August 18, 2010 3:20 PM  
**To:** Carol Dunaway  
**Subject:** FW: Foreclosure Excel Spreadsheets  
**Importance:** High

Carol-How time sensitive is this ie tomorrow Friday. If I should let this go through normally or push. I don't want to get people feeling I am messing in their kitchen. I see Gary got a little pushy so let me know if I can assist. I am going to check with Gary on his input.

---

**From:** Gary Hagan  
**Sent:** Wednesday, August 18, 2010 3:16 PM  
**To:** 'PJ Stockdale'; Alan Neubauer <neubauer@flcourts.org> (neubauer@flcourts.org); Carol Dunaway; Jan Shadburn  
**Subject:** FW:Foreclosure Excel Spreadsheets  
**Importance:** High

PJ,

Our Circuit is standardized on Office 2010 and the Foreclosure Excel worksheets you have sent out do not seem to be compatible. I have spoken to Alan about this issue and he indicated he would talk to you about revising the worksheets or making it a web based solution. This has now become a major issue for our Circuit and Carol to complete this work.

Please advise on how this can be corrected ASAP. (Loading an older version of Office on the desktops is not an option.)

Thank you,  
Gary

**Gary A. Hagan**  
**Court Technology Officer**

Fourteenth Judicial Circuit of Florida  
Serving the counties of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington  
(850) 747-5410 - Office  
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Mailing Address: P.O. Box 1089, Panama City, FL 32402  
Physical Address: 301 McKenzie Avenue, Panama City, FL 32401  
Website: <http://www.jud14.flcourts.org/>

---

**From:** Carol Dunaway  
**Sent:** Wednesday, August 18, 2010 2:59 PM  
**To:** Gary Hagan  
**Cc:** Jan Shadburn  
**Subject:** Jackson County Update

Well, was not aware we were getting updated in Jackson County to Office 2010 until today when I requested Phillip set up my laptop on the server in my office so I could expedite these workbooks. Amber made the request and mentions that I need to be updated to 2010. I asked they delay that until this project was complete. I go to Doreen's computer today to show her how to use the workbooks and learn she is already updated to 2010. Hagan, we have a problem. It is imperative that we get this remedied right away as I need her to assist in updating these workbooks ASAP. Yes, I am a little panicked.

*Carol A. Dunaway*  
**Alternative Dispute Resolution Director**  
14th Judicial Circuit  
P.O. Box 826  
Marianna, FL 32447  
Phone: 850-718-0059  
Fax: 850-718-0521  
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## Carol Dunaway

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**From:** Jan Shadburn  
**Sent:** Wednesday, August 18, 2010 3:58 PM  
**To:** P.J. Stockdale (stockdap@flcourts.org)  
**Cc:** Gary Hagan; Carol Dunaway  
**Subject:** Gary Hagan Email RE Database Population

P. J. – I would appreciate your updating us on this database issue as soon as you can determine when this could be resolved. I know Gary talked with Alan on this issue when the database first was sent out and we were waiting on a version to use on 2010. Carol Dunaway who coordinates this project was training the OPS workers who had just come on board and was waiting on the fix from OSCA. Now we want to begin populating we are on hold. With 9/10 a due date we need to get going.

Please call me on my cell 850-814-6849 I will be on road tomorrow am. My question is why, with 2010 version out, are we the only circuit on 2010 and why did not the database be developed for 2007 or 2010.

Key is when can you get us going. Thanks JES

## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Wednesday, August 18, 2010 4:02 PM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure Excel Spreadsheets

I did tell him Doreen was just scheduling those that called. Solving the stale cases I indicated those would be resolved when we reviewed the database with Judge McClellan.

I have talked with Gary and he is going to get Michael over when they get back from Gulf County tomorrow pm to get Betty equipment moved.  
He wants PJ/OSCA to fix the database issue. However he is prepared to get Michael to get a 2007 version loaded Friday for you up there.

Will that keep your stress to a minimum. Thanks JES

---

**From:** Carol Dunaway  
**Sent:** Wednesday, August 18, 2010 3:32 PM  
**To:** Jan Shadburn  
**Subject:** RE: Foreclosure Excel Spreadsheets

You are correct, but to answer his question, NO , Doreen is not calling attorneys to schedule. She is scheduling all that call her. The role of case manager is that of Betty's. She should be the one reviewing cases for their age and determining which ones need to be set for dismissal for lack of prosecution but we are not to that point yet with her, not sure if we will get their either, but I am darn sure gonna try. She knows full well my plate is loaded and to get that email from her this afternoon wanting me to prepare a list....geez.

I plan to come down two days next week, although I really can not afford it but have to but want to meet with Judge Ellinor as well as work with Betty.

The dockets that he has now were already set before Doreen came on board, as I mentioned yesterday, they are getting much fuller in the coming weeks.

---

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**Sent:** Wednesday, August 18, 2010 3:28 PM  
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**Court Technology Officer**  
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**Sent:** Wednesday, August 18, 2010 2:59 PM  
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*Carol A. Dunaway*

**Alternative Dispute Resolution Director**

14th Judicial Circuit

P.O. Box 826

Marianna, FL 32447

Phone: 850-718-0059

Fax: 850-718-0521

Email: [dunawayc@jud14.flcourts.org](mailto:dunawayc@jud14.flcourts.org)

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Thursday, August 19, 2010 11:02 AM  
**To:** Carol Dunaway; Gary Hagan  
**Subject:** FW: ECONRECOV: RE: Foreclosure Excel Spreadsheets

Good Morning-In talking with PJ this am this is basically what I got. O. Now in stopping by in Marianna this am it appears that Amber has Phillip setting up Carol's laptop for Doreen to use which will have 2007. Carol's desktop is still set for 2007, and Mrs. Grammer has been set with a laptop with 2007. (Betty needs to have laptop moved over to her desk and a mouse which Gary is going to see about this pm when he gets back from Gulf County.

Carol, will this get you where you need to be for your group to populate the database. If there is anything else please get with Gary or Amber (Phillip).

I agree with you that they OSCA should have done a different set up on this and should have gotten back with Gary but they didn't and we try next time when we have more time to get them OSCA better customer service.

If we have any other challenges to getting this up and running let's talk and work out. Thanks JEs

---

**From:** P.J. Stockdale [mailto:stockdap@flcourts.org]  
**Sent:** Thursday, August 19, 2010 9:30 AM  
**To:** Gary Hagan; Carol Dunaway; Jan Shadburn; Alan Neubauer  
**Subject:** ECONRECOV: RE: Foreclosure Excel Spreadsheets

Gary, Carol,

Well, this does present a bit of a dilemma. The app works in both Excel 2007 and Excel 2003. The problem with Excel 2010 as far as I am able to determine is the calendar control. This ActiveX object is not available in Excel 2010 and earlier versions of the control will not work.

Right now, I don't know if there are any good alternatives. I don't have a copy of Excel 2010 to test but I am trying to scare up a one so I can look into it. Until we get some more info, you can enter data into the spreadsheets directly and bypass the data entry screen entirely. Not an ideal solution but it will get you moving forward.

To bypass the opening macros, open windows explorer and go to the directory containing your workbook. Hold down the SHIFT key and double-click the workbook you want to open. Continue holding down the SHIFT key until the workbook completely opens. The workbook should open to the "DATA" worksheet. You can enter data into the spreadsheet from there. Just remember to save your work.

I'll keep working on the problem and see what I can do for you. Please contact me directly to discuss this issue or if you have any other questions. Alan and I work in different units and his group wasn't really involved in this application. I'd hate to make more work for him if I don't have to.

PJ

PJ Stockdale  
Senior Court Statistics Consultant  
OSCA - Court Services

Supreme Court Building Annex  
500 S Duval St  
Tallahassee FL 32301-1900  
(ph) 850.410.1523  
(fax) 850.414.1342

---

**From:** Gary Hagan [mailto:HaganG@jud14.flcourts.org]  
**Sent:** Wednesday, August 18, 2010 4:16 PM  
**To:** P.J. Stockdale; Alan Neubauer; Carol Dunaway; Jan Shadburn  
**Subject:** FW:Foreclosure Excel Spreadsheets  
**Importance:** High

PJ,

Our Circuit is standardized on Office 2010 and the Foreclosure Excel worksheets you have sent out do not seem to be compatible. I have spoken to Alan about this issue and he indicated he would talk to you about revising the worksheets or making it a web based solution. This has now become a major issue for our Circuit and Carol to complete this work.

Please advise on how this can be corrected ASAP. (Loading an older version of Office on the desktops is not an option.)

