

Copies to:

Smith, Hiatt & Diaz
P.O. Box 11438
Ft. Lauderdale, Florida 33339

Denis M. Weber
4302-202 Plaza Gate West S.
Jacksonville, Florida 32217
Defendant

IN THE CIRCUIT COURT
OF THE FOURTH JUDICIAL
CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NUMBER: . 2009-CA-5515
DIVISION: FC-A

AMERICAN HOME MORTGAGE SERVICING, INC.
Plaintiff,

Vs

RICHARD ALLEN SELF a/k/a RICHARD A. SELF
AND JANICE BOXX SELF a/k/a JANICE B. SELF, His Wife;
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
AS NOMINEE FOR AMERICAN BROKERS CONDUIT;
OLD PLANK PLANTATION OWNERS ASSOCIATION, INC.
RICHARD ALLEN SELF, et al.
Defendant,

ORDER VACATING WRIT OF POSSESSION

This cause came on for review after reviewing the file and speaking with Felicia Witherup, Senior Loan Consultant with Integrity Home Loan at 8130 Baymeadows Way West, Ste. 104, Jacksonville, Florida 32256, 904-493-8951. The Court finds the Current Tenant of the property, Sharmaine Levy, is not only a bone fide tenant of the property, but a bone fide prospective purchaser of the property, who has been pre-approved for purchase for the property. Her application for purchase has been submitted for approval to Fannie Mae and that all parties concerned are awaiting final approval and the Court having been informed by Felicia Witherup that the said tenant, Sharmaine Levy has made rent since inception, it is thereupon,

ORDERED:

1. The Writ of Possession ordered by this Court and issued by the Clerk dated July 28, 2010 be and is hereby Vacated and Set Aside.
2. The Jacksonville Sheriff's Office shall not execute the Writ of Possession until further order of the Court.
3. The tenant, Sharmaine Levy, without fail will set aside the full amount of all the monthly rent due in a separate account for the purpose of making a lump sum payment on all past due rents when ordered. In addition, if there are Home

Owner's Association dues that are payable, she shall continue to pay those dues as they become currently due (not those due in the past), beginning with the payment due for August, 2010.

DONE AND ORDERED in Chambers, at Jacksonville, Duval County, Florida, this ____ day of _____, 2010.

SENIOR CIRCUIT JUDGE

Copies to:

Shapiro & Fishman, LLP
10004 N. Dale Mabry Highway, Ste. 112
Tampa, Florida 33618

Richard Allen Self & Janice B. Self
483 Brockham Drive
Jacksonville, Florida 32221

Sharmaine Levy
412 Martin Lakes Drive, West
Jacksonville, Florida 32220

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2009-CA-7086-XXXX-MA
DIVISION: FC-G

U.S. BANK NATIONAL ASSOCIATION,
Plaintiff(s),

v.

ROBERT H. REEVES, JR.,
Defendant(s).

NOTICE OF RECORD INACTIVITY,
AND PROPOSED DISMISSAL OF ACTION

It appears from the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of at least 11 months; the Court has not issued an order staying the action; and the Court has not approved a stipulation for stay of the action. Rule 1.420(e), Fla. R. Civ. P.

ACCORDINGLY, it is **ORDERED** that, unless the Plaintiff shows good cause in **WRITING** within fifteen (15) days why the action should remain pending, the Court will dismiss this action without prejudice, and the court file will be closed as concluded. Please do not call my Judicial Assistant giving the status of the case. If the case has been dismissed please send a copy of the dismissal to my office.

DONE AND **ORDERED** in Chambers at Jacksonville, Duval County, Florida, this _____ day of _____, 2010.

SENIOR CIRCUIT JUDGE

Copies to:

Adam George, Esquire
900 South Pine Island Road, Ste. 400
Plantation, Florida 33324

Robert Reeves
3562 Lumberjack Circle South
Jacksonville, Florida 32223

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.
CASE NO.: 16-*CA-*XX
DIVISION: FC

*,

Plaintiff,

vs.

*,

Defendant(s).

**FINAL ORDER OF DISMISSAL
OF FORECLOSURE WITHOUT PREJUDICE**

This action came on for review by the Court on its own initiative, in furtherance of its obligation to reasonably expedite the processing of foreclosure cases to conclusion in the interests of all parties, and in furtherance of the Court's obligation to properly case manage the large volume of foreclosure actions being filed in the court system.

The Court is aware that there are many cases open and pending in which there is no available or interested party that would seek to dismiss the action for lack of prosecution, and furthermore, the Court has determined that there has been no record activity within the immediate past 12 months prior to the date hereof, and no stay hereof has been issued or approved by the Court, it is, thereupon,

ORDERED, that the Complaint for Foreclosure be dismissed without prejudice for lack of prosecution. If this Order has been entered through mistake and/or error, upon application and motion by an interested party, the same may be re-opened upon a showing of good cause, in writing, and within 45 days.

DONE AND ORDERED at _____, _____ County, Florida, this _____ day of _____, 2010.

CIRCUIT JUDGE

**IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
CLAY COUNTY, FLORIDA.
CASE NO.: 16-*-CA-*-XX
DIVISION: FC**

*,

Plaintiff,

vs.

