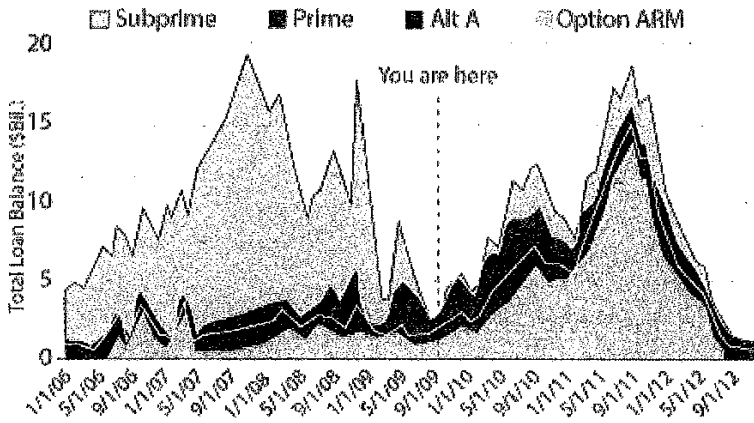


The Second Wave

Subprime resets crushed the housing market in '07 and '08. Now a new wave of adjustable rate mortgage resets is just around the corner.



Source: I2 Partners

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Florida Press Association
336 E. College Avenue, Suite 203
Tallahassee, FL 32301
(850) 521-1199
Fax (850) 577-3629

Chief Judge Donald R. Moran
Fourth Judicial Circuit of the State of Florida
330 E. Bay Street
Jacksonville, Florida 32202

RECEIVED NOV 15 2010

November 12, 2010

Dear Chief Judge Moran,

We write to express our concern that the right to open access to judicial proceedings is not being fully protected in the Duval County foreclosure division. It has recently come to our attention that Senior Judge Soud has severely curtailed public access to foreclosure proceedings, including access by members of the media. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have received a number of reports, however, suggesting that members of the public and press who attempt to observe foreclosure proceedings in Duval County encounter unjustifiable hurdles. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

This practice of exclusion recently crystallized into an explicit statement of policy by Senior Judge Soud. On October 26, an attorney from Jacksonville Area Legal Aid accompanied a reporter from Rolling Stone Magazine to observe proceedings held in Judge Soud's chambers. Neither the attorney nor the reporter did anything to disrupt the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard and who had left the room. Later that day, Judge Soud sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while "attorneys are welcome in Chambers at their leisure," members of the media are "permitted" entry only upon "proper request to the security officer." He further informed the attorney that she "did not have authority to take anyone back to chambers without proper screening," and stated that her "apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview" may be "sited [sic] for possible contempt charges in the future."

Judge Soud's stated policy is irreconcilable with the extensive body of case law that has made Florida a model for open government. He has stated that members of the media may observe foreclosure proceedings only after making a "proper request" and that lawyers who facilitate access by the press may face contempt charges based on a reporter's non-disruptive interview and observation of judicial proceedings. But the Florida Supreme Court has held that "both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Adm'n. 2.420

closed that *Barron* precludes a situation where access is contingent on court approval; reversing the presumption of openness is tantamount to exclusion. Judge Soud has failed to engage in the rigorous analysis necessary to establish the prerequisites for court closure.

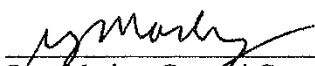
We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.

As the Florida Supreme Court has noted, the press plays an indispensable role in maintaining “the judicial system’s credibility in a free society.” *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the specific permission of the presiding judge to observe important judicial proceedings.


It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.¹

Accordingly, we urge you to take corrective action to ensure citizen and press access as required by Florida law. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action setting forth clear procedures governing public access to foreclosure proceedings in the Fourth Judicial Circuit.² Those procedures should ensure that both the public and media can observe proceedings subject only to ordinary security measures.

We thank you for your attention to this important matter.



Sam Morley, General Counsel
The Florida Press Association



Talbot D'Alemberte, Bar No. 0017529
The Florida Press Association

¹ The incident described in this letter occurred on October 26th. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29th.

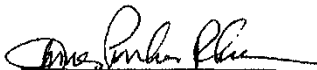
² Although the incident described herein is particularly disturbing, barriers to public access to foreclosure proceedings have been reported statewide, and for that reason we have also sent a letter to Chief Justice Canady requesting that he take action to ensure open access to foreclosure proceedings across the state.



