

http://www.flcourts.org/gen_public/pubs/srsmanual.shtml. These instructions include definitions of the new case types on the cover sheets. We believe that the new case types listed on the cover sheet may generate questions from the clerks to the judges during hearings. This is also true for foreclosure cases when the clerk needs to make sure that they have the valuation information on the final judgment to determine if a refund needs to be given or additional fees need to be charged.

I hope that these circuit civil and circuit family forms and SRS 2010 instructions will be helpful to you and your staff. If you have any comments or questions regarding this information please contact Ms. Miriam Jugger, Senior Court Analyst I in the OSCA Court Services office, by e-mail (juggerm@flcourts.org) or phone (850-410-1888).

Thank you for your time, cooperation, and commitment.

LG:MJ:dgh

cc: Chief Judges of the Circuit Courts
Trial Court Administrators

Jenn C. Lussier

From: P. DeWitt Cason <pdcaison@columbiaclerk.com>
Sent: Wednesday, December 30, 2009 9:23 AM
To: Darren K. Jackson; David W. Fina; Frederick L. Koberlein; Greg S. Parker; Julian E. Collins; Leandra G. Johnson; Paul S. Bryan; James R. Bean; Sonny Scaff; Jean Pittman; Tom Coleman; E. Vernon Douglas; H. Wetzel Blair; William R. Slaughter
Subject: Emailing: AOSC09-54
Attachments: AOSC09-54.pdf

Judges,

I'm sure all of you are of aware of this, But I felt it was important enough to send out. Apparently, Homestead Foreclosures must go to mediation now. Let me know if my office can do anything to help speed the process.

DeWitt

p.s. Happy New Year

Supreme Court of Florida

No. AOSC09-54

IN RE: FINAL REPORT AND RECOMMENDATIONS ON
RESIDENTIAL MORTGAGE FORECLOSURE CASES

ADMINISTRATIVE ORDER

Foreclosure case filings in Florida trial courts stood at nearly 369,000 in December 2008. At the beginning of the last quarter of 2009, foreclosure filings statewide totaled in excess of 296,000. Florida has the third highest mortgage delinquency rate, the worst foreclosure inventory, and the most foreclosure starts in the nation. At the close of 2009, it is estimated there will be an inventory of approximately 456,000 pending foreclosure cases statewide. The crisis continues unabated.

The Task Force on Residential Mortgage Foreclosure Cases was established to respond on an emergency basis to the residential mortgage foreclosure crisis in Florida.¹ In Re: Task Force on Residential Mortgage Foreclosure Cases, AOSC09-8 (March 27, 2009). The 15-member Task Force issued a Final Report and

1. The Task Force was asked to recommend “policies, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties” through “mediation and other alternative dispute resolution strategies, case management techniques, and approaches to providing *pro bono* or low-cost legal assistance to homeowners.”

Recommendations on August 15, 2009.² The Final Report and Recommendations was published for comment, and oral argument was held on November 4, 2009. In its report, the Task Force identified lack of communication between plaintiffs and borrowers as the most significant issue impeding early resolution of foreclosure cases, and concluded that effective case management and mediation techniques are the best methods the courts can employ to ensure that such communications occur early enough in the case to avoid wasted time and resources for the courts and the parties.

Recognizing that section 44.108, Florida Statutes, and statewide trial court budget policy considerations do not allow trial courts to collect fees for the provision of circuit civil mediation services, the Task Force concluded that outside entities would be needed to manage mediations on the scale required to address the state's foreclosure crisis.

Statewide Managed Mediation Program

The Task Force recommended adoption of a uniform, statewide managed mediation program to be implemented through a model administrative order to be issued by each circuit chief judge. Under this program, all foreclosure cases in the

2. The Task Force met over a period of approximately 20 weeks. During that time period, it conducted in-depth surveys and engaged in other outreach efforts to determine the impact of the foreclosure crisis on lenders and servicers, borrowers, attorneys and judges. The Task Force's Final Report and Recommendations is available at http://www.floridasupremecourt.org/pub_info/documents.shtml#foreclosure.

state courts that involve residential homestead property will be referred to mediation, unless the plaintiff and borrower agree otherwise or unless effective pre-suit mediation that substantially complies with the managed mediation program requirements has been conducted. Referral of the borrower to foreclosure counseling prior to mediation, early electronic exchange of borrower and lender information prior to mediation, and the ability of a plaintiff's representative to appear at mediation by telephone are features of the model administrative order.

The Court approves this recommendation as the best method to open communication and facilitate problem-solving between the parties to foreclosure cases while conserving limited judicial resources. The Court therefore adopts, with minor changes, the Task Force's proposed model administrative order. The model administrative order is incorporated into and appended to this Administrative Order.

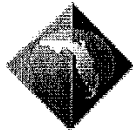
As part of the managed mediation program, the Task Force recommended specific written parameters for qualifying providers of managed mediation services, as appended to the model administrative order as Exhibit 13. The Court adopts these standards for providers. It is crucial that these non-profit organizations be independent of the judicial branch, capable of sustained operation without fiscal impact to the courts, politically and professionally neutral, and have a demonstrated ability to efficiently manage the extremely high volume of

Jenn C. Lussier

From: Kevin C Lunsford <kevin@kevinlunsford.com>
Sent: Tuesday, December 29, 2009 4:08 PM
To: Undisclosed-Recipient;;
Cc: info@kevinlunsford.com
Subject: New Florida Supreme Court Mortgage Foreclosure Order
Attachments: AOSC09-54_Foreclosures.12.28.09.pdf

The Administrative Order requires that all new residential homestead foreclosure actions be referred to mediation. Attached please find the Residential Mortgage Foreclosure Mediation Administrative Order AOSC09-54 issued by Chief Justice Quince on December 28, 2009.

Wishing you all a Happy and Healthy New Year.