*,

Defendant(s).

**FINAL ORDER OF DISMISSAL
OF FORECLOSURE WITHOUT PREJUDICE**

This action came on for review by the Court on its own initiative, in furtherance of its obligation to reasonably expedite the processing of foreclosure cases to conclusion in the interests of all parties, and in furtherance of the Court's obligation to properly case manage the large volume of foreclosure actions being filed in the court system.

The Court is aware that there are many cases open and pending in which there is no available or interested party that would seek to dismiss the action for lack of prosecution, and furthermore, the Court has determined that there has been no record activity within the immediate past 12 months prior to the date hereof, and no stay hereof has been issued or approved by the Court, it is, thereupon,

ORDERED, that this action be dismissed without prejudice for lack of prosecution. If this Order has been entered through mistake and/or error, upon application and motion by an interested party, the same may be re-opened upon a showing of good cause, in writing, and within 45 days.

DONE AND ORDERED at Green Cove Springs, Clay County, Florida, this ____ day of _____, 2010.

CIRCUIT JUDGE

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2003-CA-0792-XXXX-MA
DIVISION: CV-E

JESSICA APPLEY, et al.,
Plaintiff(s),

v.

STUART WEST, et al.,
Defendant(s).

**NOTICE OF RECORD INACTIVITY, HEARING,
AND PROPOSED DISMISSAL OF ACTION**

It appears from the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of at least ten (10) months; the Court has not issued an order staying the action; and the Court has not approved a stipulation for stay of the action. Rule 1.420(e), Fla. R. Civ. P.

ACCORDINGLY, it is **ORDERED** that, unless:

- (a) record activity occurs within 60 days of the date of the service of this notice, or
- (b) the Plaintiff shows good cause in **WRITING** why the action should remain pending at least five (5) days before the hearing on **NOVEMBER 26, 2008, at 2:00 P.M.**, in room 202 of the Duval County Courthouse, 330 E. Bay Street, Jacksonville, FL 32202, then the Court at the hearing will dismiss this action without prejudice, and the court file will be closed as concluded. Please **do not call** my Judicial Assistant requesting that this hearing be changed or giving the status of the case. If the case has been dismissed please send a copy of the dismissal to my office.

ORDERED on September 17, 2008, in Jacksonville, Florida.

BERNARD NACHMAN, Circuit Judge

Copies to:

Kenneth L. Bednar, Esquire
One East Broward Boulevard, Suite 1010
Ft. Lauderdale, FL 33301



CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT OF FLORIDA

A.C. SOUD, JR.
Senior Circuit Judge

Duval County Courthouse
Jacksonville, Florida 32202

August 4, 2010

TO: SHERIFF'S OFFICE CIVIL FORECLOSURE EVICTION DEPARTMENT
(KEITH)

FROM: SARA PAPPAS - JUDICIAL ASSISTANT TO FORECLOSURE DEPT.
SENIOR CIRCUIT JUDGE SOUD

DATE: AUGUST 4, 2010

PAGES: 1 INCLUDING COVER SHEET

RE: MOTION TO STAY WRIT OF POSSESSION
CASE # 2009-CA-13048
LONDA JOHNSON(TENANT)
5625 BRYNER DRIVE
JACKSONVILLE, FLORIDA 32244

The Judge Granted a Motion to Dissolve the Writ of Possession and the Attorney for David J. Stern P.A. is sending an Order to reflect that.

Sara Pappas
Administrative Secretary 1
Judicial Assistant to the foreclosure Dept.
330 E. Bay Street, Room 506
Jacksonville, Florida 32202
904-630-3792
DuvalFC@coj.net

Telephone: 904/ 630-3792 Facsimile: 904/ 630-2197 E-mail: DuvalFC@coj.net

4th Cir 00108



CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT OF FLORIDA

A.C. SOUD, JR.
Senior Circuit Judge

Duval County Courthouse
Jacksonville, Florida 32202

August 5, 2010

TO: SHERIFF'S OFFICE CIVIL FORECLOSURE EVICTION DEPARTMENT
(Sgt. McNeely or Sgt. Mann)

FROM: SARA PAPPAS - JUDICIAL ASSISTANT TO FORECLOSURE DEPT.
SENIOR CIRCUIT JUDGE SOUD

DATE: AUGUST 5, 2010

PAGES: 3 INCLUDING COVER SHEET

RE: ORDER VACATING WRIT OF POSSESSION
CASE # 2009-CA-5515
SHARMAINE LEVY (TENANT)
412 MARTIN LAKES DRIVE, WEST
JACKSONVILLE, FLORIDA 32220

The Judge Granted a Motion to Stay the Writ of Possession and I have prepared an Order Vacating Writ of Possession.

Sara Pappas
Administrative Secretary 1
Judicial Assistant to the foreclosure Dept.
330 E. Bay Street, Room 506
Jacksonville, Florida 32202
904-630-3792
DuvalFC@coj.net

Telephone: 904/ 630-3792 Facsimile: 904/ 630-2197 E-mail: DuvalFC@coj.net

4th Cir 00109



CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT OF FLORIDA

A.C. Soud, Jr.
Circuit Judge

Duval County Courthouse
Jacksonville, Florida 32202

MEMO

FROM: Senior Circuit Judge, A.C. Soud, Jr.
TO: Theodore S. Foreman, Esquire- U.S. Default law
RE: Final Judgment Package on case number 16-2010-CA-6391

Your complaint must be filed with the Clerk of Court and all matters regarding this Foreclosure must be presented to Local Counsel.