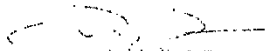
Larry Schwartzol, Staff Attorney
The American Civil Liberties Union



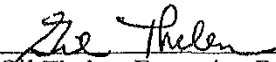
Randall Marshall, Legal Director
The American Civil Liberties Union of Florida



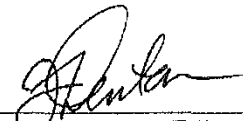
James Parker Rhea, Director & General Counsel
The First Amendment Foundation



C. Patrick Roberts, President & CEO
Florida Association of Broadcasters



Gil Thelen, Executive Director
The Florida Society of Newspaper Editors



James Denton, Editor
The Florida Times-Union

MEMO

To: All Judges in the Fourth Judicial Circuit

From: Chief Judge Donald R. Moran, Jr. 

Date: November 16, 2010

Re: Foreclosure Cases - Courtroom Assignment

Traditionally, foreclosure proceedings have been handled in chambers in order to minimize any embarrassment for the home owners. However, extensive national media coverage of the foreclosures in recent history has generated substantial interest in these cases. After discussion with Judge A.C. Soud, we recognize that, due to the increased interest, chambers can no longer accommodate the lawyers, the parties, the media, and the public.

At the request of Judge Soud and in recognition of the media interest, we will be moving the proceedings from chambers to Courtroom 59 on the Fifth floor and provide a Bailiff beginning Monday, November 22, 2010 in order to make the proceedings more secure and accessible to all interested persons.



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY L. POLSTON
JORGE LABARGA
JAMES E.C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts

FROM: Chief Justice Charles T. Canady *CTC*

DATE: November 17, 2010

SUBJECT: Mortgage Foreclosure Proceedings

Enclosed for your review and action is a letter dated November 12, 2010, that I received from the Florida Press Association and other organizations. The letter alleges that in some instances, members of the public and/or press either have been advised that they cannot attend mortgage foreclosure proceedings or have been prevented from attending such proceedings.

As the chief administrative officer of the Florida judicial branch, I am directing all chief judges to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public.

I also ask that you communicate with all judges and court staff in your circuit to remind them of the relevant provisions relating to open court proceedings. It is important for you to communicate with the clerks of court and bailiffs within your circuit as well to ensure that those offices provide any visitors

Chief Judges of the Circuit Courts
November 17, 2010
Page Two

or callers with the correct information about attendance at mortgage foreclosure or other court proceedings.

I would also like to take this opportunity to clarify the Supreme Court's understanding of the goals of the Foreclosure and Economic Recovery Funding Initiative, which was partially funded by the Legislature during the 2010 Legislative Session. I have reviewed Judge John Laurent's memorandum of October 28, 2010, a copy of which is attached and incorporated herein by reference. I agree with his description of the 62-percent goal established by the Trial Court Budget Commission as a means to help measure the court system's progress in the initiative and to document how the appropriation for the foreclosure initiative is being spent. There is no reason why the 62-percent goal should interfere with a judge's ability to adjudicate each case fairly on its merits. Each case must be adjudicated in accordance with the law.

Thank you for your ongoing efforts to appropriately administer and resolve the avalanche of mortgage foreclosure cases that have been overwhelming the court system during the past few years. I recognize that the challenge you face in assuring that these cases are resolved properly is unprecedented. I am confident that with the cooperation of all judges and court staff—along with the tools of the revised rules of court procedure, implementation of the managed mediation program, and the influx of court resources through the Foreclosure and Economic Recovery Funding Initiative—the Florida courts will be able to meet this challenge in a manner that protects and preserves the rights of all parties as well as interested observers.

CTC/LG/dgh

Enclosures

cc: Trial Court Administrators



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY POLSTON
JORGE LABARGA
JAMES E. C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

November 17, 2010

Mr. Sam Morley
General Counsel
The Florida Press Association
336 East College Avenue, Suite 203
Tallahassee, Florida 32301

Mr. Talbot D'Alemberte
Mr. Larry Schwartztol
Mr. Randall Marshall
Mr. James Parker Rhea
Mr. C. Patrick Roberts
Mr. Gil Thelen
Mr. James Denton

Gentlemen:

Thank you for your letter of November 12, 2010, regarding public access to Florida foreclosure proceedings. As you know, judicial ethics rules prohibit me from intervening in actual legal disputes pending or likely to be filed in lower courts, including the possible future litigation you mentioned with regard to an incident in Duval County.