Thank you,  
Gary

**Gary A. Hagan**  
**Court Technology Officer**  
Fourteenth Judicial Circuit of Florida  
Serving the counties of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington  
(850) 747-5410 - Office  
(850) 527-9185 - Cell  
E-Mail - [hagang@jud14.flcourts.org](mailto:hagang@jud14.flcourts.org)  
Mailing Address: P.O. Box 1089, Panama City, FL 32402  
Physical Address: 301 McKenzie Avenue, Panama City, FL 32401  
Website: <http://www.jud14.flcourts.org/>

---

**From:** Carol Dunaway  
**Sent:** Wednesday, August 18, 2010 2:59 PM  
**To:** Gary Hagan  
**Cc:** Jan Shadburn  
**Subject:** Jackson County Update

Well, was not aware we were getting updated in Jackson County to Office 2010 until today when I requested Phillip set up my laptop on the server in my office so I could expedite these workbooks. Amber made the request and mentions that I need to be updated to 2010. I asked they delay that until this project was complete. I go to Doreen's computer today to show her how to use the workbooks and learn she is already updated to 2010. Hagan, we have a problem. It is imperative that we get this remedied right away as I need her to assist in updating these workbooks ASAP. Yes, I am a little panicked.

***Carol A. Dunaway***  
**Alternative Dispute Resolution Director**  
14th Judicial Circuit  
P.O. Box 826  
Marianna, FL 32447

Phone: 850-718-0059

Fax: 850-718-0521

Email: [dunawayc@jud14.flcourts.org](mailto:dunawayc@jud14.flcourts.org)

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Thursday, August 19, 2010 12:44 PM  
**To:** Carol Dunaway; Gary Hagan  
**Cc:** Amber Baggett  
**Subject:** RE: ECONRECOV: RE: Foreclosure Excel Spreadsheets

Everyone-It appears that we have identified equipment and solutions. I would assume that we have the screens that can be used in Marianna and you will see with Betty what will work best for her. I did go over and Michael had already moved her laptop on her desk. From here I will let you 3 continue to fine tune. Let me know if I need to assist in any way. JES

---

**From:** Carol Dunaway  
**Sent:** Thursday, August 19, 2010 12:23 PM  
**To:** Jan Shadburn; Gary Hagan  
**Cc:** Amber Baggett  
**Subject:** RE: ECONRECOV: RE: Foreclosure Excel Spreadsheets

Some corrections:

I requested that Phillip set up my lap top in my office for ME, not Doreen. I need two screens to work from so I thought that would be the easiest fix.

As for Doreen, my understanding from Gary is that were going to get her a laptop like they did for Betty that had 07 on it. However, that may not be the case now.

Now, after learning that indeed there is a way to enter the data in the worksheets in 2010, (after two weeks of wrangling with it with OSCA), it is NOW just brought to our attention that you can you 2010 Office but have to do it a different way. Well that puts us back at square one, everybody needs two screens to complete this task in an efficient and expedient manner.

For Betty the two screens is going to be easier than using that laptop. Who knows, maybe she is used to it by now. Doreen needs two screens and when my laptop is hooked up I will have two screens.

---

**From:** Jan Shadburn  
**Sent:** Thursday, August 19, 2010 11:02 AM  
**To:** Carol Dunaway; Gary Hagan  
**Subject:** FW: ECONRECOV: RE: Foreclosure Excel Spreadsheets

Good Morning-In talking with PJ this am this is basically what I got. 0. Now in stopping by in Marianna this am it appears that Amber has Phillip setting up Carol's laptop for Doreen to use which will have 2007. Carol's desktop is still set for 2007, and Mrs. Grammer has been set with a laptop with 2007. (Betty needs to have laptop moved over to her desk and a mouse which Gary is going to see about this pm when he gets back from Gulf County.

Carol, will this get you where you need to be for your group to populate the database. If there is anything else please get with Gary or Amber (Phillip).

I agree with you that they OSCA should have done a different set up on this and should have gotten back with Gary but they didn't and we try next time when we have more time to get them OSCA better customer service.

If we have any other challenges to getting this up and running let's talk and work out. Thanks JEs

---

**From:** P.J. Stockdale [mailto:stockdap@flcourts.org]  
**Sent:** Thursday, August 19, 2010 9:30 AM  
**To:** Gary Hagan; Carol Dunaway; Jan Shadburn; Alan Neubauer  
**Subject:** ECONRECOV: RE: Foreclosure Excel Spreadsheets

Gary, Carol,

Well, this does present a bit of a dilemma. The app works in both Excel 2007 and Excel 2003. The problem with Excel 2010 as far as I am able to determine is the calendar control. This ActiveX object is not available in Excel 2010 and earlier versions of the control will not work.

Right now, I don't know if there are any good alternatives. I don't have a copy of Excel 2010 to test but I am trying to scare up a one so I can look into it. Until we get some more info, you can enter data into the spreadsheets directly and bypass the data entry screen entirely. Not an ideal solution but it will get you moving forward.

To bypass the opening macros, open windows explorer and go to the directory containing your workbook. Hold down the SHIFT key and double-click the workbook you want to open. Continue holding down the SHIFT key until the workbook completely opens. The workbook should open to the "DATA" worksheet. You can enter data into the spreadsheet from there. Just remember to save your work.

I'll keep working on the problem and see what I can do for you. Please contact me directly to discuss this issue or if you have any other questions. Alan and I work in different units and his group wasn't really involved in this application. I'd hate to make more work for him if I don't have to.

PJ

PJ Stockdale  
Senior Court Statistics Consultant  
OSCA - Court Services  
Supreme Court Building Annex  
500 S Duval St  
Tallahassee FL 32301-1900  
(ph) 850.410.1523  
(fax) 850.414.1342

---

**From:** Gary Hagan [mailto:HaganG@jud14.flcourts.org]  
**Sent:** Wednesday, August 18, 2010 4:16 PM  
**To:** P.J. Stockdale; Alan Neubauer; Carol Dunaway; Jan Shadburn  
**Subject:** FW:Foreclosure Excel Spreadsheets  
**Importance:** High

PJ,

Our Circuit is standardized on Office 2010 and the Foreclosure Excel worksheets you have sent out do not seem to be compatible. I have spoken to Alan about this issue and he indicated he would talk to you about revising the worksheets or making it a web based solution. This has now become a major issue for our Circuit and Carol to complete this work.

Please advise on how this can be corrected ASAP. (Loading an older version of Office on the desktops is not an option.)

Thank you,  
Gary

**Gary A. Hagan**

**Court Technology Officer**

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Website: <http://www.jud14.flcourts.org/>

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**From:** Carol Dunaway

**Sent:** Wednesday, August 18, 2010 2:59 PM

**To:** Gary Hagan

**Cc:** Jan Shadburn

**Subject:** Jackson County Update

Well, was not aware we were getting updated in Jackson County to Office 2010 until today when I requested Phillip set up my laptop on the server in my office so I could expedite these workbooks. Amber made the request and mentions that I need to be updated to 2010. I asked they delay that until this project was complete. I go to Doreen's computer today to show her how to use the workbooks and learn she is already updated to 2010. Hagan, we have a problem. It is imperative that we get this remedied right away as I need her to assist in updating these workbooks ASAP. Yes, I am a little panicked.

***Carol A. Dunaway***

**Alternative Dispute Resolution Director**

14th Judicial Circuit

P.O. Box 826

Marianna, FL 32447

Phone: 850-718-0059

Fax: 850-718-0521

Email: [dunawayc@jud14.flcourts.org](mailto:dunawayc@jud14.flcourts.org)

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Monday, August 23, 2010 9:58 AM  
**To:** Carol Dunaway  
**Subject:** FW: Foreclosure questions

FYI Will you respond on this to keep all correspondence coming from you. JES

---

**From:** Barbara Dawicke [mailto:BDawicke@pbcgov.org]  
**Sent:** Monday, August 23, 2010 9:52 AM  
**To:** Trial Court Administrators  
**Subject:** Foreclosure questions

Dear All:

If possible, please help me out with the following questions by responding by this Wednesday or Thursday (August 25<sup>th</sup> or 26<sup>th</sup>):

1. When a summary judgment is entered by the Court, it takes approximately how long before the information is docketed by the clerk?
2. In your circuit, is there a delay with the clerk holding the sales of the foreclosed properties? If so, what is that lag time?
3. In your circuit, what is the time of sale to issuance of certificate of title?
4. In your circuit, is there a lag time with the docketing of other foreclosure documents (other than summary judgments) and if so, approximately how long does it take the docket to reflect the filing?
5. What is the standard docket time for a newly filed foreclosure filing?

---

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Monday, August 23, 2010 11:10 AM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure questions

Thanks.

---

**From:** Carol Dunaway  
**Sent:** Monday, August 23, 2010 10:19 AM  
**To:** 'BDawicke@pbcgov.org'  
**Cc:** Jan Shadburn  
**Subject:** RE: Foreclosure questions

Barbara:

Jan asked that I answer your questions, please see below:

---

**From:** Jan Shadburn  
**Sent:** Monday, August 23, 2010 9:58 AM  
**To:** Carol Dunaway  
**Subject:** FW: Foreclosure questions

FYI Will you respond on this to keep all correspondence coming from you. JES

---

**From:** Barbara Dawicke [mailto:BDawicke@pbcgov.org]  
**Sent:** Monday, August 23, 2010 9:52 AM  
**To:** Trial Court Administrators  
**Subject:** Foreclosure questions

Dear All:

If possible, please help me out with the following questions by responding by this Wednesday or Thursday (August 25<sup>th</sup> or 26<sup>th</sup>):

1. When a summary judgment is entered by the Court, it takes approximately how long before the information is docketed by the clerk? Time period is typically within 24 hours
2. In your circuit, is there a delay with the clerk holding the sales of the foreclosed properties? If so, what is that lag time? A month or so ago, the clerks were having a hard time getting the sales published timely because of the 30 day sale date Judges were assigning. In Bay County where the matter was an issue, we have adjusted the sale date and set the sales for 35 days out from Summary Judgment and this minor adjustment has made a world of difference and sales are held on a timely basis with no delays.. As all circuits have, we do have those lenders that constantly want to cancel at the last minute. They do not have carte blanche to do that anymore, there must be a REALLY good reason for the cancellation.
3. In your circuit, what is the time of sale to issuance of certificate of title? The certificate of title is issued on the 11<sup>th</sup> day after the sale, taking into account the time period for filing an objection. Our clerks are consistent with this time frame.