JUDICIAL CHAMBERS

Foreclosure Division
330 E. Bay Street, Room 506
Jacksonville, Florida 32202

MEMORANDUM

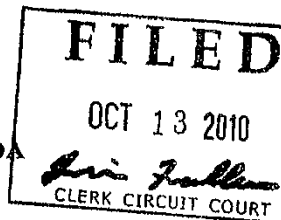
TO:

This ___ Motion, ___ Notice, ___ Final Judgment, and/or ___ Pleading is being returned for the following reason:

Sara Pappas
Case Manager / Judicial Assistant
Foreclosure Division

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL, CLAY AND NASSAU COUNTIES, FLORIDA

FIRST AMENDED ADMINISTRATIVE ORDER NO. 2010-1



**RE: RESIDENTIAL HOMESTEAD FORECLOSURE CASES
MANDATORY REFERRAL TO MEDIATION**

WHEREAS, it is in the best interest of the judiciary, the parties involved, the mediators, the Residential Mortgage Foreclosure Mediation (RMFM) Program Manager, and the citizens of the Fourth Judicial Circuit, to establish some reasonable time lines within which the Borrowers must respond to the Program Manager in order to report any intentions of proceeding with the mediation process;

WHEREAS, it has also become necessary to establish accountability for the Borrowers' failure to timely file the "Borrowers' Request to Participate in the RMFM Program," therefore delaying the program schedule so that it is unable to complete credit counseling and the exchange of financial documents with the Plaintiffs as required in order to schedule mediation within 120 days of the date the case is filed;

NOW THEREFORE, by the authority vested in me as the Chief Judge of the Fourth Judicial Circuit and pursuant to the Florida Rules of Judicial Administration, it is

ORDERED:

1. That upon filing a new case, plaintiffs in the Fourth Judicial Circuit shall send a completed Form "A" as revised, amended and attached hereto, and a check in the amount of \$400.00 to the Jacksonville Bar Association (hereinafter, the "Program Manager");
2. That within twenty (20) days from the date the Program Manager receives a completed Form A from the Plaintiffs, the Program Manager shall make a diligent, good faith attempt to contact the Borrower and will mail a Packet, including a letter explaining the Residential Mortgage Foreclosure Mediation (RMFM) Program to the Borrower, along with the Borrower's Request to Participate in RMFM Program form, the Borrower's Decline to Participate in RMFM Program form, and a Business Reply envelope for the Borrower's Response.
3. That from the date that the Program Manager mails the Packet to the Borrower, the Borrower shall have twenty-five (25) calendar days, excluding holidays (unless good cause is shown to the Court), within which to submit a response in writing to the Program Manager;

Instr #: 2010239712
BK: 16397 PAGES 391-396
RECORDED 10/13/2010 03:31
Clerk of Courts
Duval County Florida
ERecord -bellvi

3.a) in its response to the Program Manager, the Borrower may:

(i) submit the Borrower's Request to Participate in RMFM Program form to the Program Manager; or

(ii) submit the Borrower's Decline to Participate in RMFM Program form to the Program Manager.

b) in its response to the Program Manager, if the Borrower timely submits the Borrower's Request to Participate form to the Program Manager, then Mediation must be scheduled within the original one-hundred and twenty (120) days from the date the Program Manager received the completed Form A and the check from the Plaintiffs, unless the Plaintiff fails to timely comply with the financial documentation production requirements contained within Section 6 and 7 of the original Administrative Order No. 2010-1;

c) if the Borrower submits the Borrower's Decline to Participate in RMFM Program form to the Program Manager, fails to respond timely, or ignores the matter, the Program Manager shall file with the Court the Notice of Borrower Nonparticipation with RMFM Program no later than 60 days after the receipt of the completed Form A and check from the Plaintiffs.

4. That if, after submitting the Borrower's Request to Participate in RMFM Program form to the Program Manager, the Borrower then fails to comply with *any* of the requirements of the Mediation process, the Program Manager will forthwith terminate the Mediation process and file with the Court a Notice of Borrower's Nonparticipation;

5. That all of the original Administrative Order No. 2010-1 previously entered and requiring mediation for residential homestead mortgage foreclosure cases is only superseded where it is contrary and inconsistent to the terms provided above; otherwise, it remains in full force and effect; and

6. That this First Amended Administrative Order shall be recorded by the Clerk of the Court, in the Official Records of Duval County, in the State of Florida, and shall take effect immediately and remain in full force and effect unless and until otherwise ordered by the Court.

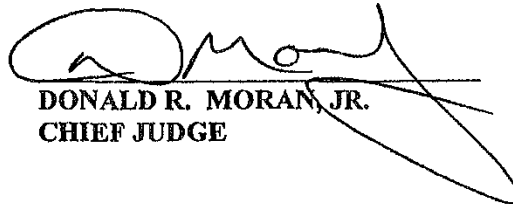
DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida,

this 13 day of Oct, 2010.