But Canon 3C(3) of the Florida Code of Judicial Conduct expressly says that "[a] judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure . . . the proper performance of their other judicial responsibilities." Under the Florida Constitution, article V, section 2(b), I

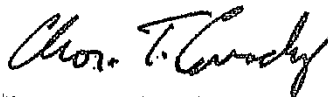
Mr. Sam Morley, et al.
November 17, 2010
Page Two

am the chief administrative officer of the state courts system. I write you solely in that capacity.

The courts of Florida belong to the people of Florida. The people of Florida are entitled to know what takes place in the courts of this state. No crisis justifies the administrative suspension of the strong legal presumption that state court proceedings are open to the public.

Today I have sent to the chief judges of Florida's twenty judicial circuits a supervisory memorandum—a copy of which is enclosed—setting forth my administrative directive on this matter. Under that directive, the chief judges shall ensure that the judges they supervise and the staff who report to those judges, as well as bailiffs and employees of the clerks of court, are not violating the rights of Floridians by improperly closing judicial proceedings to the public. The chief judges shall promptly exercise their administrative and supervisory authority to countermand closures or impediments to access that are inconsistent with Florida law.

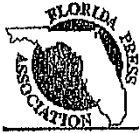
Sincerely,



Charles T. Canady

CTC/ps

Enclosure



Florida Press Association
336 E. College Avenue, Suite 203
Tallahassee, FL 32301
(860) 521-1199
Fax (860) 577-3629

Chief Justice Charles T. Canady
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

November 12, 2010

Dear Chief Justice Canady,

We write to express our concern that the right to open access to judicial proceedings is being unduly impeded in foreclosure proceedings around the state. Our organizations have received numerous reports that extraordinary barriers to access are preventing members of the general public, as well as representatives of the news media, from observing foreclosure proceedings in judicial circuits around the state. We believe these barriers undercut the transparency of the judicial process; they also violate the strong presumption of open access to judicial proceedings under Florida law. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

The reports we have received come from all around the state, and although the precise nature of the barriers to access varies, a troubling pattern emerges: foreclosure divisions recently established by the judicial circuits have been operating under a presumption of closure to members of the general public, rather than the presumption of openness mandated by Florida law. An illustrative, but not exhaustive, list of encounters that have been reported to our organizations since August 2010 follows:

- A court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public.
- A pro se defendant in Duval County was told by a member of court security that she could not access foreclosure proceedings because only attorneys were permitted.
- A court observer called the Orange County courthouse to ask about attending foreclosure proceedings. She was informed that foreclosure hearings were held "in private chambers" and therefore not open to the public.

- In Citrus County, an individual preparing to mount a pro se defense in his own foreclosure case attempted to attend foreclosure hearings in advance of his own so that he could know what to expect when his case was heard. He was told that foreclosure hearings are “private” and take place in judges’ chambers, and that he would not be permitted to observe them.
- Most recently, a legal aid attorney in Jacksonville attended a foreclosure proceeding accompanied by a reporter from Rolling Stone Magazine. Neither the attorney nor the reporter did anything disruptive to the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard. Later that day, the judge sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while “attorneys are welcome in Chambers at their leisure,” members of the media are “permitted” entry only upon “proper request to the security officer.” He further informed the attorney that she “did not have authority to take anyone back to chambers without proper screening” and stated that her “apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview” may be “sited [sic] for possible contempt charges in the future.”¹

In raising our concerns about this pattern of exclusion, we rely on the extensive body of case law that has made Florida a model for open government. Systematically excluding members of the press and public from judicial foreclosure proceedings violates the robust guarantee of open access to courts provided by Florida law. This Court has held that “both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records.” *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). *Barron* articulated this right of access in forceful terms. It emphasized that “a strong presumption of openness exists for all court proceedings” and outlined the carefully circumscribed exceptions to this broad rule:

[C]losure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

¹ Since the incident in Duval County was particularly egregious, we have also asked that Chief Judge Moran consider appropriate action.