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Kevin C. Lunsford
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1675 E. Sunrise Boulevard
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Fort Lauderdale, FL 33304
(954) 467-6642 Fax: 564-4813

Supreme Court of Florida

No. AOSC09-54

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RESIDENTIAL MORTGAGE FORECLOSURE CASES

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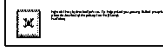
Jenn C. Lussier

From: Daily Business Review <dbr_editor@alm.com>
Sent: Tuesday, December 22, 2009 11:48 AM
To: Darren K. Jackson
Subject: Litigation Alert

<p>Subscribe to the Review</p> <p>Subscribe to the print & Web editions</p> <p>Free 30-day Web Trial</p> <p>From the newsroom: Top Dealmakers We will recognize the people who made the biggest and most complicated deals in South Florida. Brokers, Real estate salespeople, attorneys, including in-house counsel, and accountants are eligible. To submit your nomination for Top Dealmakers, click here</p> <p>Today's Headlines</p> <p>Recovery on track to strengthen at end of 2009</p> <p>Man charged with violating order through MySpace</p> <p>Most important practice of all: Self-promotion</p> <p>Cost-cutting Yahoo to close offices for holidays</p>	<p>December 22, 2009</p> <p><input type="checkbox"/> Legal News And Information You Can't Get Anywhere Else</p> <hr/> <p><u>Criminal Justice</u></p> <p>Court told Miami's busiest defender can't handle client</p> <p>By: Vanessa Blum</p> <p>The workload at the Miami-Dade public defender's office is an issue before the 3rd District Court of Appeal for a second time in less than two years.</p> <hr/> <p><u>Florida Supreme Court</u></p> <p>Justices ban shackles for juveniles in courtroom</p> <p>By: Jordana Mishory</p> <p>The justices amended the rules of judicial procedure to state a juvenile defendant cannot be placed in handcuffs, chains, irons or straightjackets unless the court finds it necessary in specific instances.</p> <hr/> <p><u>Appeals</u></p> <p>9th circuit opens door to televised civil trials</p> <p>By: The Recorder</p>	
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The Judicial Council of the 9th U.S. Circuit Court of Appeals has authorized television cameras in district courts, reviving a national controversy just weeks before a groundbreaking trial over same-sex marriage is slated to begin in San Francisco.

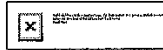


Malpractice Claims

New York attorney sues his lawyer for negligence

By: Nate Raymond

Greenberg Traurig and a New York shareholder are targets of a lawsuit claiming they mishandled a lawyer's claims against his former firm.



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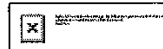
[Public Hearings](#)

Supreme Court

Justices to review employer access to worker text messages

By: The Associated Press

The justices will review a 9th circuit ruling that sided with California police officers who complained that the department snooped on their messages. The court also faulted the text-messaging service for turning over transcripts of the messages without the officers' consent.

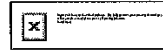


Indigent Counsel

Georgia convicts sue governor over lack of attorneys

By: The Associated Press

Georgia has failed to provide lawyers for nearly 200 convicted criminals who can't afford attorneys but claim they're innocent and want to appeal, according to a lawsuit.

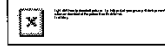


On Appeal

3rd DCA separates trials in DuPont case

By: Review staff

Individual trials will be required in lawsuits filed by 20 Costa Rican fern growers on claims the DuPont pesticide Benlate ruined their crops.



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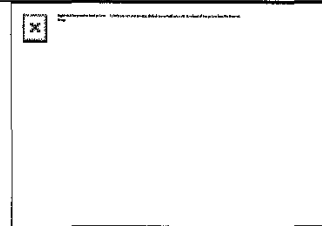
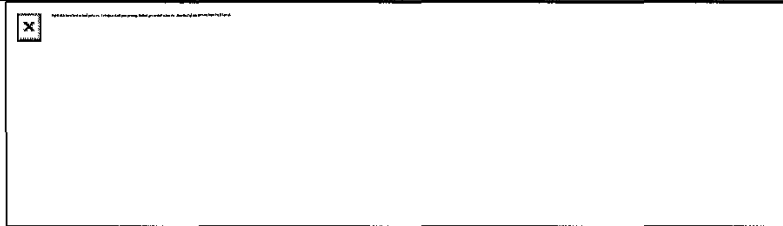
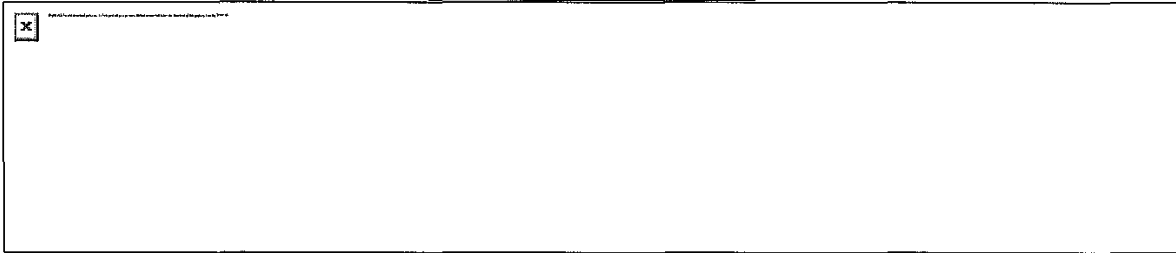
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Jean C. Lussier

From: AmStar Litigation Support <cleseminar@amstarlit.com>
Sent: Monday, December 21, 2009 8:01 AM
To: Darren K. Jackson
Subject: Florida Bar Approved CLE

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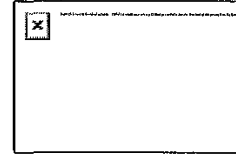
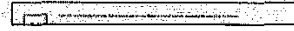
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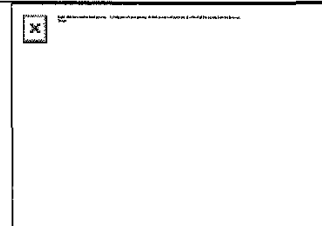
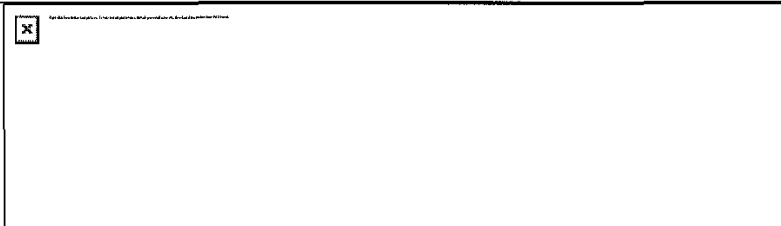
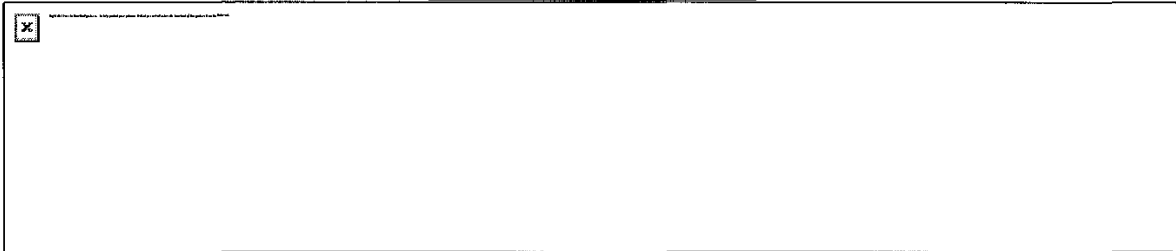
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Jenn C. Lussier