STATE OF FLORIDA
DUVAL COUNTY

I, THE UNDERSIGNED Clerk of the Circuit Court, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing to be a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit of Duval County, Florida.
WITNESS my hand and seal of Clerk of Circuit Court at Jacksonville, Florida, this the 13 day of Oct, A.D., 2010.

JIM FULLER
Clerk, Circuit and County Courts
Duval County, Florida.



DONALD R. MORAN, JR.
CHIEF JUDGE

cc: All Judges in the Fourth Circuit Court, in Duval County
The Honorable Robert M. Foster, Administrative Judge, Nassau County
The Honorable William A. Wilkes, Administrative Judge, Clay County
All Magistrates in the Fourth Circuit
The Honorable Jim Fuller, Clerk of the Circuit Court, Duval County
The Honorable James B. Jett, Clerk of the Circuit Court, Clay County
The Honorable John A. Crawford, Clerk of the Circuit Court, Nassau County
The Honorable Cindy A. Laquidara, General Counsel
The Jacksonville Bar Association, Program Manager
Mark Kessler, Esq.
James Kowalski, Esq.
Blane McCarthy, Esq.
Dennis Schutt, Esq, JAX Mediation Center
James Gardner, Fourth Judicial Circuit ADR Director
Joseph Stelma, Fourth Judicial Circuit Trial Court Administrator
Mia Heiney, Chief Deputy Court Administrator
Caroline C. Emery, Esq, Court Counsel
Fourth Circuit Court Law Library, Duval County
Judicial Staff Attorneys, Fourth Judicial Circuit
Michael Figgins, Esq., Director JALA

Please fill in and file the original with the Clerk of Court

IN THE CIRCUIT COURT IN AND FOR _____ COUNTY, FLORIDA

Case No.:

Plaintiff,

vs.

Defendant(s)

Form "A"

(Certifications Pursuant to Fourth Judicial Circuit Administrative Order 2010-1)

Certificate of Plaintiff's Counsel Regarding Origination of Note and Mortgage

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the origination of the note and mortgage sued upon in this action ___ WAS or ___ WAS NOT subject to the provisions of the federal Truth in Lending Act, Regulation Z.

Certificate of Plaintiff's Counsel Regarding Status of Residential Property

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the property that is the subject matter of this lawsuit ___ IS or ___ IS NOT a homestead residence. A "homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

If the residential property is a homestead residence, complete both of the following:

Certificate of Plaintiff's Counsel Regarding Pre-Suit Mediation

The following certification ___ DOES or ___ DOES NOT apply to this case: THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies that prior to filing suit a plaintiff's representative with full settlement authority attended and participated in mediation with the borrower, conducted by The Jacksonville Bar Association Fourth Judicial Circuit Residential Mortgage Foreclosure Mediation Program and the mediation resulted in an impasse or a pre-suit settlement agreement was reached but the settlement agreement has been breached. The undersigned further certifies that prior to mediation the borrower received services from a HUD or NFMCA approved foreclosure counselor, Borrower's Financial Disclosure for Mediation was provided, and Plaintiff's Disclosure for Mediation was provided.

Certificate of Plaintiff's Counsel Regarding Plaintiff's Representative at Mediation

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the following is a list of the persons, one of whom will represent the plaintiff in mediation with full authority to modify the existing loan and mortgage and to settle the foreclosure case, and with authority to sign a settlement agreement on behalf of the plaintiff (*list name, address, phone number, facsimile number, and email address*):

Plaintiff's counsel understands the mediator or the RFM Program Manager may report to the court who appears at mediation and, if at least one of plaintiff's representatives named above does not appear at mediation, sanctions may be imposed by the court for failure to appear. As required by the Administrative Order, plaintiff's counsel will transmit electronically to the RFM Program Manager the case number of this action, the contact information regarding the parties, and a copy of this Form A, using the approved web-enable information platform.

Certificate of Borrower's Last Known Address and Occupancy

Borrower Name: _____
Last Known Mailing Address: _____

Home Phone Number: _____
Work Phone Number: _____
Alternate Phone Number: _____
Email Address: _____

An answer of "unknown," "not sure,"
"not applicable," or other like response
will not be accepted.

Is this residence occupied by the borrower? Yes No

Borrower's Attorney (if applicable): _____
Firm Name: _____
Address: _____

Phone Number: _____

If certified property is homestead, please make check payable to The Jacksonville Bar Association--RMFMP in the amount of \$400.00

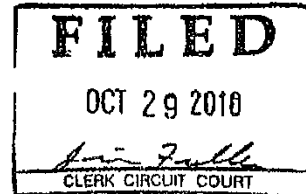
Date:

(Signature of Plaintiff's Counsel)
[Printed name, address, phone number and
Fla. Bar No.]