Id., at 118. Even in these exceptional circumstances, “before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.” *Id.*

The protection of public access to judicial proceedings serves fundamental constitutional values. In particular, the “value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)). “A trial courtroom is a public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B v. Francis*, No. 5:08-cv-79, 2010 WL 503067, *2 (N.D. Fla. Feb. 5, 2010). Foreclosure proceedings are currently a matter of intense public interest. Indeed, the media has, in recent months, scrutinized them for possible procedural deficiencies. *See, e.g.*, Gretchen Morgenson and Geraldine Fabrikant, *Florida’s High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 14, 2010; Polyana da Costa, *Before Foreclosing, Judges Must Hear Out Homeowners*, MIAMI DAILY BUS. REV., Oct. 14, 2010.

As the examples outlined above show, Florida’s presumption of openness is being inverted in the context of foreclosure proceedings: courts across the state are effectively imposing a presumption of closure, which may be overcome only by special permission to observe proceedings. In effect, only those who actively assert their right of access in the face of initial barriers, and then ultimately receive permission, may exercise their right to observe foreclosure hearings.

Under Florida law, there are few justifications that can counterbalance the right to access. Even when those exceptional circumstances exist, the court must still determine that no more narrowly tailored alternative is available. *Barron*, 531 So. 2d at 118; *see also Globe Newspaper Co. v. Super. Ct. for the County of Norfolk*, 457 U.S. 596 (1982) (invalidating statute closing trials for certain sex offenses involving minors where state had a “compelling” interest in protecting minors’ privacy but where the court “offered no empirical support” that closure would effectively further that interest). There is no indication that closure of foreclosure courts occurs only when such rigorous analysis has taken place. Indeed, the opposite appears to be true: by choosing to conduct foreclosure hearings in “private” conference rooms or judicial chambers and treat those as closed proceedings, the burden shifts to members of the press or public to convince the court to allow access.

We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical

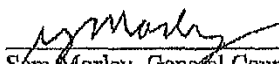
setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.


This Court has noted that the press plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the indulgence of the presiding judge to allow them to observe important judicial proceedings.


It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.²


Accordingly, we respectfully urge you to take corrective action to ensure citizen and press access as guaranteed by Florida's right-of-access jurisprudence. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action to ensure that both the public and media may observe proceedings consistent with Florida law and subject only to ordinary security measures

We thank you for your attention to this important matter.

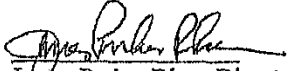

Sam Morley, General Counsel
The Florida Press Association


Talbot D'Alemberte, Bar No. 0017529
The Florida Press Association


Larry Schwartz, Staff Attorney
The American Civil Liberties Union


Randall Marshall, Legal Director
The American Civil Liberties Union of Florida

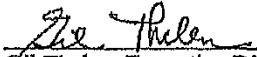
² The incident in Duval County occurred on October 26th. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29th.



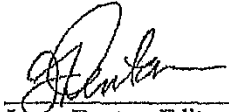
James Parker Rhea, Director & General Counsel
The First Amendment Foundation



C. Patrick Roberts, President & CEO
Florida Association of Broadcasters



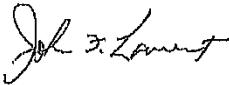
Gil Thelen, Executive Director
The Florida Society of Newspaper Editors



James Denton, Editor
The Florida Times-Union



MEMORANDUM

TO: Chief Judges of the Circuit Courts
FROM: John Laurent 
DATE: October 28, 2010
SUBJECT: Foreclosure Initiative

**The Honorable
John F. Laurent, Chair**

**The Honorable
Margaret Steinbeck,
Vice-Chair**

Members

- Catherine Brunson, Circuit Judge*
- Paul S. Bryan, Circuit Judge*
- Joseph P. Farina, Circuit Judge*
- Charles A. Francis, Circuit Judge*
- Mark Mahon, Circuit Judge*
- J. Thomas McGrady, Circuit Judge*
- Wayne M. Miller, County Judge*
- Belvin, Perry, Jr., Circuit Judge*
- Robert E. Roundtree, Jr., Circuit Judge*
- Clayton D. Simmons, Circuit Judge*
- Elijah Smiley, Circuit Judge*
- Patricia V. Thomas, Circuit Judge*
- Mike Bridenback, Court Administrator*
- Tom Genung, Court Administrator*
- Sandra Lonergan, Court Administrator*
- Carol Lee Orman, Court Administrator*
- Walt Smith, Court Administrator*
- Mark Weinberg, Court Administrator*
- Robin Wright, Court Administrator*