4. In your circuit, is there a lag time with the docketing of other foreclosure documents (other than summary judgments) and if so, approximately how long does it take the docket to reflect the filing? All pleadings are filed within 24 hours, typically.
5. What is the standard docket time for a newly filed foreclosure filing? Again, if I understand the question, it is typically 24 hours from the date it is filed to the date it appears on the docket. Was that your question?

If I can help further, please contact me.

*Carol A. Dunaway*

**Alternative Dispute Resolution Director**

14th Judicial Circuit

P.O. Box 826

Marianna, FL 32447

Phone: 850-718-0059

Fax: 850-718-0521

Email: [dunawayc@jud14.flcourts.org](mailto:dunawayc@jud14.flcourts.org)

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Monday, August 23, 2010 1:09 PM  
**To:** 'P.J. Stockdale'; Carol Dunaway; Gary Hagan  
**Cc:** Kristine Slayden  
**Subject:** RE: Foreclosure Excel Spreadsheets

PJ thanks for your help on this. JEs

---

**From:** P.J. Stockdale [mailto:stockdap@flcourts.org]  
**Sent:** Monday, August 23, 2010 12:47 PM  
**To:** Carol Dunaway; Gary Hagan; Jan Shadburn  
**Cc:** Kristine Slayden  
**Subject:** RE: Foreclosure Excel Spreadsheets

Sure, works for me.

PJ

PJ Stockdale  
Senior Court Statistics Consultant  
OSCA - Court Services  
Supreme Court Building Annex  
500 S Duval St  
Tallahassee FL 32301-1900  
(ph) 850.410.1523  
(fax) 850.414.1342

---

**From:** Carol Dunaway [mailto:DunawayC@jud14.flcourts.org]  
**Sent:** Monday, August 23, 2010 10:58 AM  
**To:** P.J. Stockdale; Gary Hagan; Jan Shadburn  
**Cc:** Kristine Slayden  
**Subject:** RE: Foreclosure Excel Spreadsheets

At this point, PJ, I am inclined to let us get through this initial reporting period with the way we have set up folks to "workaround" the problem, using lap tops with Excel 07. Let us get past September 10<sup>th</sup> and then we will see about your work around. I appreciate you looking into it and I will be in touch.

Carol

*Carol A. Dunaway*  
**Alternative Dispute Resolution Director**  
14th Judicial Circuit  
P.O. Box 826  
Marianna, FL 32447  
Phone: 850-718-0059  
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**From:** P.J. Stockdale [mailto:stockdap@fcourts.org]  
**Sent:** Monday, August 23, 2010 9:18 AM  
**To:** Gary Hagan; Carol Dunaway; Jan Shadburn  
**Cc:** Kristine Slayden  
**Subject:** RE: Foreclosure Excel Spreadsheets

Gary,

I have been investigating the issues involving the Foreclosure application and Excel 2010. I believe that I have a workable solution for the issue.

The problem is, as we discussed, with the use of a calendar control in the app that allows the user to select the date from a drop down calendar rather than have to type the date in directly. While this control has been commonly available since Office 2003, it is not available in Excel 2010. In fact, as near as I can determine, there is no date selection option available in Excel 2010. I have disabled the requirement for the control and eliminated the clickable objects on the data entry form. With the control removed, the application works as expected. Users will have to manually enter all dates but, I think, short of a complete rewrite, that is the best we can do.

We have a couple of options to proceed. I can explain how to make the adjustments to the workbooks yourself. There are several steps but nothing complicated. Or, you can send me a copy of each of your circuits workbooks and I can transfer the data to an adapted workbook and send it back. It might be simplest if you just send me copies but we can do it any way you like.

Thanks for your patience. Hope to hear from you soon.

PJ

PJ Stockdale  
Senior Court Statistics Consultant  
OSCA - Court Services  
Supreme Court Building Annex  
500 S Duval St  
Tallahassee FL 32301-1900  
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---

**From:** Gary Hagan [mailto:HaganG@jud14.flcourts.org]  
**Sent:** Wednesday, August 18, 2010 4:16 PM  
**To:** P.J. Stockdale; Alan Neubauer; Carol Dunaway; Jan Shadburn  
**Subject:** FW:Foreclosure Excel Spreadsheets  
**Importance:** High

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**From:** Carol Dunaway  
**Sent:** Wednesday, August 18, 2010 2:59 PM  
**To:** Gary Hagan  
**Cc:** Jan Shadburn  
**Subject:** Jackson County Update

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Thursday, August 26, 2010 10:22 AM  
**To:** slawrence@baycoclerk.com; Carol Dunaway  
**Cc:** jwalls@baycoclerk.com  
**Subject:** Monthly Report Foreclosure Filings and Disposed Foreclosure Cases

Good Morning-Carol and staff are populating the foreclosure database from the info you sent earlier to FACC. We are having to update the info and send in to OSCA by Sept. 10 and monthly thereafter.

In our discussions this am it appears that Stacey in in process of having to produce a report that will provide information on the Foreclosure Filings and Disposed Cases on monthly basis. I have asked for this report to be forwarded to Carol who is chairing our foreclosure project. It sounds as if this will be exactly what Carol will need.

Carol take a look when you receive and work with Stacey. Stacey/Jody we appreciate all your help and partnership in this effort. As I indicated this am when we get the info populated Carol is going to get with you and insure what we are reporting each month and what you are reporting is consistent. Also, Judge McClellan is going to review and if there are steps he needs to take for any stale foreclosure cases that have been filed but no action by attorney/lender he is going to address.

Thanks JES



## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Thursday, August 26, 2010 11:54 AM  
**To:** 'tknox@gulfclerk.com'  
**Cc:** Carol Dunaway  
**Subject:** Foreclosure Filings and Disposed Foreclosure Cases

Tanya-Carol is coordinating the population and updating the information each of the clerks in the 14 Circuit sent to FACC back in July. We have to send in the updated info by Sept. 10 and monthly thereafter. In an effort to keep from having to look up activity on foreclosure cases each month there seems to be a report available that will list any new foreclosure cases filed and any foreclosure cases disposed. In our discussions with Jessica Moneyham, who handles foreclosures for Jackson County Clerk's Office, indicates there is a "Date Range Code 221" report that will generate new foreclosure cases filed and disposed for the month.

Could you determine if you can pull this report and it will provide the info on foreclosure cases. If you have any questions Jessica indicated you could call her and she could assist. Please let us know if this is possible and if we could have by the 5<sup>th</sup> of each month.

Since Carol is coordinating this project if you could send the report to her each month. Please call me and we can discuss further. JES

## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Friday, September 03, 2010 9:15 AM  
**To:** Amber Baggett; Carol Dunaway  
**Subject:** FW: Sr. Judge Report - Allocation Usage History

**Importance:** High

Ladies-FYI

---

**From:** Charlotte Jerrett [mailto:jerrettc@flcourts.org]  
**Sent:** Tuesday, August 31, 2010 1:41 PM  
**To:** Trial Court Administrators  
**Cc:** Mandy Couch  
**Subject:** Sr. Judge Report - Allocation Usage History  
**Importance:** High

Hi All –

Mandy has updated the “View (circuit name) Allocation Usage History” report in the Senior Judge System to allow users to select which allocation fund they would like to view. See the screenshots below for the report being referenced.

Please forward this to the appropriate staff and let me know if you have any questions/concerns. We’ll notify you as additional report options have been completed for the foreclosure resources.

Thanks,  
C.