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Sent: Wednesday, December 09, 2009 8:02 AM
To: Darren K. Jackson
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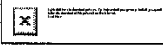
From: Daily Business Review <dbr_editor@alm.com>
Sent: Tuesday, December 08, 2009 1:04 PM
To: Darren K. Jackson
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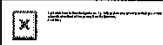
after teaching the jury the difficult concept of lost profits.



Most Effective Lawyers: Complex/Business Litigation

By: Review staff

Most Effective Lawyer: Mark Raymond, Broad and Cassel.

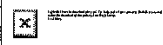


Class Actions

Suit accuses Amazon of cutting overtime corners

By: National Law Journal

In a federal lawsuit the online retail giant is being sued for allegedly rounding off the hours worked by 21,000 warehouse employees who fill orders and ship packages.

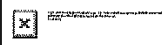


Supreme Court

Sotomayor Collides With Ginsburg During Questioning

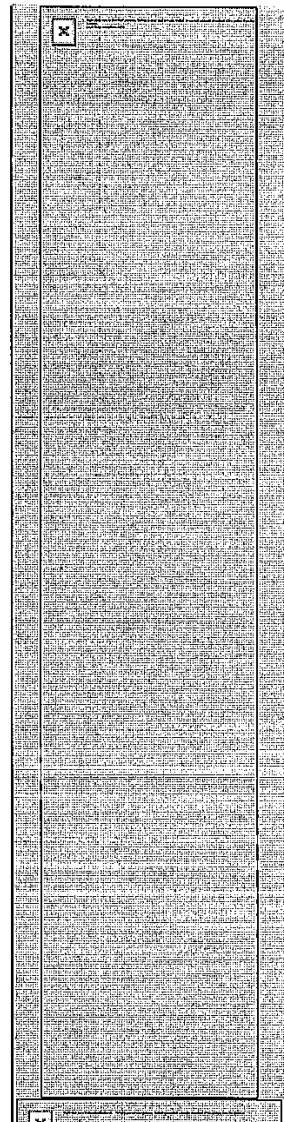
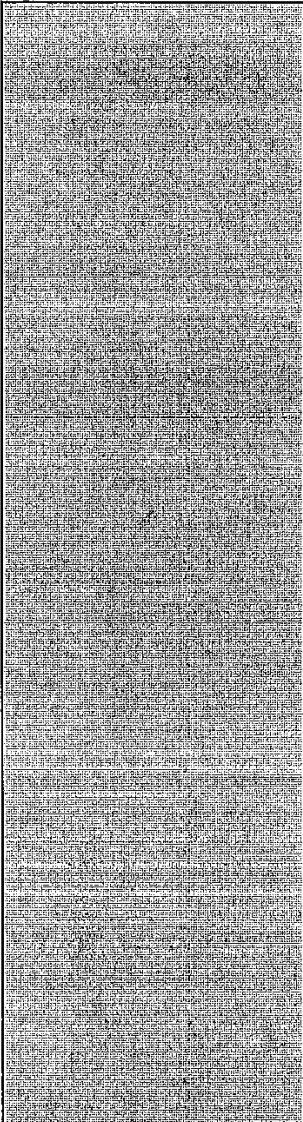
By: Law.com

In the midst of a lively oral argument at the Supreme Court, the justices' questioning of the attorneys at the podium sometimes overlaps, with several justices jumping in with different queries at the same time and talking over each other. The situation usually resolves itself fairly seamlessly and subtly.



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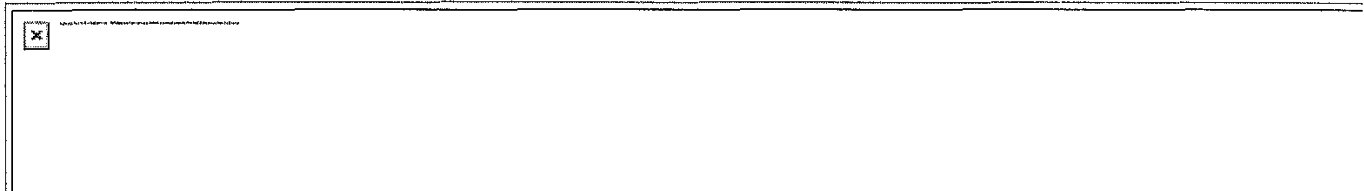
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Jenn C. Lussier

From: FloridaBarCLE - Online Programs <OnlineCLE@flabar.org>
Sent: Wednesday, December 02, 2009 10:05 AM
To: Darren K. Jackson
Subject: The Florida Bar - Online CLE Programs



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Downloadable Audio Seminars (Podcasts)

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[Ethical Challenges for the Environmental Lawyer and Consultant](#)

[Real Estate: Ethical Fraud & Other Fairy Tales](#)

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Sunshine Law, Public Records and Ethics Seminar

7.5 CLE Credits, 4.0 of which may be applied toward Ethics, 7.5 of which may be applied toward City, County & Local Government

Topics included:

- Sunshine Law Overview
- Public Records Law Overview
- Ethics Commission: Processes and Procedures
- Ethics: Revolving Door Standards
- Ethics: Reporting, Financial Disclosure and Other Standards
- Ethics: Conflicts of Interest & Voting Conflicts
- Ethics: Gifts

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- "Seminar and materials on Public Records and Sunshine State were great. Very helpful in my practice. I don't often utilize public records requests but sometimes I do. The seminar and materials will save me a lot of time and effort for those occasions."