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 2010-7

RE: JUDICIAL SALES FEE IN ALL FORECLOSURE CASES



WHEREAS, in foreclosure actions, the Office of the Clerk for Duval County has been experiencing substantial difficulty in collecting the judicial sales fees for conducting public sales once final judgments have been entered;

WHEREAS, after final judgment, the plaintiff in a foreclosure action, which is typically the lending institution, more often than not, ultimately purchases the property at the judicial sale;

WHEREAS, it has become necessary to restructure the payment procedures so that the Office of the Clerk can be assured of payment by requiring payment when suit is initially filed;

NOW THEREFORE, by the authority vested in me as the Chief Judge of the Fourth Judicial Circuit and pursuant to the Florida Rules of Judicial Administration, it is

ORDERED:

1. That beginning December 1, 2010, the plaintiff in each and every foreclosure action will be required to pay seventy dollars (\$70.00) to the Clerk of Court for Duval County at the time of filing the complaint, as a service charge pursuant to § 45.035(1), Florida Statutes, "for services in making, recording, and certifying the sale and title" which "shall be advanced by the plaintiff before the sale." This seventy dollars (\$70.00) service charge may be refunded to the plaintiff if - and only if - the case is dismissed prior to the judicial sale.

2. That beginning December 1, 2010, the plaintiff in each and every foreclosure action will be required to pay an additional seventy dollars (\$70.00) to the Clerk of Court for Duval County at the time of filing the complaint, pursuant to § 45.035(3), Florida Statutes, for services in conducting the public sale, which is by electronic means. Such costs are statutorily required to be paid by the "winning bidder." Therefore, if the winning bidder at the judicial sale is ultimately not the plaintiff, but instead, is a third party purchaser, the Clerk shall refund the seventy dollars (\$70.00) to the plaintiff within thirty (30) calendar days of the sale.

Instr #: 2010253241
BK: 15412 PAGES 2143-2145
RECORDED 10/29/2010 08:52
Clerk of Courts
Duval County Florida
ERecord -bellvi

3. That, unless objections to the public sale are filed with the Court within ten (10) days after filing the certificate of sale pursuant to § 45.031(5), Florida Statutes, the party to whom the certificate of title is issued shall pay the required documentary stamp fees no later than fifteen (15) calendar days from the date the certificate of sale is filed.

4. That beginning December 1, 2010, if a foreclosure sale is incomplete, and the successful third party bidder does not follow through with paying the balance of bid price in full, the 5 % deposit, which the third party bidder has as a credit with the Clerk of Court, shall be forfeited to the Clerk of Court subject to partial distribution to the plaintiff upon application in accordance with Florida law. The plaintiff will be required to file a motion to reschedule the foreclosure sale and simultaneously pay to the Clerk of Court for Duval County: (a) a filing fee in the amount of fifty dollars (\$50.00) for reopening the action, as authorized by § 28.241, Florida Statutes; (b) an additional seventy dollars (\$70.00) service charge pursuant to § 45.035(1), Florida Statutes, "for services in making, recording, and certifying the sale and title" to be refunded to the plaintiff if the case is voluntarily dismissed; and (c) an additional seventy dollars (\$70.00) for services in conducting an electronic public sale pursuant to § 45.035(3), Florida Statutes, to be refunded to the plaintiff within thirty (30) calendar days of the public sale if the "winning bidder" at the judicial sale is ultimately a third party purchaser.

5. That this Administrative Order shall be recorded by the Clerk of the Court, in the Official Records of Duval County, in the State of Florida, and shall take effect on December 1, 2010 and remain in full force and effect unless and until otherwise ordered by this Court.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 27 day of Oct, 2010.


DONALD R. MORAN, JR.
CHIEF JUDGE

STATE OF FLORIDA
DUVAL COUNTY

I, THE UNDERSIGNED Clerk of the Circuit Court, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit Court of Duval County, Florida.

WITNESS my hand and seal of Clerk of Circuit Court at Jacksonville, Florida, this the 29 day of Oct, A.D. 2010.

JIM FULLER
Clerk, Circuit and County Courts
Duval County, Florida.
By Valerie L. Bell
Deputy Clerk

cc: All Judges in the Fourth Circuit Court, in Duval County
The Honorable Robert M. Foster, Administrative Judge, Nassau County
The Honorable William A. Wilkes, Administrative Judge, Clay County
All Magistrates in the Fourth Circuit
The Honorable Jim Fuller, Clerk of the Circuit Court, Duval County
The Honorable James B. Jett, Clerk of the Circuit Court, Clay County
The Honorable John A. Crawford, Clerk of the Circuit Court, Nassau County
The Honorable Cindy A. Laquidara, General Counsel
The Jacksonville Bar Association, Program Manager
Mark Kessler, Esq.
James Kowalski, Esq.
Blane McCarthy, Esq.
Dennis Schutt, Esq, JAX Mediation Center
James Gardner, Fourth Judicial Circuit ADR Director
Joseph Stelma, Fourth Judicial Circuit Trial Court Administrator
Mia Heiney, Chief Deputy Court Administrator
Caroline C. Emery, Esq. Court Counsel
Fourth Circuit Court Law Library, Duval County
Judicial Staff Attorneys, Fourth Judicial Circuit
Michael Figgins, Esq., Director JALA

Emery, Caroline

From: Elaine Coats [escoats@nassauclerk.com]
Sent: Monday, October 25, 2010 10:00 AM
To: Emery, Caroline
Subject: RE: DRAFT of Admin. Order working on with Judge SOUD

We are reviewing and discussing the order. We are starting our electronic sales January 17th, 2011, so our date would be different.