Ex-Officio Members

- The Honorable Kevin M. Emas
Florida Conference of Circuit Court Judges*
- The Honorable Susan F. Schaeffer
Chair Emeritus*

Supreme Court Liaison

Justice James E. C. Perry

Florida State Courts System
500 South Duval Street
Tallahassee, FL 32399-1900
www.flcourts.org

In follow up to the Judicial Administration Committee conference call held on October 18, 2010, I am writing to reiterate the Trial Court Budget Commission's purpose for tracking the progress of cases the trial courts are hearing using funding provided for the foreclosure and economic recovery initiative. When the Florida Legislature appropriated special funding of \$6 million to help the trial courts with the significant backlog of foreclosure cases, the Trial Court Budget Commission established a measurement of progress that corresponded to the funding received: 62% of the backlog cases potentially could be processed because the Legislature funded 62% of the original request from the courts. A simple case tracking system was set up to monitor the progress and identify any reasons for delays. This is so that we will be able to report to the Legislature on how these funds were used. However, the Legislature has not specifically directed us to make such a report.

The 62% rate is not a quota. The 62% rate is simply a goal set by the TCBC to help measure the courts' progress in this initiative and document how the appropriation for the foreclosure initiative is being spent. The 62% rate was set before the initiative began and, most notably, before many of the lender moratoriums and other delays occurred. Please assure judges working on this project that the 62% rate was never intended to interfere with their ability to adjudicate each case fairly on its merits.

We will continue to monitor the progress of this initiative because we have an obligation to account for how these funds have been used. But we also will document all issues related to any difficulties that prevent or delay the court from hearing and disposing of cases before them.

JL/ks

cc: TCBC Members



Florida Press Association
336 E. College Avenue, Suite 203
Tallahassee, FL 32301
(850) 521-1199
Fax (850) 577-3629

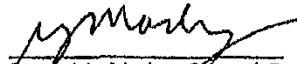
Chief Judge Donald R. Moran, Jr.
Fourth Judicial Circuit of the State of Florida
330 E. Bay Street, Room 220
Jacksonville, Florida 32202

November 18, 2010

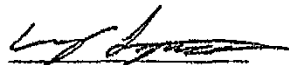
Dear Chief Judge Moran:

We greatly appreciate your November 16, 2010 memorandum to judges of the Fourth Judicial Circuit moving the foreclosure proceedings from chambers to Courtroom 59 in order to make the proceedings more secure and accessible. We thank you for your prompt action that affirms the Fourth Circuit's commitment to public access to these judicial proceedings.

Sincerely,



Samuel J. Morley, General Counsel
The Florida Press Association

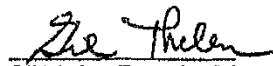

Talbot "Sandy" D'Alemberte, Bar No. 0017529



Larry Schwartz
The American Civil Liberties Union


Randall Marshall
The American Civil Liberties Union of Florida


James Parker Rhea, Director & General Counsel
The First Amendment Foundation


C. Patrick Roberts, President & CEO
Florida Association of Broadcasters


Gil Thelen, Executive Director
The Florida Society of News Editors


Frank Denton, Editor
The Florida Times-Union

HP LaserJet 3055

Fax Call Report



HP LASERJET FAX
9046307301
Nov-18-2010 11:21AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
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NOV-18-2010 11:20AM FROM: FLORIDA PRESS 8502224498 TO: 9046307301 P. 1/2

330 E. College Avenue, Suite 203
Tallahassee, FL 32301
(850) 521-1158
(850) 577-3512
www.fpress.com

**Florida Press
Association**

Fax

To: Caroline Emery From: Florida Press Association
Fax: (904) 630-6334 Pages: 2
Phone: Date: 11/18/2010
Re: ccc

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please forward the following letter to Judge Moran at the Fourth Judicial Circuit of the State of Florida.
Thank you.