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Topics Include:

- Attorneys Playing Engineers and Engineers Playing Attorneys: Ethical Challenges in Avoiding Malpractice
- Ethical Issues with Technical Expert Witnesses
- Emerging Ethical Considerations with Discovery
- Participation of Attorneys and Consultants in Environmental and Land Use Mediations and Other Alternative Dispute Resolution Formats: Doing it Ethically & Effectively.

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Real Estate: Ethical Fraud & Other Fairy Tales

6.5 CLE Credits, 5.0 of which may be applied towards Ethics, 6.5 of which may be applied toward Real Estate, 5.0 of which may be applied toward Business Litigation, 1.0 of which may be applied toward Criminal Trial

Topics Include:

- The Attorney General Wants You! Foreclosure Rescue and Other Recent Changes in Florida Law
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- Practice Pointers to Avoid RESPA Violations
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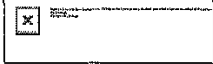
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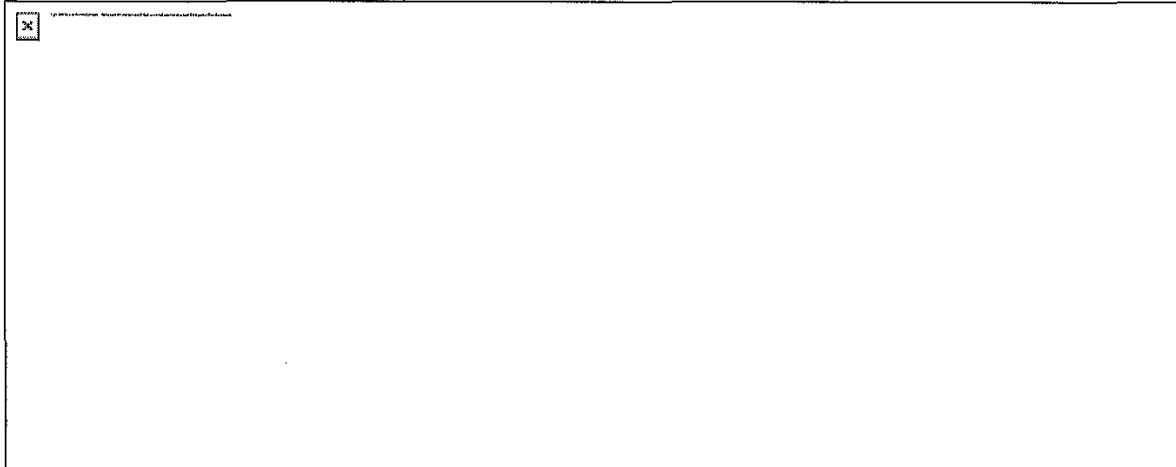
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Jenn C. Lussier

From: AmStar Litigation Support <cleseminar@amstarlit.com>
Sent: Monday, November 23, 2009 8:02 AM
To: Darren K. Jackson
Subject: Bankruptcy Techniques as Foreclosure Defense Strategies

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Join us for a powerful day of Florida Bar Approved CLE covering one of the hottest topics: Bankruptcy and Foreclosure Defense.

On December 8, "[Bankruptcy Techniques as Foreclosure Defense Strategies](#)" delves into sophisticated and complex issues of bankruptcy and how these issues are intertwined with current foreclosure litigation. This valuable seminar is approved by the Florida Bar for 8 hours of CLE credit, including .5 hours of ethics. Topics include:

- Qualifying for relief
- Avoidance of mortgages
- Lien stripping
- Cram down of investment property
- Ethics on Metadata
- Objections to proof of claim
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- FCRA and FDCPA issues

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- \$100 off your tuition (\$495 at the door)

**"Bankruptcy
Techniques
as Foreclosure
Defense Strategies."**

Florida Bar Approved:
8 hours of CLE credit

Ft. Lauderdale:
December 8, 2009

**Sheraton Suites
Cypress Creek**
555 NW 62nd Street
Fort Lauderdale, Florida

Time: 8:00 a.m. - 5:00
p.m.

Tuition: \$395 (\$495 at
door)

- 25% off any additional CLE course
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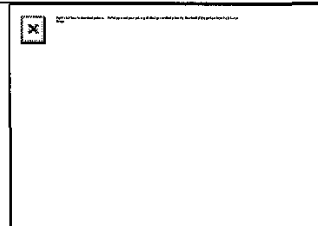
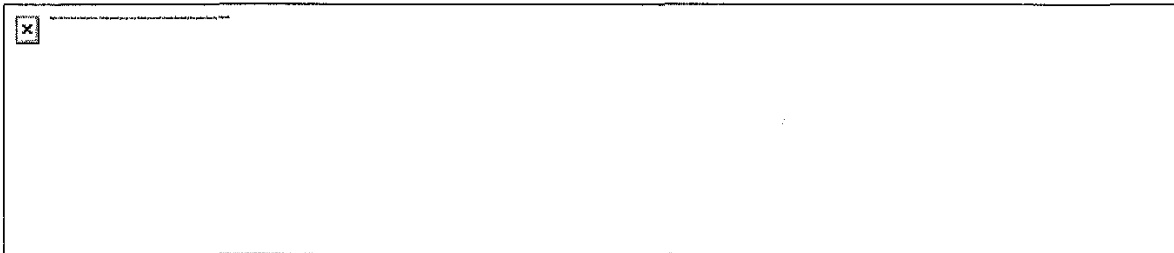
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Jenni C. Lussier

From: AmStar Litigation Support <cleseminar@amstarlit.com>
Sent: Wednesday, November 18, 2009 7:45 AM
To: Darren K. Jackson
Subject: Foreclosure Defense CLE



Dear Darren,

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If you're practicing or considering foreclosure defense, this CLE course provides you with in-depth information about the latest developments regarding:

- Substantive mortgage loan law
- Pleading and procedure
- Securitization
- Remediation
- Ethics and more

When you **register**, you'll receive a complimentary luncheon on **"How to build a successful foreclosure defense practice."**

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"This is the best CLE course"

- Scott K., Real-estate, Personal Injury and Foreclosure Defense

Click here to register for your CLE course today.

When: December 9, 2009
8:00 a.m. - 5:00 p.m.