Sherry said Judge Foster is also reviewing it today

Elaine Coats
Chief Deputy of Courts
Nassau County Clerk of Courts Office
76347 Veteran's Way
Yulee, Florida 32097
(904) 548-4507
escoats@nassauclerk.com

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, please do not send electronic mail to this entity. Instead, please contact this office by phone or in writing.

From: Emery, Caroline [mailto:CEmery@coj.net]
Sent: Friday, October 22, 2010 4:22 PM
To: Elaine Coats
Subject: RE: DRAFT of Admin. Order working on with Judge SOUD

Elaine -
I'll cut and paste here so you can read it now instead of waiting for IT. You'll have to try to ignore the strange spacing.

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,

IN AND FOR DUVAL COUNTY, FLORIDA

DRAFT- October 22, 2010

ADMINISTRATIVE ORDER NO. 2010-7

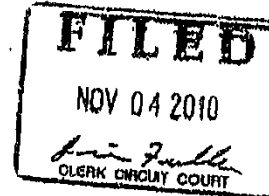
0/25/2010

4th Cir 00120

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR CLAY COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 2010-8

RE: JUDICIAL SALES FEE IN ALL FORECLOSURE CASES



WHEREAS, in foreclosure actions, the Office of the Clerk for Clay County has been experiencing substantial difficulty in collecting the judicial sales fees for conducting public sales once final judgments have been entered;

WHEREAS, after final judgment, the plaintiff in a foreclosure action, which is typically the lending institution, more often than not, ultimately purchases the property at the judicial sale;

WHEREAS, it has become necessary to restructure the payment procedures so that the Office of the Clerk can be assured of payment by requiring payment when suit is initially filed;

NOW THEREFORE, by the authority vested in me as the Chief Judge of the Fourth Judicial Circuit and pursuant to the Florida Rules of Judicial Administration, it is

ORDERED:

1. That beginning December 1, 2010, the plaintiff in each and every foreclosure action will be required to pay seventy dollars (\$70.00) to the Clerk of Court for Clay County at the time of filing the complaint, as a service charge pursuant to § 45.035(1), Florida Statutes, "for services in making, recording, and certifying the sale and title" which "shall be advanced by the plaintiff before the sale." This seventy dollars (\$70.00) service charge may be refunded to the plaintiff if - and only if - the case is voluntarily dismissed prior to the judicial sale.

2. That, should Clay County implement electronic foreclosure sales in the future, then at that time, plaintiffs in each and every foreclosure action will be required to pay an additional seventy dollars (\$70.00) to the Clerk of Court for Clay County when filing the complaint, pursuant to § 45.035(3), Florida Statutes, for services in conducting the public sale by electronic means. Such electronic sales costs are statutorily required to be paid by the "winning bidder." Therefore, in the event the winning bidder at the electronic judicial sale is ultimately not the plaintiff, but instead, is a third party purchaser, the Clerk will refund the seventy dollars (\$70.00) to the plaintiff within thirty (30) calendar days of the sale.

Instr #: 2010258329
BK: 15419 PAGES 2000-2002
RECORDED 11/04/2010 03:20
Clerk of Courts
Duval County Florida
ERecord -bellvi

3. That, unless objections to the public sale are filed with the Court within ten (10) days after filing the certificate of sale pursuant to § 45.031(5), Florida Statutes, the party to whom the certificate of title is issued shall pay the required documentary stamp fees no later than fifteen (15) calendar days from the date the certificate of sale is filed.

4. That beginning December 1, 2010, if a foreclosure sale is incomplete, and the successful third party bidder does not follow through with paying the balance of bid price in full, the 5 % deposit, which the third party bidder has as a credit with the Clerk of Court, shall be forfeited to the Clerk of Court subject to partial distribution to the plaintiff upon application in accordance with Florida law. The plaintiff will be required to file a motion to reschedule the foreclosure sale and simultaneously pay to the Clerk of Court for Clay County: (a) a filing fee in the amount of fifty dollars (\$50.00) for reopening the action, as authorized by § 28.241, Florida Statutes; (b) an additional seventy dollars (\$70.00) service charge pursuant to § 45.035(1), Florida Statutes, "for services in making, recording, and certifying the sale and title" to be refunded to the plaintiff if the case is voluntarily dismissed; and (c) if, and only if, Clay County implements public sales electronically, then plaintiffs will also have to pay an additional seventy dollars (\$70.00) for services in conducting an electronic public sale pursuant to § 45.035(3), Florida Statutes, to be refunded to the plaintiffs within thirty (30) calendar days of the public sale if the "winning bidder" at the electronic judicial sale is ultimately a third party purchaser.

5. That this Administrative Order shall be recorded by the Clerk of the Court in the Official Records of Duval County, in the State of Florida, and shall take effect on December 1, 2010 and remain in full force and effect unless and until otherwise ordered by this Court.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this

7 day of Nov, 2010.