Administrative Menu - Windows Internet Explorer  
 http://199.242.59.71/pls/ps/p\_c\_staff\_menu?p\_emp\_person\_id=5513

File Edit View Favorites Tools Help

Administrative Menu Administrative Menu


**Florida State Courts** Home Courts Citizens Court News Press

Welcome Court Administration

**Senior Judge Menu Options**

Court Administrators

- List of Senior Judges who have submitted consent.
- List of Senior Judges who have not submitted consent.
- Enter Senior Judge Reimbursement Requests or Registration Information
- Person Search
- Add New Person
- Search All Available Judges
- Search Judges for Eleventh Judicial Circuit
- View Eleventh Judicial Circuit Reimbursement Requests Awaiting Approval
- Allocation Usage Detail & Summary Reports
- Senior Judge Name, Address, Phone & Email List
- View Eleventh Judicial Circuit Allocation Usage History
- Blank Reimbursement Compensation Form
- Travel Reimbursement Voucher - Print & Complete Requires Adobe Reader
- Travel Reimbursement Voucher - Complete & Print Microsoft Excel Spreadsheet



Court Allocation Detail History - Windows Internet Explorer  
 http://199.242.59.71/pls/ps/p\_court\_allocation\_history?p\_emp\_person\_id=5513&p\_cirg\_id=17

File Edit View Favorites Tools Help

Court Allocation Detail History Administrative Menu

**Florida State Courts** Home Courts Citizens Court News Press

Welcome Court Administration

**Court Allocation Detail History**


for the Eleventh Judicial Circuit

Select Fiscal Year:  Select Type of Allocation:

Regular Senior Judge Allocation

Foreclosure Senior Judge Allocation

[Return to Menu](#)



## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Tuesday, September 07, 2010 11:14 AM  
**To:** Carol Dunaway; 'Stacey Lawrence'  
**Cc:** Jody Walls  
**Subject:** RE: Monthly Report Foreclosure Filings and Disposed Foreclosure Cases

Thanks everyone for your help on this. JES

---

**From:** Carol Dunaway  
**Sent:** Tuesday, September 07, 2010 11:13 AM  
**To:** 'Stacey Lawrence'; Jan Shadburn  
**Cc:** Jody Walls  
**Subject:** RE: Monthly Report Foreclosure Filings and Disposed Foreclosure Cases

I think that will do it, Stacy. Thank you.

---

**From:** Stacey Lawrence [mailto:slawrence@BayCoClerk.com]  
**Sent:** Tuesday, September 07, 2010 11:01 AM  
**To:** Carol Dunaway; Jan Shadburn  
**Cc:** Jody Walls  
**Subject:** RE: Monthly Report Foreclosure Filings and Disposed Foreclosure Cases



For August

**Stacey Lawrence**  
**Database & Software Administrator**  
**Information Systems**

**Bill Kinsaul Clerk of Court and Comptroller**  
**300 East 4th St. Panama City, FL 32401**

**Mail To: PO Box 2269 (CIS) Panama City, FL 32402**  
**Email: [slawrence@BayCoClerk.com](mailto:slawrence@BayCoClerk.com) Tel: (850) 747-5218 Web: [www.baycoclerk.com](http://www.baycoclerk.com) Fax: (850) 747-5260**

---

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**From:** Carol Dunaway [mailto:DunawayC@jud14.flcourts.org]  
**Sent:** Tuesday, September 07, 2010 10:56 AM  
**To:** Stacey Lawrence; Jan Shadburn  
**Cc:** Jody Walls  
**Subject:** RE: Monthly Report Foreclosure Filings and Disposed Foreclosure Cases

Unfortunately this data will not be of assistance to our project. On a monthly basis, by the 5<sup>th</sup>, we must know what cases we were disposed. We need actual case numbers, not just the total figures. I appreciate this information though.

The excel workbooks that we were given provided data current as of June 30, 2010. It lists every open case in all the counties staff and I must go in an update this list every month by the 10<sup>th</sup>. We need a list that reflects case numbers for opened and d received lists from Gulf, Calhoun, and Jackson counties thus far.

**From:** Stacey Lawrence [mailto:slawrence@BayCoClerk.com]  
**Sent:** Tuesday, September 07, 2010 10:41 AM  
**To:** Jan Shadburn; Carol Dunaway  
**Cc:** Jody Walls  
**Subject:** RE: Monthly Report Foreclosure Filings and Disposed Foreclosure Cases



	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May
<b>Dismissals</b> ****	226	188									
<b>Certificates of Title Issued</b>	104	134									
<b>Total Dispositions</b>	330	322	-	-	-	-	-	-	-	-	-
<b>New Filings</b>	166	209									

**Stacey Lawrence**  
**Database & Software Administrator**  
**Information Systems**

**Bill Kinsaul Clerk of Court and Comptroller**  
**300 East 4th St. Panama City, FL 32401**

**Mail To: PO Box 2269 (CIS) Panama City, FL 32402**  
**Email: [slawrence@BayCoClerk.com](mailto:slawrence@BayCoClerk.com) Tel: (850) 747-5218 Web: [www.baycoclerk.com](http://www.baycoclerk.com) Fax: (850) 747-5260**

*PLEASE NOTE: Florida has a very broad public records law. Email communications to or from Bay County Clerk of Court & C are considered public records and are available to the public and media upon request. Your e-mail communications, including subject to public disclosure. This email is intended for the addressee(s) indicated above only. If you have received this email immediately.*

**From:** Jan Shadburn [mailto:shadburnj@jud14.flcourts.org]  
**Sent:** Thursday, August 26, 2010 10:22 AM  
**To:** Stacey Lawrence; Carol Dunaway

**Cc:** Jody Walls

**Subject:** Monthly Report Foreclosure Filings and Disposed Foreclosure Cases

Good Morning-Carol and staff are populating the foreclosure database from the info you sent earlier to FACC. We are having send in to OSCA by Sept. 10 and monthly thereafter.

In our discussions this am it appears that Stacey is in process of having to produce a report that will provide information on and Disposed Cases on monthly basis. I have asked for this report to be forwarded to Carol who is chairing our foreclosure p this will be exactly what Carol will need.

Carol take a look when you receive and work with Stacey. Stacey/Jody we appreciate all your help and partnership in this effort when we get the info populated Carol is going to get with you and insure what we are reporting each month and what is consistent. Also, Judge McClellan is going to review and if there are steps he needs to take for any stale foreclosure cases that no action by attorney/lender he is going to address.

Thanks JES

## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Monday, September 13, 2010 11:54 AM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure Projects

What do you think about reviewing the info we sent Friday with Judge Ellinor at some time. JES

---

**From:** Carol Dunaway  
**Sent:** Monday, September 13, 2010 10:55 AM  
**To:** Clerks of the Court - DL  
**Cc:** 'Stacey Lawrence'; 'Nona Borelli'; 'tknox@gulfclerk.com'; 'Diane Eaton'; Jessica Mooneyham (jmooneyham@jacksonclerk.com); Jan Shadburn  
**Subject:** Foreclosure Projects

Just wanted to say **THANK YOU** to the clerks and all the help they have provided during our initial reporting period. Without your help we could not have completed this project. I appreciate each and everyone of you.

As mentioned, this is a year long project where we will need updates each month and I promise to send you reminders each month before the due date. Again, thank you.

P.S. Linda would you thank Donna for me...she does not have email but was very helpful....

***Carol A. Dunaway***  
**Alternative Dispute Resolution Director**  
14th Judicial Circuit  
P.O. Box 826  
Marianna, FL 32447  
Phone: 850-718-0059  
Fax: 850-718-0521  
Email: [dunawayc@jud14.flcourts.org](mailto:dunawayc@jud14.flcourts.org)

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Monday, September 13, 2010 12:08 PM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure Projects

I will just meet you on Wednesday and we can talk later on Wednesday on the answers. I am better on these face to face. I retain more. Thanks JES

---

**From:** Carol Dunaway  
**Sent:** Monday, September 13, 2010 12:05 PM  
**To:** Jan Shadburn  
**Subject:** RE: Foreclosure Projects

K, once I know from him what time I will let you know. I will get the answers to your questions, if you want to call me later this afternoon or tomorrow.

---

**From:** Jan Shadburn  
**Sent:** Monday, September 13, 2010 12:04 PM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure Projects

No I will plan to join you and listen.

I have about 4 questions that will help me better understand where we are, what did the population of info provide you, what areas do we need to identify to insure we are accomplishing our goal ie stale cases and what to do, and what will indicate and when if we are going to have to commit more judges to hear cases, and insuring our reporting each month mirrors each of the clerks.

We might have addressed all those on Friday but I was more interested in Judge McClellan's view. Once you and I can talk should only take 15 minutes, you and I can put some actions in timelines that you see.

Thanks again for all your help.

---

**From:** Carol Dunaway  
**Sent:** Monday, September 13, 2010 11:56 AM  
**To:** Jan Shadburn  
**Subject:** RE: Foreclosure Projects

I was going to on Wednesday. He has a break in the docket round 11:30 or 2pm. Would there be a best time for you, or did you want me to just do it?

---

**From:** Jan Shadburn  
**Sent:** Monday, September 13, 2010 11:54 AM  
**To:** Carol Dunaway  
**Subject:** RE: Foreclosure Projects

What do you think about reviewing the info we sent Friday with Judge Ellinor at some time. JES



**From:** Carol Dunaway  
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**To:** Clerks of the Court - DL  
**Cc:** 'Stacey Lawrence'; 'Nona Borelli'; 'tknox@gulfclerk.com'; 'Diane Eaton'; Jessica Mooneyham (jmooneyham@jacksonclerk.com); Jan Shadburn  
**Subject:** Foreclosure Projects

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P.S. Linda would you thank Donna for me...she does not have email but was very helpful....