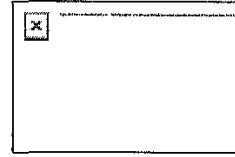
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Tuition: \$395 (\$495 at the door)

Florida Bar Approved:
7.5 hours, includes .5 hours of ethics.

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Jenn C. Lussier

From: Documentary Clearing House and Associates
<Documentary_Clearing_House_and_Associates@email.admail.net>
Sent: Tuesday, November 17, 2009 9:41 PM
To: Darren K. Jackson
Subject: Please view this new legal strategy to defend against foreclosure.

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Why Choose DCH Documents to defend against foreclosure?

Key Points of DCH Legal Documents:

1. Our motions require the other side to produce an extensive and thoroughly researched responsive pleading.
2. New arguments regarding mortgage securitization Judges haven't seen before.
3. Each motion includes a comprehensive citation of legal authorities.
4. Our motions can be used again and again for new clients.
5. Our motions are dispositive. If granted, they end the case.
6. Our motions create potential liability for the plaintiff.
7. Mortgage Securitization is complex. Our knowledge of securitization is extensive.
8. Researching effective arguments is time-consuming. We've done all the tedious, tiring, and time-consuming research at a fraction of the cost you would incur if you or a paralegal did the work instead.
9. Our motions are innovative, professional, and powerful leading-edge arguments.
10. Each motion employs legal strategies designed to achieve results.
11. Off the shelf motions you can use in every case to defend against foreclosure of a securitized motion.
12. By attacking the legality of mortgage securitization, DCH's motions provide leverage to negotiate an alternative dispute resolution.
13. Our motions, if granted, provide a final outcome without further litigation.
14. All three of the motions address the subject of securitization in relationship to the debtor. No one else has used this strategy to defend against foreclosure.
15. Order today; file tomorrow.

The Motions (click a hyperlink below to see details about each motion):

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2. [Poison Pill Motion - If the mortgage trust failed to register in Florida, the mortgage is unenforceable in Florida. Show me the certificate or this lawsuit is over. \\$124.99 <Click Here>](#)

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3. Case of the Missing Note Holder Motion – Securitization leaves no party with standing to enforce the note. \$599.00 <Click Here>



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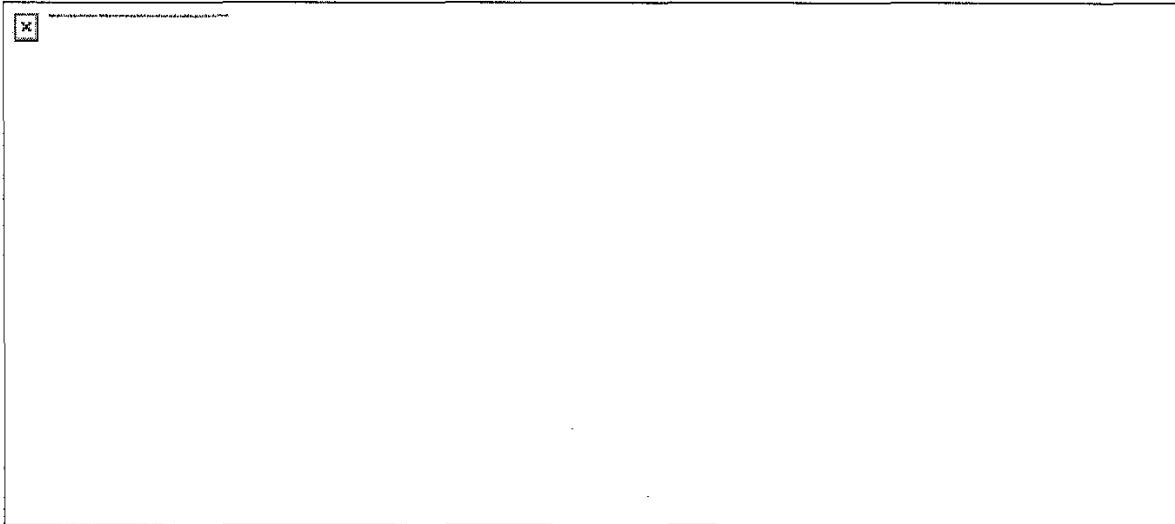
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Jenn C. Lussier

From: AmStar Litigation Support <cleseminar@amstarlit.com>
Sent: Friday, November 06, 2009 12:26 AM
To: Darren K. Jackson
Subject: Bankruptcy and Foreclosure Defense

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Beginning December 8, the first day features "[Bankruptcy Techniques as Foreclosure Defense Strategies.](#)" The course delves into sophisticated and complex issues of bankruptcy and how these issues are intertwined with current foreclosure litigation. This valuable seminar is approved by the Florida Bar for 8 hours of CLE credit, including .5 hours of ethics. Topics include:

- Qualifying for relief
- Avoidance of mortgages
- Lien stripping
- Cram down of investment property
- Ethics on Metadata
- Objections to proof of claim
- Curing defaults
- FCRA and FDCPA issues

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Florida Bar Approved: 8 hours of CLE credit

Ft. Lauderdale: December 8

Time: 8:00 a.m. - 5:00 p.m.

Tuition: \$395 (\$495 at door)

Register for the second course and receive a 25% discount..

"Foreclosure Defense--Recession Proof Your Practice."

Florida Bar Approved: 7.5 hours of CLE credit

Ft. Lauderdale: December 9

Time: 8:00 a.m. - 5:00 p.m.