STATE OF FLORIDA
DUVAL COUNTY

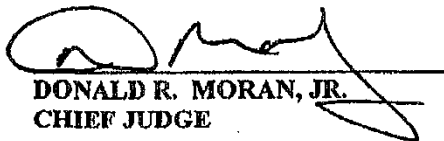
I, THE UNDERSIGNED Clerk of the Circuit Court, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit Court of Duval County, Florida.

WITNESS my hand and seal of Clerk of Circuit Court at Jacksonville, Florida, this the 7 day of Nov, A.D. 2010.

JIM FULLER

Clerk, Circuit and County Courts
Duval County, Florida.

By Valerie Bell
Deputy Clerk


DONALD R. MORAN, JR.
CHIEF JUDGE

cc: All Judges in the Fourth Judicial Circuit
The Honorable Robert M. Foster, Administrative Judge, Nassau County
The Honorable William A. Wilkes, Administrative Judge, Clay County
All Magistrates in the Fourth Circuit
The Honorable Jim Fuller, Clerk of the Circuit Court, Duval County
The Honorable James B. Jett, Clerk of the Circuit Court, Clay County
The Honorable John A. Crawford, Clerk of the Circuit Court, Nassau County
The Honorable Cindy A. Laquidara, General Counsel
The Jacksonville Bar Association, Program Manager
Mark Kessler, Esq.
James Kowalski, Esq.
Blane McCarthy, Esq.
Dennis Schutt, Esq, JAX Mediation Center
James Gardner, Fourth Judicial Circuit ADR Director
Joseph Stelma, Fourth Judicial Circuit Trial Court Administrator
Mia Heiney, Chief Deputy Court Administrator
Caroline C. Emery, Esq. Court Counsel
Fourth Circuit Court Law Library, Duval County
Judicial Staff Attorneys, Fourth Judicial Circuit
Michael Figgins, Esq., Director JALA

MEMO

To: Jim Bailey, Jr., "Financial News & Daily Record"
Office of the Clerk, Duval County
The Honorable A.C. Soud, Jr., Foreclosure Division

From: Chief Judge Donald R. Moran, Jr.



Date: December 22, 2010

Re: Notice of Publication of Foreclosure Sales

Once Summary Final Judgment of Foreclosure has been entered setting forth the sale date to be conducted by the Clerk on the foreclosed property, the Clerk of Court is responsible for sending the Notice of Publication to the "Financial News & Daily Record." It has come to the Court's attention that, without notice to the Court or to the Clerk, plaintiffs' law firms have taken it upon themselves to unilaterally communicate with the "Financial News & Daily Record" to void the Notice of Publication, thereby cancelling the publication.

Sale dates are set by Court Orders, and, therefore, can only be changed by Court Order. Effective immediately, the "Financial News & Daily Record" shall not cancel any Notice of Publication without a Court Order or specific authorization and shall proceed as directed by the Court and Clerk of Court. Anyone requesting the "Financial News & Daily Record" to cancel a Notice of Publication must be notified of this directive.

SENIOR JUDGE'S PHONE LIST

A.C. Soud, Jr.

904- [REDACTED]

Aaron K. Bowden

904- [REDACTED]

Charles O. Mitchell

904- [REDACTED]

Michael Weatherby

904- [REDACTED]

Frederic Buttner

904- [REDACTED]

Bob Williams

904- [REDACTED]

DUVAL COUNTY CLERK

Betty Brown-904-630-7295

Sara Pappas (scheduling Judicial Assistant)

[REDACTED]
904-630-3792

NASSAU COUNTY CLERK

Elaine Coats-904-548-4507

Agnes Prelow (Judicial Assistant to Judge Brian Davis(Scheduling Assistant))- 904-491-7275

Sherry Colson (Judicial Assistant to Judge Robert Foster)-904-548-4910

CLAY COUNTY CLERK

Amie Herrera-904-269-6363

Samantha Juneau (Judicial Assistant to Judge John H. Skinner(Scheduling Assistant))-904-269-6323

SENIOR JUDGE'S SCHEDULE

NASSAU COUNTY

Week of:	July 6, 2010	Judge Williams
	July 12, 2010	Judge Bowden
	July 19, 2010	Judge Soud
	July 26, 2010	Judge Williams
Week of:	August 2, 2010	Judge Williams
	August 9, 2010	Judge Williams
	August 16, 2010	Judge Weatherby
	August 23, 2010	Judge Soud
	August 30, 2010	Judge Williams
Week of:	September 7, 2010	Judge Williams
	September 13, 2010	Judge Williams
	September 20, 2010	Judge Bowden
	September 27, 2010	Judge Weatherby
Week of:	October 4, 2010	Judge Williams
	October 11, 2010	Judge Soud
	October 18, 2010	Judge Williams
	October 25, 2010	Judge Bowden
Week of:	November 1, 2010	Judge Williams
	November 8, 2010	Judge Williams
	November 15, 2010	Judge Williams
	November 22, 2010	Judge Bowden
	November 29, 2010	Judge Soud
Week of:	December 6, 2010	Judge Williams
	December 13, 2010	Judge Williams

Judge Aaron Bowden: [REDACTED] 904-[REDACTED]
Judge Frederick Buttner: [REDACTED]; 904-[REDACTED]
Judge Charles Mitchell: 904-[REDACTED]
Judge A.C. Soud: [REDACTED] 904-[REDACTED]
Judge Michael Weatherby: [REDACTED]; 904-[REDACTED]
Judge Bob Williams: [REDACTED]; 904-[REDACTED]

* This is the schedule for the Senior Judges for the Foreclosure Division. As we go a long , there will be swapping of days for a variety of reasons. So while this is pretty firm, it is not set in concrete, but should be used as a guide.