*Carol A. Dunaway*  
**Alternative Dispute Resolution Director**  
14th Judicial Circuit  
P.O. Box 826  
Marianna, FL 32447  
Phone: 850-718-0059  
Fax: 850-718-0521  
Email: [dunawayc@jud14.flcourts.org](mailto:dunawayc@jud14.flcourts.org)

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## Carol Dunaway

---

**From:** Jan Shadburn  
**Sent:** Thursday, September 23, 2010 2:44 PM  
**To:** Carol Dunaway  
**Subject:** FW: Media Requests - Foreclosure Initiative Status Report  
**Attachments:** Status Report for September 2010 Transmission.pdf

**Importance:** High

Carol-I know we reviewed but before I sent a response make sure you are ok. JES

---

**From:** Kristine Slayden [mailto:slaydenk@flcourts.org]  
**Sent:** Thursday, September 23, 2010 1:44 PM  
**To:** Trial Court Chief Judges; Trial Court Administrators  
**Cc:** Lisa Goodner; P.J. Stockdale; Arlene Johnson  
**Subject:** Media Requests - Foreclosure Initiative Status Report  
**Importance:** High

Chief Judges/Trial Court Administrators – As follow-up to the JAC conference call on Monday, September 20<sup>th</sup>, we are sending the updated status reports out and ask for your critical review of the results. We have received numerous requests for this data from reporters and do not feel comfortable releasing the information until you have had an opportunity to let us know if there are any problems with the data. Since these tables were produced from your first submission of data, we understand that there may need to be some kinks worked out in the system. Also, if you would like us to prepare any detailed reports for your circuit/county, we are available to easily produce custom reports for you.

Please contact me by COB, Monday, September 27<sup>th</sup> if you have any concerns. Thank you for your help. Kris

Kris Slayden  
Research and Data  
Office of the State Courts Administrator  
Florida Supreme Court  
500 S. Duval Street  
Tallahassee, Florida 32399  
850-922-5106 (wk)  
850-556-2335 (cell)  
850-414-1342 (fax)

---

**From:** Arlene Johnson  
**Sent:** Thursday, September 23, 2010 12:18 PM  
**To:** Kristine Slayden  
**Subject:** status report

Arlene Johnson  
OSCA, Research and Data  
Telephone 850.922.5103

Facsimile 850.414.1342

**Foreclosure and Economic Recovery  
Real Property/Mortgage Foreclosure Cases Disposed  
Status Report<sup>1</sup>**

Circuit	Case Dispositions Target <sup>2</sup>	July 2010 Dispositions		August 2010 Dispositions
		Total July 2010 SRS Dispositions <sup>3</sup>	Total July 2010 Application Dispositions <sup>4</sup>	Total August 2010 Application Dispositions <sup>4</sup>
1	8,035	457	8	81
2	2,719	203	16	29
3	822	66	39	25
4	13,344	1,016	NA	NA
5	12,357	2,260	145	319
6 <sup>5</sup>	24,424	1,208	179	1,205
7	13,383	951	945	1,316
8	1,597	206	178	133
9	31,372	2,712	1,859	2,564
10	8,047	1,129	990	1,126
11	54,532	1,826	1,733	1,290
12	15,845	1,081	320	336
13	23,672	1,348	310	1,830
14	2,873	276	253	237
15	39,309	4,440	4,110	2,980
16	1,656	58	14	54
17	35,659	2,827	2,159	3,543
18	19,252	746	524	504
19	12,844	574	373	79
20	25,423	3,326	1,184	964
<b>Total</b>	<b>347,165</b>	<b>26,710</b>	<b>15,339</b>	<b>18,615</b>

<sup>1</sup> Status Report based on September 2010 Transmission.

<sup>2</sup> Case Dispositions Target represent 62 percent of the estimated total backlog for real property/mortgage foreclosure cases during Session 2010. These statistics were based on SRS filings and dispositions reported by the Clerk of Court.

<sup>3</sup> Total July 2010 SRS Dispositions includes dynamic SRS data for all real property/mortgage foreclosure cases reported by the Clerk of Court. Please note that the dynamic SRS data provided above may be amended by the Clerk of Court at a later date.

<sup>4</sup> Total July 2010 Application Dispositions and Total August 2010 Application Dispositions are based on the FERCTS data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed in July 2010 and August 2010 using the new resources. In addition, Desoto and Okeechobee Counties did not receive Foreclosure and Economic Recovery funding and are not included above; Circuit 4 has not submitted data using the FERCTS application; and Circuit 20 does not include Charlotte County.

<sup>5</sup> Circuit 6 does not include complete SRS disposition data for Pasco County.

**Foreclosure and Economic Recovery**  
**Real Property/Mortgage Foreclosure**  
**Estimated Number of Cases Disposed During the "Clean Up" Time Frame**  
**March 2010 through June 2010**

Circuit	Estimated Number of Cases Disposed During the "Clean Up" <sup>1</sup>
1	19
2	295
3	33
4	1,858
5	404
6 <sup>2</sup>	1,161
7	6
8	133
9	1,788
10	0
11	402
12	448
13	450
14	127
15	6,149
16	15
17	256
18	172
19	0
20	1,808
<b>Total</b>	<b>15,525</b>

<sup>1</sup> Estimated Number of Cases Disposed During the "Clean Up" are based on historical behavior of disposition activity using SRS real property/mortgage foreclosure statistics.

<sup>2</sup> Circuits 6 does not include complete SRS disposition data for Pasco County.

**Foreclosure and Economic Recovery  
Real Property/Mortgage Foreclosure Backlog Cases  
Comparison of March 2010 and Current**

<b>Circuit</b>	<b>Estimated Total Real Property/ Mortgage Foreclosure Backlog Cases (March 2010)<sup>1</sup></b>	<b>Real Property/ Mortgage Foreclosure Backlog Cases (through July 2010)<sup>2</sup></b>
1	12,960	11,167
2	4,385	3,466
3	1,325	1,144
4	21,523	18,030
5	19,931	14,946
6 <sup>3</sup>	39,394	31,389
7	21,585	18,293
8	2,575	1,887
9	50,600	38,644
10	12,979	10,495
11	87,955	76,480
12	25,557	21,385
13	38,180	32,647
14	4,634	3,908
15	63,402	49,153
16	2,671	2,248
17	57,514	48,190
18	31,052	27,503
19	20,717	19,225
20	41,005	30,453
<b>Total</b>	<b>559,945</b>	<b>460,653</b>

Note: Totals may not be exact due to rounding.

<sup>1</sup> Estimated Total Real Property/Mortgage Foreclosure Backlog Cases represents the backlog calculated during Session 2010.

<sup>2</sup> Real Property/Mortgage Foreclosure Backlog Cases represents the actual backlog calculated through July 2010.

<sup>3</sup> Circuit 6 does not include complete SRS disposition data for Pasco County.

**Foreclosure and Economic Recovery  
Real Property/Mortgage Foreclosure Cases Disposed**

**July 2010 and August 2010 Type of Dispositions<sup>1</sup>**

<b>Circuit</b>	<b>Dismissed</b>	<b>Summary/ Final Judgment</b>	<b>Trial</b>	<b>Unidentified</b>	<b>Total Disposed</b>
1	13	76	0	0	89
2	8	37	0	0	45
3	29	35	0	0	64
4	NA	NA	NA	NA	NA
5	120	317	0	27	464
6	7	1,376	1	0	1,384
7	883	1,358	1	19	2,261
8	110	187	5	9	311
9	1,120	3,291	1	11	4,423
10	661	1,450	1	4	2,116
11	2,170	853	0	0	3,023
12	9	646	1	0	656
13	225	1,882	0	33	2,140
14	163	321	0	6	490
15	2,193	4,860	0	37	7,090
16	10	49	0	9	68
17	1,658	4,044	0	0	5,702
18	260	756	1	11	1,028
19	244	198	1	9	452
20	1,725	421	2	0	2,148
<b>Total</b>	<b>11,608</b>	<b>22,157</b>	<b>14</b>	<b>175</b>	<b>33,954</b>

<sup>1</sup> Type of Dispositions are based on the FERCTS data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed in July 2010 and August 2010 using the new resources. In addition, Desoto and Okeechobee Counties did not receive Foreclosure and Economic Recovery funding and are not included above; Circuit 4 has not submitted data using the FERCTS application; and Circuit 20 does not include Charlotte County.