Tuition: \$395 (\$495 at door)

Register

discuss the latest developments regarding:

- Substantive mortgage loan law
- Pleading and procedure
- Securitization
- Remediation
- Ethics and more

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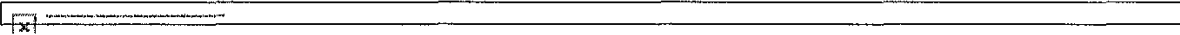
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Jenn C. Lussier

From: JSKoch <newsguy31@windstream.net>
Sent: Wednesday, November 04, 2009 11:10 PM
Subject: I.N.S. NEWS FEED - 11/05/2009

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TOWERS GO - DRIVEWAY STAYS
MADISON MAN BUSTED WITH CHILD PORN
FOREIGN STUDENTS TO BE CHARGED MORE
LIBRARY GETS FUNDING BOOST
RESIGNED COUNCILMAN TAKES BACK POST
IT'S 50 - 50 SPLIT ON COSTS
COMMISSION REACHES NO CONCLUSIONS

* * * * *

LIVE OAK - The gate that opens into the Blue Lodge in Live Oak and the adjoining wall with electrical lights most likely will be torn down. The corporate leaders of CSX Railroad is demanding the owners remove the items and have nullified a contract signed in 1940 that gave permission to set the towers and wall as well as the electric lines to light them up at night. During Tuesday's Suwannee County Commission meeting family that own and live in the buildings main house at the lodge made the impression the railroad was going to close the driveway into the lodge as well as remove the structures. However, after reading the 1940 contract and CSX demand letters, the conclusion reached is that CSX just wants the structures removed and the right of way cleared. It is not sure if the reason for the removal of the wall and towers are related to liability exposure as the structures have remained on that spot for almost 50 years or is it because CSX is planning to run a 2nd rail along side the existing one. CSX officials have yet to return phone calls. So the effort to have the county or the city do something to stop the destruction of the structures is moot as neither entity has jurisdiction in the matter.

MADISON - Tuesday agents with the Florida Department of Law Enforcement Computer Crime Center arrested 52, Jack Yates, of Madison and charged him with 10 counts of distribution of child pornography. Yates became a suspect last month after a detective with the Boynton Beach Police Department working undercover received more than 500 images from the suspect. The detective was able to trace images that had been shared online back to Yates' computer. Authorities executed a search warrant at Yates' home and during the search Yates tried to delete his collection of child pornography on his computer.

MAYO - At its latest meeting the Lafayette County School Board adopted a fee schedule for receiving foreign exchange students from other nations. Prior to now, the Lafayette County school district has accepted foreign exchange students at no extra charge. However, due to tough economic times and new, more demanding regulations regarding the grading of schools, Lafayette County, like many other school districts, has decided it needs to get some money in exchange for teaching students from other countries. When students come from foreign nations into local schools, agencies are involved in setting up the new arrangement. The school board is setting up a fee schedule to charge such agencies for these arrangements. The policies and so forth are not yet fully in place and so prices are yet to be established but the matter is expected to be resolved soon, perhaps at the next school board meeting on the 17th. This will be an organizational meeting, meaning that the board will officially determine the dates for meetings throughout the coming year.

LEE - A new library is just about complete but things such as furniture, shelves and other items are still needed. Officials from Nestle Waters Madison County Bottling Facility gave a ten-thousand dollar check to the Lee Library enclosed in a copy of a book entitled the history of bottled water to the regional library director. The money will go toward equipping and furnishing the 5,200 square foot building. The money represents a quarter of the county's goal of \$40,000 being raised from individuals and local businesses. The library is being built next to Lee Elementary School and is expected to open in late January.



© INS PHOTO

Nestlé Waters official giving a copy of the book discussing bottles spring water to Regional Library Director Danny Hales. Inside the book was a check for \$10,000 to be used for things needed in side the library.

LIVE OAK - The Suwannee County Commission discussed the Catalyst Project at its meeting this week but reached no conclusions. The project is drawn from an idea that if the local, state and federal government work together to fund and build public works for a parcel of land and then offer that land to private enterprise, everyone would benefit. The idea is to create jobs which in turn builds communities and encourages businesses to grow and prosper. Suwannee County is among a 14 county region which are a part of a bigger area known as a Regional Area of Critical Economic Concern and has one of these projects. The county's development authority has already spent public funds to secure an option on 100 acre at the I-10 and US90 interchange. There is also another project area under consideration mainly because public works is already available to the site as opposed to building a whole new system to the US90 site. Simply said the US129 interchange to become available to private enterprise now is under \$800,000 as opposed to over \$7 million for the other. The discussions centred on the issue of why things have changed so quickly as well as the reasons why to choose one site over another. When the economic climate was more positive the RACEC projects would have received funding from several sources, and local governments would cooperate to prepare the sites which would have eventually marketed and sold. In the past two years all of that money has dried up and priorities changed. The idea now is to salvage a workable site that current funding can prepare for sale. Those supporting and working towards getting a site ready say that both sites have merit and that funding for the US90 site is still possible in the foreseeable future, 3 to 4 years, but the US129 site can be done with the money that we have now. The commission came to the conclusion that it did not have enough information to make any decision and asked that staff put together something and bring the issue back to them in December.

LEE - When the Lee Town Council made the decision to go ahead with the wastewater project the lone dissenter on the council got so emotional that it led him to resign that night. At the this week's town council meeting Councilman Roger Parsons was sitting in his seat at the council table. He said that he was very upset that night but after cooling off and thinking about it I changed my mind. That decision after seeing things differently led Parsons to ask for his scrawled resignation note back so that he could continue to serve the town's residents. That was done around October 23. In other council business Tuesday night the decision to appoint residents to the newly created planning and zoning board and code enforcement board was postponed. The residents asked to serve on those boards as well as others who are interested in volunteering want some time to understand the requirements of the job. The decision is to be made by the council on who to appoint next month.

LIVE OAK - Foreclosures are clogging the state court system, so The Florida Supreme Court is recommending mandatory mediation between lenders and borrowers who have defaulted on their loans. State Senator Dave Aronberg is sponsoring similar legislation that would allow borrows to reduce their payments. But for homeowners who have lost their jobs and are out of cash, mediation would simply delay the inevitable. The Florida Bankers Association says mandatory mediation could bog down the courts even more. Bankers say borrowers should have a choice. The justices are

still considering an opt out option for borrowers who have given up on saving their property. Still hanging in limbo is the question of who will pay for the bulk of mediation which costs an estimated 750 dollars. Some say the lenders should foot the bill, others suggest a 50 – 50 split.