SENIOR JUDGE'S SCHEDULE

DUVAL COUNTY

Week of:	July 6, 2010	Judge Soud
	July 12, 2010	Judge Bowden
	July 19, 2010	Judge Bowden
	July 26, 2010	Judge Moran(Circuit Judges Conference) (Judge Soud 29th)
Week of:	August 2, 2010	Judge Soud
	August 9, 2010	Judge Bowden
	August 16, 2010	Judge Mitchell
	August 23, 2010	Judge Weatherby
	August 30, 2010	Judge Mitchell (Soud Sept. 1 & 2)
Week of:	September 7, 2010	Judge Mitchell
	September 13, 2010	Judge Mitchell
	September 20, 2010	Judge Weatherby
	September 27, 2010	Judge Soud
Week of:	October 4, 2010	Judge Bowden
	October 11, 2010	Judge Mitchell
	October 18, 2010	Judge Mitchell
	October 25, 2010	Judge Soud
Week of:	November 1, 2010	Judge Bowden
	November 8, 2010	Judge Mitchell
	November 15, 2010	Judge Weatherby
	November 22, 2010	Judge Soud
	November 29, 2010	Judge Bowden
Week of:	December 6, 2010	Judge Mitchell
	December 13, 2010	Judge Weatherby

Judge Aaron Bowden: [REDACTED] 904-[REDACTED]
Judge Frederic Buttner: [REDACTED]; 904-[REDACTED]
Judge Charles Mitchell: 904-[REDACTED]
Judge A.C. Soud: [REDACTED]; 904-[REDACTED]
Judge Michael Weatherby: [REDACTED] 904-[REDACTED]
Judge Bob Williams: [REDACTED] 904-[REDACTED]

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SENIOR JUDGE'S SCHEDULE

CLAY COUNTY

Week of:	July 6, 2010	Judge Buttner
	July 12, 2010	Judge Soud
	July 19, 2010	Judge Buttner
	July 26, 2010	Judge TBA(Circuit Judges Conference)
Week of:	August 2, 2010	Judge Bowden
	August 9, 2010	Judge Mitchell
	August 16, 2010	Judge Buttner
	August 23, 2010	Judge Buttner
	August 30, 2010	Judge Weatherby
Week of:	September 7, 2010	Judge Butter
	September 13, 2010	Judge Buttner
	September 20, 2010	Judge Buttner
	September 27, 2010	Judge Buttner
Week of:	October 4, 2010	Judge Buttner
	October 11, 2010	Judge Bowden
	October 18, 2010	Judge Soud
	October 25, 2010	Judge Mitchell
Week of:	November 1, 2010	Judge Buttner
	November 8, 2010	Judge Weatherby
	November 15, 2010	Judge Buttner
	November 22, 2010	Judge Mitchell
	November 29, 2010	Judge Buttner
Week of:	December 6, 2010	Judge Weatherby
	December 13, 2010	Judge Soud

Judge Aaron Bowden: [REDACTED]; 904-[REDACTED]
Judge Frederick Buttner: [REDACTED]; 904-[REDACTED]
Judge Charles Mitchell: 904-[REDACTED]
Judge A.C. Soud: [REDACTED]; 904-[REDACTED]
Judge Michael Weatherby: [REDACTED]; 904-[REDACTED]
Judge Bob Williams: [REDACTED]; 904-[REDACTED]

* This is the schedule for the Senior Judges for the Foreclosure Division. As we go a long , there will be swapping of days for a variety of reasons. So while this is pretty firm, it is not set in concrete, but should be used as a guide.

**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

'or
ma w/right
to enforce

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. 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 is 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 alleged with particularity. *Siahpoosh v. Nor Props.*, 666 So. 2d 988, 989 (Fla. 4th DCA 1996).

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

(j) Legal description of the subject real property.

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

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

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

Original Document Filing and Reestablishment of the Note

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

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

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

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

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

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

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

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

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

(1) Checklist for lost note affidavit:

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

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

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

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

Fair Debt Collection Practices Act (FDCPA)

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

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

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

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

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

Mandatory Mediation of Homestead Foreclosures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Service of Process

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

Personal Service

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

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

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

2. Substitute service authorized by Section 48.031 (2), Fla. Stat. (2010).

Substitute service may be made upon the spouse of a person to be served, if the cause of action is not an adversary proceeding between the spouse and the person to be served, and if the spouse resides with the person to be served.

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

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

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

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

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

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

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

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

Constructive Service by Publication

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

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

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

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

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

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

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

§49.10(1)(c)(2), Fla. Stat. (2010).

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

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