**Foreclosure and Economic Recovery**  
**Real Property/Mortgage Foreclosure Cases Disposed**  
**Status of Cases as of September 2010 Transmission<sup>1</sup>**

Circuit	Disposed	Active	Inactive				Stayed				Total
			Attorney Inactive	Insufficient Pleadings or Documentation	Mediation/Settlement Negotiations	Other <sup>2</sup>	Bankruptcy	Pending Resolution of Another Case	Agreement of the Parties	Appeal Pending	
1	89	4	3	6	10	11,357	1	0	0	0	11,470
2	45	322	42	10	13	3,617	11	0	1	0	4,061
3	64	557	0	0	0	700	7	0	0	0	1,328
4	0	0	0	0	0	18,291	0	0	0	0	18,291
5	464	4,028	3	0	3	13,586	29	0	2	0	18,115
6	1,384	276	5	227	37	34,441	8	0	1	6	36,385
7	2,261	0	0	0	0	16,852	2	0	0	0	19,115
8	311	369	119	0	12	1,662	16	0	0	0	2,489
9	4,423	3,295	0	0	0	41,548	3	0	0	1	49,270
10	2,116	9,029	1,573	5	44	646	39	1	3	2	13,458
11	3,023	39,895	0	0	0	40,676	0	0	0	0	83,594
12	656	101	7	8	5	21,035	2	0	0	0	21,814
13	2,140	0	0	0	0	31,311	0	0	0	0	33,451
14	490	1,795	784	4	35	1,628	34	1	7	4	4,782
15	7,090	0	0	0	0	43,237	0	0	0	0	50,327
16	68	396	50	10	12	1,866	10	2	1	1	2,416
17	5,702	24,488	11,559	0	5,140	11,617	0	0	0	0	58,506
18	1,028	539	5	3	1	23,466	5	0	0	0	25,047
19	452	0	0	0	0	20,415	0	0	0	0	20,867
20	2,148	27,188	119	12	1	5,391	3	0	6	0	34,868
<b>Total</b>	<b>33,954</b>	<b>112,282</b>	<b>14,269</b>	<b>285</b>	<b>5,313</b>	<b>343,342</b>	<b>170</b>	<b>4</b>	<b>21</b>	<b>14</b>	<b>509,654</b>

<sup>1</sup> Status of Cases as of September 2010 Transmission are based on the FERCTS data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed in July 2010 and August 2010 using the new resources and the status of the remaining pending cases. In addition, Desoto and Okeechobee Counties did not receive Foreclosure and Economic Recovery funding and are not included above; Circuit 4 has not submitted data using the FERCTS application; and Circuit 20 does not include Charlotte County.

<sup>2</sup> Inactive Other was the initial status setting assigned to all cases.



# VACANCY ANNOUNCEMENT

## FOURTEENTH JUDICIAL CIRCUIT



**Position:** Court Program Specialist II -  
Civil (OPS)  
**Salary:** \$3,009.61 Monthly  
**Location:** Bay County

### GENERAL DESCRIPTION

This is a one year OPS (Other Personnel Services) position with primary duties and responsibilities concentrated on foreclosure case types. The Court Program Specialist II is a professional and highly responsible case management position within Civil Court. Work involves the use of differentiated case management techniques to promote case progression and disposition. This position is responsible for case screening, analysis, and coordination of all foreclosure matters. Travel throughout the circuit may be required. This position works under the general supervision of the ADR Director.

### EXAMPLES OF WORK PERFORMED

(Omission of specific statements does not preclude management from assigning specific duties not listed if such duties are a logical assignment to the position.)

- ▶ Provides early court intervention and establishes case plans;
- ▶ Effectively manages cases according to their nature and complexity;
- ▶ Monitors cases for compliance with Administrative Orders;
- ▶ Reviews and screen foreclosure cases throughout the circuit;
- ▶ Prepares the foreclosure case management docket for Bay County; and
- ▶ Assists judges and magistrate in review and preparation for summary judgment foreclosure dockets.

### EDUCATION

Bachelor's degree in public or business administration, criminal justice, social work, or a closely related social science field. Additional relevant experience may substitute for the recommended educational level on a year-for-year basis.

### EXPERIENCE

Three years of related experience. Additional relevant education may substitute for the recommended experience on a year-for year basis. Juris doctorate degree may substitute for the required experience.

### COMMENTS

- ▶ The successful applicant will be subject to a criminal background check.
- ▶ If you need an accommodation to participate in the application process, please contact the person at the number indicated below. TTY users may call the contact person through the Florida Relay Service at 1-800-955-8771.

SEND AN ORIGINAL AND THREE (3) COPIES OF A CURRENT STATE OF FLORIDA APPLICATION AND FOUR (4) COPIES OF VERIFICATION OF EDUCATION TO:

Robyn H. Gable  
Court Administration  
P. O. Box 1089  
Panama City, FL 32402-1089

Phone: (850) 747-5338

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race, religion, color, sex, age, national  
origin, or disability.

**Closing Date:**  
**June 23, 2010**  
**5:00 PM**

14TH CIR 00349

## VACANCY ANNOUNCEMENT FOURTEENTH JUDICIAL CIRCUIT



**Position:** Senior Secretary - Civil (OPS)  
**Salary:** \$2,060.61 Monthly  
**Location:** Jackson County

### GENERAL DESCRIPTION

This is a one year OPS (Other Personnel Services) position with primary duties and responsibilities concentrated on foreclosure case types. The Senior Secretary is a responsible position that performs complex, high level clerical duties to support the Magistrate and the Senior Judge assigned to foreclosure cases in the circuit. This position is responsible for scheduling, clerical duties, case research, and docket management. This position also prepares court forms, monitors case referrals, reviews court records, and compiles statistical reports. Work is performed with minimal supervision by the ADR Director.

### EXAMPLES OF WORK PERFORMED

(Omission of specific statements does not preclude management from assigning specific duties not listed if such duties are a logical assignment to the position.)

- ▶ Schedules case management conferences and hearings;
- ▶ Types and prepares documents, orders, reports, referrals, and other related paperwork;
- ▶ Conducts document reviews and performs case research;
- ▶ Prepares and distributes court dockets;
- ▶ Compiles statistical information, enters data, and create program reports; and
- ▶ Assists litigants and attorneys with case inquiries.

### EDUCATION

High school diploma or GED. Additional relevant experience may substitute for the recommended educational level on a year-for-year basis.

### EXPERIENCE

Two years of experience in office skills, computer operation, or a closely related field. Additional relevant education may substitute for the recommended experience on a year-for year basis.

### COMMENTS

- ▶ The successful applicant will be subject to a criminal background check.
- ▶ If you need an accommodation to participate in the application process, please contact the person at the number indicated below. TTY users may call the contact person through the Florida Relay Service at 1-800-955-8771.

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race, religion, color, sex, age, national  
origin, or disability.

**Closing Date:**  
**June 23, 2010**  
**5:00 PM**

# **Administrative Secretary**

## **Mortgage Foreclosure Unit**

### **Duties and Responsibilities:**

- 1) Scheduling of Foreclosure Cases in Bay, Washington and Holmes Counties. Additional counties may be added at a later date.**
- 2) Creating dockets for Bay County Court**
- 3) Coordinating Hearing times with Bobbi Martinez ([Martinezb@jud14.flcourts.org](mailto:Martinezb@jud14.flcourts.org)) for Magistrate Hearings in the outer counties**
- 4) Ensuring the Memorandum of Status is received no later than 7 days prior to the hearing on the Motion for Summary Judgment. If not, cancel the hearing for non-compliance.**
- 5) Ensuring Order of Referrals are in place for all cases referred to the Magistrate.**
- 6) On an as needed basis, typing Report and Recommendations for the Magistrate in foreclosure cases**
- 7) Processing all mail for court administration on the second floor in the Jackson County Courthouse.**
- 8) Other duties as required; while this is not a complete list, it is meant to provide guidance as to the most important responsibilities of the position.**

## Jan Shadburn

---

**From:** Melissa Henderson <HendersM@flcourts.org>  
**Sent:** Thursday, October 14, 2010 11:10 AM  
**To:** Trial Court Chief Judges; Trial Court Administrators  
**Cc:** Susan Leseman; OSCA-JUDED; Blan Teagle  
**Subject:** New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee  
**Attachments:** Foreclosure Bench Book.pdf

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

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

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

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

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

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

# **RESIDENTIAL FORECLOSURE BENCH BOOK**

Prepared by

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

and

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

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## Introduction

1. Foreclosure is the enforcement of a security interest by judicial sale of collateral. All mortgages shall be foreclosed of equity. § 702.01, Fla. Stat. (2010).

2. **Definitions:**

(a) **Mortgage:** any written instrument securing the payment of money or advances including liens to secure payment of assessments for condominiums, cooperatives and homeowners' associations. § 702.09, Fla. Stat. (2010).

A mortgage creates only a specific lien against the property; it is not a conveyance of legal title or of the right of possession. § 697.02, Fla. Stat. (2010); *Fla. Nat'l. Bank & Trust Co. of Miami v. Brown*, 47 So. 2d 748 (1949).

(b) **Mortgagee:** refers to the lender; the secured party or holder of the mortgage lien. § 721.82(6), Fla. Stat. (2010).

(c) **Mortgagor:** refers to the obligor or borrower; the individual or entity who has assumed the obligation secured by the mortgage lien. § 721.82(7), Fla. Stat. (2010). The mortgagor holds legal title to the mortgaged property. *Hoffman v. Semet*, 316 So. 2d 649, 652 (Fla. 4th DCA 1975).

3. To foreclosure the mortgage lien and extinguish equities of redemption, secured parties must file a civil action. § 45.0315, Fla. Stat. (2010).

### Lender's Right to Foreclose

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

(a) Right unaffected by defendant's misfortune. *Lee County Bank v. Christian Mut. Found., Inc.*, 403 So. 2d 446, 449 (Fla. 2d DCA 1981); *Morris v. Waite*, 160 So. 516, 518 (Fla. 1935).

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

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

## **Default**

1. Right to foreclosure accrues upon the mortgagor's default.
2. Basis for default:
  - (a) mortgagor's failure to tender mortgage payments; or
  - (b) impairment of security, including failure to pay taxes or maintain casualty insurance.