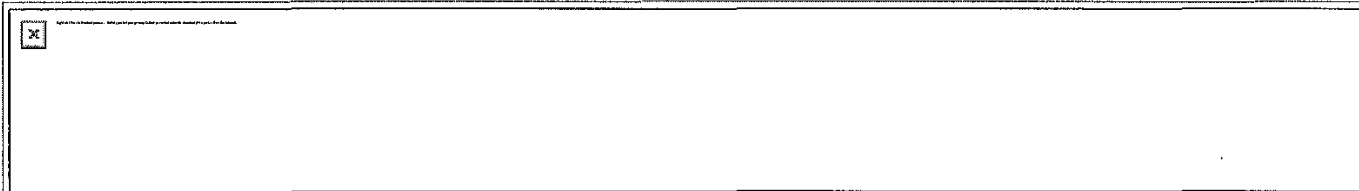
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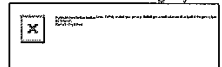
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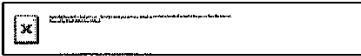
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Solution:

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3. Each motion includes a comprehensive citation of legal authorities.
4. Our motions can be used again and again for new clients.
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8. Researching effective arguments is time-consuming. We've done all the tedious, tiring, and time-consuming research at a fraction of the cost you would incur if you or a paralegal did the work instead.
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12. By attacking the legality of mortgage securitization, DCH's motions provide leverage to negotiate an alternative dispute resolution.
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To: Darren K. Jackson
Subject: The Florida Bar October 15th CLE Publication E-newsletter



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- Expanded coverage of planning for incapacity



- Updates to case law, statutes, and rules through 2008

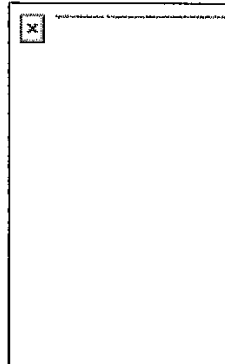
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FasTrain - Mortgage Foreclosure and Alternatives, Fifth Edition with CD-ROM

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This FasTrain (quick-training guide) explains procedures involved in handling payment defaults on mortgaged property. This FasTrain:

- guides you through an **evaluation of the facts** of the case.
- enables you to determine the **best action to pursue** against the debtor, be it a lawsuit on the note alone, acceptance of a deed in lieu, an agreement for payoff, an agreement for liquidation/forbearance, reinstatement of the loan, or foreclosure.
- discusses the **proper parties** to a foreclosure action and guides you through the **mandatory diligent search for those parties**. Outlines the necessary **steps required to file and complete a foreclosure action** including the need for a demand letter; drafting and filing a complaint; filing a notice of lis pendens; obtaining guardians when necessary; obtaining defaults and a final judgment; the judicial sale; and obtaining certificates, a deficiency judgment, and a writ of possession.
- instructs you on the proper **procedure to follow when the debtor has filed a petition in bankruptcy**.
- prepares you for **commonly encountered issues and challenges** to the foreclosure action and lists **cross-references** for further in-depth study of particular elements of the action.
- provides **47 forms** including letters, notices, pleadings, and orders needed to pursue alternative actions against the debtor and sets forth a **foreclosure worksheet** to ensure your timely and thorough progress. This new edition includes the latest Florida statutory and case law on foreclosure, and addresses provisions of the Servicemembers Civil Relief Act of 2003 regarding foreclosures against military personnel, as well as pertinent provisions of the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

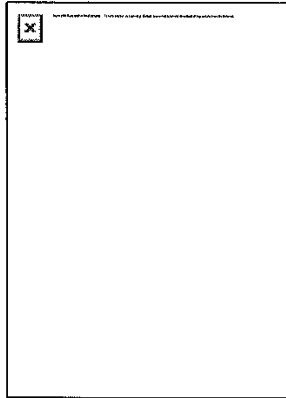


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Adoption, Paternity, and Other Florida Family Practice, Eighth Edition with CD-ROM

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Adoption, Paternity, And Other Florida Family Practice covers areas of marital and family law beyond dissolution of marriage, including adoption, paternity, rights and disabilities of minors, temporary custody proceedings, and change of name, and complements the other manuals in The Florida Bar's family law series. The new Eighth Edition updates all cases, statutes, and rules through May 2009 and provides new and expanded coverage of:



- judicial interpretations of F.S. 61.14(1)(b), regarding what constitutes a "supportive relationship" sufficient to modify or terminate an alimony award.
- case law holding F.S. 64.042(3) prohibiting adoption by homosexuals unconstitutional and providing that an adoption in another state must be recognized in Florida.
- surrender of a newborn infant under F.S. 383.50.
- incorporation of the 2008 amendments to F.S. Chapter 61 regarding parental responsibility, time-sharing, and parenting plans.
- impact of Hague Convention on Intercountry Adoption.

Forms are provided throughout the book and on the included CD-ROM, and the Eighth Edition features 15 new and amended forms concerning paternity, adoption, and change of name.



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From: Beverly Brown <BrownB@flcourts.org>
Sent: Friday, October 02, 2009 1:38 PM
To: Darren K. Jackson
Subject: Answers to the problems at today's videoconference
Attachments: PDFMailer.pdf

Attached are the answers to the problems that were discussed at today's Tenants' Rights in Foreclosures videoconference.

TENANTS IN FORECLOSURE

OCTOBER 2, 2009

CASE PROBLEMS FOR DISCUSSION WITH ANSWERS

1. Luckless Tenant signed a one year lease with Hapless Landlord for occupancy beginning on March 1, 2009. His rent for the 3-bedroom house was \$2000.00 per month. He paid first, last and security deposit totaling \$6000.00 at move-in on March 1. On May 10, 2009, he heard from his neighbor B.Z. Boddie that Landlord's property was in foreclosure for non-payment of the mortgage.

Luckless failed to pay his rent on June 1, July 1 or August 1. Hapless serves Luckless with a 3-day notice on August 5. When the rent alleged to be due is not paid, Hapless brings an eviction action for non-payment of rent. Luckless files an answer stating that he ceased paying rent because he believes that the property is in foreclosure. Luckless does not post any money in the court registry.

Result?

MY BEST GUESS:

A tenant is obligated to pay rent, and that obligation is not likely to be excused on just the suspicion of a pending foreclosure. Certainly, until, a court forecloses the landlord's interest in the property, the landlord is the owner and entitled to receive the rent. The court could order the tenant to post the disputed rent into the court registry in order to raise the defense of a pending foreclosure. Every contract in the state of Florida includes a covenant that the parties will perform in good faith. *Merin Hunter Codman, Inc. v. Wackenhut Corrections Corp.*, 941 So.2d 396 (Fla. App. 4th DCA 2006); *County of Brevard v. Miorelli Engineering Inc.*, 703 So.2d 1049 (Fla. 1997). Failure to pay the mortgage, thereby risking foreclosure, may constitute a breach of the landlord's duty to act in good faith and deal fairly

with the tenant implied (or stated) in the lease. Then, if the court finds that the landlord has breached, the court can order the monies disbursed in accordance with the court's findings of fact and its conclusion as to who is entitled to possession.