## **Acceleration**

1. Acceleration - gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default.
2. Mortgage Acceleration Clause - confers a contract right upon the note or mortgage holder which he may elect to enforce upon default. *David v. Sun Fed. Sav. & Loan Ass'n.*, 461 So. 2d 93, 94 (Fla. 1984).
  - (a) Absent acceleration clause, lender can only sue for amount in default. *Kirk v. Van Petten*, 21 So. 286 (Fla. 1896).
3. Commencement - upon delivery of written notice of default to the mortgagor; prior notice is not required unless it is a contractual term. *Millett v. Perez*, 418 So. 2d 1067 (Fla. 3d DCA 1982); *Fowler v. First Sav. & Loan Ass'n. of Defuniak Springs*, 643 So. 2d 30, 34 (Fla. 1st DCA 1994), (filing of complaint is notice of acceleration).
4. Pre-acceleration - mortgagor may defeat foreclosure by the payment of arrearages, thereby reinstating the mortgage. *Pici v. First Union Nat'l. Bank of Florida*, 621 So. 2d 732, 733 (Fla. 2d DCA 1993).

## **Statute of Limitations**

1. Five year statute of limitations period - applies specifically to mortgage foreclosure actions. § 95.11(2)(c), Fla. Stat. (2010); *Farmers & Merch. Bank v. Riede*, 565 So. 2d 883, 885 (Fla. 1st DCA 1990).
2. Commencement of limitations period:
  - (a) General rule - commencement upon accrual of the cause of action; this occurs when the last element of the cause of action is satisfied (for example, default).



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

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

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

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

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

### **Jurisdiction**

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

2. Two part test to establish *in rem* jurisdiction: (1) jurisdiction over the class of cases to which the case belongs, and (2) jurisdictional authority over the property or *res* that is the subject of the controversy. *Ruth v. Dept. of Legal Affairs*, 684 So. 2d 181, 185 (Fla. 1996).

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

(b) Jurisdictional authority over real property only in the circuit where the land is situated. *Hammond v. DSY Developers, LLC.*, 951 So. 2d 985, 988 (Fla. 2d DCA 2007). *Goedmakers v. Goedmakers*, 520 So. 2d 575, 578 (Fla. 1988); (court lacks *in rem* jurisdiction over real property located outside the court's circuit). If real property lies in two counties, the foreclosure suit may be maintained in either county, however, the notice of sale must be published in both. § 702.04, Fla. Stat. (2010).

## **Parties to the Foreclosure Action**

### **Plaintiff**

1. Must be the owner/holder of the note as of the date of filing suit. *Jeff-Ray Corp. v. Jacobsen*, 566 So. 2d 885 (Fla. 4th DCA 1990); see also, *WM Specialty Mortgage, LLC v. Salomon*, 874 So. 2d 680, 682 (Fla. 4th DCA 2004).

(a) The holder of a negotiable instrument means the person in possession of the instrument payable to bearer or to the identified person in possession. § 671.201(21), Fla. Stat. (2010).

(1) Endorsement in blank – where unsigned and unauthenticated, an original note is insufficient to establish that the plaintiff is the owner and holder of the note. Must have affidavits or deposition testimony establishing plaintiff as owner and holder. *Riggs v. Aurora Loan Services, LLC*, 2010 WL 1561873 (Fla. 4th DCA 4/21/10).

(b) The holder may be the owner or a nominee, such as a servicer, assignee or a collection and litigation agent. Rule 1.210(a), Fla. R. Civ. P. (2010) provides that an action may be prosecuted in the name of an authorized person without joinder of the party for whose benefit the action is brought. See also, *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1184 (Fla. 3d DCA 1985).

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

2. Assignment of note and mortgage - Plaintiff should assert assignee status in complaint. Absent formal assignment of mortgage or delivery, the mortgage in equity passes as an incident of the debt. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725, 726 (Fla. 5th DCA 2004); *Johns v. Gillian*, 134 Fla. 575, 579 (Fla. 1938); *Warren v. Seminole Bond & Mortg. Co.*, 127 Fla. 107 (Fla. 1937), (security follows the note, the assignee of the note secured by a mortgage is entitled to the benefits of the security). Assignments must be recorded to be valid against creditors and subsequent

purchasers. § 701.02, Fla. Stat. (2010). See also, *Glynn v. First Union Nat'l. Bank*, 912 So. 2d 357, 358 (Fla. 4th DCA 2005).

(a) No requirement of a written and recorded assignment of the mortgage to maintain foreclosure action where evidence establishes plaintiff as owner and holder of the note on date of filing suit. *Perry*, 888 So. 2d at 726; *WM Specialty Mortgage, LLC*, 874 So. 2d at 682; *Chem. Residential Mortgage v. Rector*, 742 So. 2d 300 (Fla. 1st DCA 1998); *Clifford v. Eastern Mortg. & Sec. Co.*, 166 So. 562 (Fla. 1936). However, the incomplete, unsigned and unauthenticated assignment of mortgage attached as an exhibit to purported mortgage holder and note holder's response to motion to dismiss did not constitute admissible summary judgment evidence sufficient to establish standing. *BAC Funding Consortium, Inc. ISAOA/ATIMA v. Jean Jacques*, 2010 WL 476641 (Fla. App. 2 DCA Feb. 12, 2010). If plaintiff has an assignment of mortgage recorded prior to the date of filing suit, then he can enforce even if possession of note never physically delivered. Florida courts recognize constructive delivery. "The absence of the note does not make a mortgage unenforceable." *Lawyers Title Ins. Co. Inc v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 798 (Fla. 4th DCA 2004). Assignment may be by physical delivery (provide evidence) or by written assignment.

3. MERS – What is it? Mortgage Electronic Registration Systems is a corporation which maintains an electronic registry tracking system of servicing and ownership rights to mortgages throughout the United States. In many cases MERS is the mortgagee of record and is identified in the mortgage. On each MERS loan there is an 18 digit number used for tracking. Through the MERS servicer ID number, homeowners can identify their lender with borrower name and property address.

4. Since the promissory note is a negotiable instrument, plaintiff must present the original note or give a satisfactory explanation for its absence. § 90.953(1), Fla. Stat. (2010); *State Street Bank and Trust Co. v. Lord*, 851 So. 2d 790, 791 (Fla. 4th DCA 2003). A satisfactory explanation includes loss, theft, destruction and wrongful possession of the note. § 673.3091(1), Fla. Stat. (2010). Reestablishment of the note is governed by § 673.3091(2), Fla. Stat. (2010).

### **Necessary and Proper Defendants**

1. The owner of the fee simple title - only indispensable party defendant to a foreclosure action. *English v. Bankers Trust Co. of Calif., N. A.*, 895 So 2d 1120, 1121 (Fla. 4th DCA 2005). Foreclosure is void if titleholder omitted. *Id.* If a spouse fails to sign the mortgage, lender may still foreclose on property owned by husband and wife when both spouses knew of loan and purchased in joint names. *Countrywide Home Loans v. Kim*, 898 So. 2d 250 (Fla. 2005).

(a) Indispensable parties defined - necessary parties so essential to a suit that no final decision can be rendered without their joinder. *Sudhoff v. Federal Nat'l. Mortgage Ass'n.*, 942 So. 2d 425, 427 (Fla. 5th DCA 2006).

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

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

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

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

(b) Post-judgment death of titleholder, these parties are not deemed indispensable parties. *Davis v. Scott*, 120 So. 1 (Fla. 1929).

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

(a) Includes: junior mortgagees, holders of judgments and liens acquired after the superior mortgage, lessees and tenants/parties in possession of the real property. *Posnansky v. Breckenridge Estates Corp.*, 621 So. 2d 736, 737 (Fla. 4th DCA 1993); *Commercial Laundries, Inc., v. Golf Course Towers Associates*, 568 So. 2d 501, 502

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

(b) If junior lien holders are not joined, their rights in the real property survive the foreclosure action.

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

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

(a) Mortgagee seeks entry of a deficiency judgment against the prior unreleased mortgagors in the foreclosure action. *PMI Ins. Co. v. Cavendar*, 615 So. 2d 710, 711 (Fla. 3d DCA 1993).

### **Superior Interests**

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

(a) Senior liens are unaffected by the foreclosure of a junior mortgage.

2. **Purchase money mortgage defined** - proceeds of the loan are used to acquire the real estate or to construct improvements on the real estate. § 7.2(a), Restatement (Third) of Property; Mortgages (2008). The purchase and conveyance of real property occur simultaneously and are given as security for a purchase money mortgage.

(a) Purchase money mortgages - priority over all prior claims or liens that attach to the property through the mortgagor, even if latter be prior in time. *BancFlorida v. Hayward*, 689 So. 2d 1052, 1054 (Fla. 1997); *Sarmiento v. Stockton, Whatley, Davin & Co.*, 399 So. 2d 1057, 1058 (Fla. 3d DCA 1981).

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

**Association Liens and Assessments**

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

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

(b) one per cent of the original mortgage debt (provided condominium association is joined as a defendant).

(1) The law is clear that the purchaser of a condominium unit has liability for unpaid condominium assessments. § 718.1176, Fla. Stat (2010). This statutory cap, limits the liability of foreclosing mortgagees for unpaid condominium assessments that become due prior to acquisition of title. This safe harbor applies only to the first mortgagee or a subsequent holder of the first mortgage. *Bay Holdings, Inc. v. 2000 Island Boulevard Condo. Ass'n.*, 895 So. 2d 1197 (Fla. 3d DCA 2005. The term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage. § 718.116(1)(g), Fla. Stat. (2010). Other entities that acquire title are not entitled to this limitation of liability and are "jointly and severally liable for all unpaid assessments that come due up to the time of transfer of title." § 718.116(1)(a), Fla. Stat. (2010).

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

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

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

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

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

(d) The limitations on the first mortgagee's liability only apply if the lender filed suit and initially joined the homeowner's association as a defendant. § 720.3085(2)(c), Fla. Stat. (2010).

(e) Statutory revisions of the 2008 Legislature failed to remedy the potential super-priority of liens recorded prior to July 1, 2008. (Prior statutory version amended by the 2007 Legislature gave homeowner's association liens a priority, even if the mortgage was filed first in time.) Arguably, many homeowners' associations have subordination language in their declaration of covenants providing that their lien is subordinate to the mortgage. However, the subordination language is not standard in all declarations. Any challenge to the priority if the mortgage will likely be resolved on the basis of impairment of contract.

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

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

### **Judgment Liens**

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

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

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

## **Filing of the Lis Pendens**

1. Filing of lis pendens - cuts off the rights of any person whose interest arises after filing. *Bowers v. Pearson*, 135 So. 562 (Fla. 1931).

(a) Constitutes bar to the enforcement against the subject real property of any other unrecorded interests and liens unless the holder of the unrecorded interest intervenes within twenty days of the notice of the lis pendens. § 48.23(1)(b), Fla. Stat. (2010).

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

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

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

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

## **The Foreclosure Complaint**

1. Florida Supreme Court Form for foreclosure - Form 1.944, Fla. R. Civ. P. (2010). Requisite allegations assert: jurisdiction, default, acceleration and the legal description of the real property. As of 2/11/10, complaint must be verified. Rule 1.110(b), Fla. R. Civ. P. (2010).

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

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



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

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

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

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

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

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

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

(j) Legal description of the subject real property.

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

(l) Additional counts include: reestablishment of the note and reformation. Reestablishment of the note is necessary if the note is lost; reformation of the note is needed if material terms are missing. Reformation of the mortgage applies if there is a legal description discrepancy; reformation of deed is there is a deed problem.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Fair Debt Collection Practices Act (FDCPA)**

1. Purpose - eliminate abusive debt collection practices by debt collectors and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).

2. Some Florida courts held - attorneys engaged in regular foreclosure work met the general definition of debt collector and are subject to the FDCPA. *Sandlin v. Shapiro*, 919 F. Supp. 1564, 1567 (M.D. Fla. 1996), (law firm engaged in collection foreclosure work was considered a debt collector where the firm sent correspondence advising of payoff and reinstatement figures and directed mortgagors to pay the law firm).

3. Under FDCPA, a debt collector's obligation to send a Notice of Debt is triggered by an initial communication with the consumer. *McKnight v. Benitez*, 176 F. Supp. 1301, 1304 (M.D. Fla. 2001).

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

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

## **Mandatory Mediation of Homestead Foreclosures**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Service of Process**

1. Due service of process is essential to satisfy jurisdictional requirements over the subject matter and the parties in a foreclosure action. Rule 1.070, Fla. R. of Civ. P. (2010) and Chapters 48 and 49 of the Florida Statutes.

2. Service of process must be made upon the defendant within 120 days after the filing of the initial pleading. Rule 1.070(j), Fla. R. Civ. P. (2010). Absent a showing of excusable neglect or good cause, the failure to comply with the time limitations may result in the court's dismissal of the action without prejudice or the dropping of the defendant.

### **Personal Service**

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

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

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

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

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

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

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

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

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



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

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

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

#### **Constructive Service by Publication**

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

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

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

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

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

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

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

§49.10(1)(c)(2), Fla. Stat. (2010).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Service of process and timeshare real property:**

1. Foreclosure proceedings involving timeshare estates may join multiple defendants in the same action. § 721.83, Fla. Stat. (2010).

2. There are additional options to effectuating service of process for a timeshare foreclosure.

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

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

### **Substitution of Parties**

1. Substitution is not mandatory; the action may proceed in the name of the original party. However, to substitute a new party based on a transfer of interest requires a court order. *Tinsley v. Mangonia Residence 1, Ltd.*, 937 So. 2d 178, 179 (Fla. 4th DCA 2006), Rule 1.260, Fla. R. Civ. P.

2. Order of substitution must precede an adjudication of rights of parties, including default. *Floyd v. Wallace*, 339 So. 2d 653 (Fla. 1976); *Campbell v. Napoli*, 786 So. 2d 1232 (Fla. 2d DCA 2001), (error to enter judgment without a real party against whom judgment could be entered).

3. When substitution is permitted, plaintiff must show the identity of the new party's interest and the circumstances.

### **Entry of Default**

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

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

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

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

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

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

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

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

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

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

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

(1) defendant is not in military service; or

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

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

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

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

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

### **Appointment of a Guardian ad Litem**

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

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

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



## **Appointment of a Receiver**

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

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

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

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

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

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

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

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

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

### **Summary Final Judgment of Foreclosure**

1. Legal standard – No genuine issue of material fact and movant is entitled to a judgment as a matter of law. Also, outstanding discovery can preclude summary judgment.
2. Burden of Proof - The plaintiff bears the burden of proof to establish the nonexistence of disputed issues of material fact. *Delandro v. Am.'s. Mortgage Servicing, Inc.*, 674 So. 2d 184, 186 (Fla. 3d DCA 1996); *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966).
3. Content of motion for summary judgment – plaintiff should allege:
  - 1) execution of note and mortgage; 2) plaintiff's status as owner and holder (or representative); 3) date of default; 4) notice of default and acceleration; 5) amount due and owing; 6) relief sought; and 7) address affirmative defenses, if any.
4. Filing of the Motion - at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. Rule 1.510(a), Fla. R. Civ. P. (2010). The motion for summary judgment, supporting affidavits and notice of hearing must be served on a defendant at least (20) twenty days before the summary judgment hearing. Rule 1.510(c), Fla. R. Civ. P. (2010); *Verizzo v. Bank of New York*, 2010 WL 711862 (Fla. 2 DCA Mar. 3, 2010); *Mack v. Commercial Industrial Park, Inc.*, 541 So. 2d 800, 801 (Fla. 4th DCA 1989).

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

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

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

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

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

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

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

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

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

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

(b) Affidavit of Costs - This affidavit details:

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

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

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

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

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

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

### **Affirmative Defenses**

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

3. **Affirmative defenses commonly raised:**

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

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

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

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

genuine issues of material fact which are inappropriate for summary judgment. *Schiebe v. Bank of Am.*, 822 So. 2d 575 (Fla. 5th DCA 2002).

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

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

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

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

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

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

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

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

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

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

TILA issues include:

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

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

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

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



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

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

Additional cases: *Limehouse v. Smith*, 797 So. 2d 15 (Fla. 4th DCA 2001), (mistake); *O'Brien v. Fed. Trust Bank, F. S. B.*, 727 So. 2d 296 (Fla. 5th DCA 1999), (fraud, RICO and duress); *Biondo v. Powers*, 743 So. 2d 161 (Fla. 4th DCA 1999), (usury); *Heimmermann v. First Union Mortgage Corp.*, 305 F. 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. *Natl. Loan Investors, L. P. v. Joymar Assoc.*, 767 So. 2d 549, 550 (Fla. 3d DCA 2000).

### **Final Judgment**

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

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

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

4. Checklist for Final Summary Judgment

(a) Final Judgment:

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

(11) Sale date – may not be set in less than 20 days or more than 35 days, unless parties agree. § 45.031(1)(a), Fla. Stat. (2010), *JRBL Dev., Inc. v. Maiello*, 872 So. 2d 362, 363 (Fla. 2d DCA 2004).

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

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

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

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

### **Right of Redemption**

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

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

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

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

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

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

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

## **Judicial Sale**

### **Scheduling the judicial sale**

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

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

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

### **Notice of sale**

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

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

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

### **Judicial sale procedure**

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

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

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

### **Certificate of sale**

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

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

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

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

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

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

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

### **Objection to sale**

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

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

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

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

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

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

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

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

### **Sale vacated**

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

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

## **Post Sale Issues**

### **Certificate of title**

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

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

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

### **Right of possession**

1. Purchaser has a right to possess the property - upon the issuance of the certificate of title, provided the interest holder was properly joined in the foreclosure.
2. Right of possession enforced through writ of possession. Rule 1.580, Fla. R. Civ. P. (2010)

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

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

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

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

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

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

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

### **Protecting Tenants at Foreclosure Act of 2009**

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



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

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

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

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

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

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

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

## **Disbursement of Sale Proceeds**

### **Surplus**

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

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

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

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

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

### **Deficiency Judgment**

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

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

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

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

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

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

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

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

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

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

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

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

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