May a tenant raise the existence of a pending foreclosure to avoid the requirement that the disputed rent be posted in the court registry? In *Frey v. Livecchi*, 852 So.2d 896(Fl.App. 4th DCA 2003), the Court held that where a party alleges that no tenancy exists, but, rather, that the relationship between the parties is that of vendor-purchaser, the purported tenant was entitled to a hearing to determine the issue of fact of whether there was a landlord – tenant relationship prior to having to post the disputed amount of the rent in the court registry pursuant to F.S. 83.60(2). By analogy here, a tenant would argue that the landlord's prior breach by allowing the property to go into foreclosure, and thus the landlord's right or standing to bring the eviction action, should be determined in a hearing prior to imposing any obligation on the tenant to post. While standing is a question of law, there may be related questions of fact to bring the issue within the *Frey* rule (eg., has the landlord's interest in the property been foreclosed by a judgment even though there has not been a sale resulting in a new owner). A hearing could determine who the landlord/owner is, whether the Plaintiff is the correct party to bring the action, and, if so, the amount required to be posted, if any, to protect both the landlord's right to receive rent and the tenant's right to get the benefit of the advance rent/security deposit previously paid.

Under any circumstances, though, whenever there is a change in ownership of a rental property, the new owner/landlord becomes responsible for any advance rents/deposits previously paid by the tenants. F. S. 83.49(7). There is no reason why this should not be the case here as well. The requirements of chapter 83 as to advance rent and security deposits apply to landlords. Landlord is defined as the **lessor or owner** of the dwelling unit. F. S. 83.43(3). The real problem is the practical problem; will a tenant know how to begin to protect his right to the

advance rent/security deposit paid – say by giving the landlord a 7 day notice of intent to withhold rent – or is the tenant more likely to just stop paying rent in a self-help effort to recoup the benefit of monies previously advanced?

2. Knowledgeable Tenant learns that the building in which his apartment is located is in foreclosure and that Trump Properties, Inc., the landlord, is planning to let the bank take over the building. K.T. has his lawyer send the landlord a LAWYER'S LETTER, advising that K.T. is treating the lease as breached, and is withholding the rent for the remaining term of the lease. Six months remains on the lease at the time of the letter, however K.T. has paid the last month's rent in advance and posted a security deposit equal to one month's rent.

Is there an implied covenant of good faith in the lease? If so, has Trump Properties, Inc., breached that covenant by failing to pay its mortgage and letting the building go into foreclosure? If failing to pay a mortgage is a breach of the lease, can K. T. remain in possession for the six months duration of the lease without paying any rent? If not, does K.T. owe 6 months' rent, or something less? How much less?

MY BEST GUESS:

There is an implied covenant of good faith and fair dealing in every Florida contract, as noted above. I think it is not unreasonable to conclude that defaulting on the mortgage breaches that covenant. But I don't think that T can remain for six months without paying rent. T has paid the last month's rent in advance. He can use that month's rent and vacate or he can remain and let New Owner step into Trump's shoes (hair?) under 12 USCA 5220 and under F.S. Sec. 83.49(7) which provides that upon sale or transfer of title of a rental property, a security deposit or advance rent held for the benefit of a tenant SHALL be transferred to the new owner.

Security deposit is, of course, separate and apart from rent, and there is no entitlement to its return until the tenant has vacated. F.S. Sec. 83.49(3).

3. Satisfied Tenant has been renting Agreeable Landlord's beachfront condominium home for 10 years. The original one year lease has been renewed periodically, but the last one year renewal was in 2005. Since then the parties have orally agreed to increases in rent from time to time. S.T. is now paying \$3000.00 per month rent, but over the years he has made several capital improvements to the property with the permission of A.L. and, where necessary, the condo association.

This June both parties were sued by the condo association for A.L.'s failure to pay the monthly maintenance assessments. The suit seeks to foreclose a Claim of Lien in the amount of \$4218.00, plus late fees, interest, court costs and a reasonable attorney's fee. A final judgment of foreclosure is entered. At the foreclosure sale, the successful (and only) buyer was the condo association, who bought the property for \$100.00. With certificate of sale and title in hand, the association seeks a writ of possession so the Board president's daughter and son-in-law can rent the property.

Result?

What if Satisfied Tenant is the original owner/landlord's first cousin?

What if Satisfied stopped paying rent when he was served with foreclosure papers after giving the landlord a 7-day notice of his intent to withhold rent due to landlord's breach of the lease?

What if the court appointed a receiver to collect the rent for the benefit of the association, and S.T. still failed to pay rent? Can the association bring a chapter 83 eviction action? Or can they wait, purchase at the foreclosure sale, and then get an immediate writ of possession on

the ground that S.T. should not be considered a *bona fide* tenant entitled to the protections of 12 USCA 5220?

MY BEST GUESS:

No immediate writ of possession. 12 USCA 5220 gives S.T. the right to 90 days notice from the New Owner since S.T. has no current written lease. Doesn't matter if S.T. is A.L.'s 1st cousin; S.T. is a bona fide tenant since he is not the mortgagor, spouse, parent or child of the mortgagor and it appears to be an arm's length transaction for appropriate value.

As discussed above, I think S.T. can give A.L a 7-day notice. But, I don't think that if he fails to pay rent he then loses his status as a bona fide tenant who would be entitled to 90 days notice to vacate by the New Owner. If A.L. sues S.T. for non-payment of rent, prior to the foreclosure sale, same result as in Problem 1.

If a receiver was appointed to collect the rent and sues for non-payment prior to a foreclosure sale, I think the answer may be either: 1) the receiver/association can't bring an eviction action under ch. 83 because they aren't the landlord or owner, or 2) they step in the shoes of the landlord and so the answer would be the same as in Problem 1 because the receiver is not a New Owner under 12 USCA 5220. If the association waits until after the foreclosure sale and they are the New Owner, I think they still have to give 90 days notice.