336 E. College Avenue, Suite 203
Tallahassee, FL 32301
(850) 521-1168
(850) 577-3612
www.flpress.com



Fax

To: Caroline Emery **From:** Florida Press Association
Fax: (904) 630-8334 **Pages:** 2
Phone: **Date:** 11/18/2010
Re: **cc:**

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please forward the following letter to Judge Moran at the Fourth Judicial Circuit of the State of Florida.
Thank you.

Janocko, Eve

From: Sourbeer, Jeff
Sent: Thursday, December 16, 2010 4:10 PM
To: Johnroe, Steve G
Cc: Trent, Pam; Stelma, Joe; Janocko, Eve
Subject: RE: Foreclosure Meeting

Steve - I have a printed check in the amount of \$7,950 to cover the software development costs for the Court's customization to obtain Foreclosure information. Who needs to get this check?

From: Johnroe, Steve G [mailto:Steve.Johnroe@duvalclerk.com]
Sent: Thursday, December 09, 2010 3:09 PM
To: Sourbeer, Jeff
Cc: Trent, Pam
Subject: RE: Foreclosure Meeting

Jeff - here's what our accounting office said:

Since Court Admin wants to use their \$2 technology funds in 15U we will need an issued check, instead of a transfer. So we can deposit into the \$1.90 PRMTF that does not reside with the City, but in the Clerk's bank account. At that point we can offset it as a reimbursement to salaries, if specified.

So, can your folks write us a check for the money?

From: Sourbeer, Jeff [mailto:SOURBEER@coj.net]
Sent: Thursday, December 09, 2010 10:38 AM
To: Johnroe, Steve G
Cc: Trent, Pam
Subject: FW: Foreclosure Meeting

Steve - I just wanted to let you know of our intent to move forward of the programming required to automate the submission of Foreclosure data for the Fourth Judicial Circuit. I will let you know when the monies have been transferred to the Clerk. Is there a particular account in your organization in which this money needs to be TD'ed?

2/8/2011

4th Cir 00219

From: Sourbeer, Jeff
Sent: Thursday, December 09, 2010 10:31 AM
To: Trent, Pam
Cc: Stelma, Joe; Janocko, Eve
Subject: FW: Foreclosure Meeting

Pam - On this Monday and Tuesday of this week, the Chief Judge and Joe Stelma met with the TCBC group in Tallahassee to request funding to pay the Duval County Clerk of Court to develop a software program which will formulate the Foreclosure cases into a specific format required by OSCA. The TCBC turned down the request, so we will need to pay the \$7,950.00 development fee using our 15U funding. Can you please take care of this as soon as possible. Let me know if you have any questions regarding this request. Thank you,.

From: Misra, Jill A [mailto:Jill.Misra@DuvalClerk.com]
Sent: Wednesday, September 22, 2010 12:23 PM
To: Pappas, Sara; Stelma, Joe; Sourbeer, Jeff; Paruolo, Vincent; Talley, Alana; Howard, Ray L; Brown, Betty J; A. C. Soud, Jr.
Cc: Johnroe, Steve G
Subject: RE: Foreclosure Meeting

Sorry for responding so late. I am attaching the proposal plan of the work that we would do for the Foreclosure Case Tracking. The plan is brief and I will go into more detail at the meeting. The basic idea is that there is one source for the data and that would be the Clerk of Court Case Management System. The plan contains estimated hours. If we do go with this plan the Clerk would bill actual hours spent developing the application. Again I will go over the plan in detail at 2:00.

We will continue with the initial agreement of giving Court Admin a updated excel file that to submit to OSCA for the July and August data. This should be completed today or tomorrow.

I have a 3:00 meeting at JSO and I would still like to attend this meeting if possible. If not I will stay as long as I am needed.

Thanks,

Jill Misra

Applications and Development

Duval County Clerk of Court

Office: 904-630-1212 ext 6717

Mobile: 904-338-3517

2/8/2011

4th Cir 00220

From: Pappas, Sara [mailto:SaraP@coj.net]
Sent: Monday, September 20, 2010 1:57 PM
To: Stelma, Joe; Sourbeer, Jeff; Paruolo, Vincent; Talley, Alana; Howard, Ray L; Brown, Betty J; Misra, Jill A; A. C. Soud, Jr.
Subject: Foreclosure Meeting

Good Afternoon,

I am writing this e-mail to inform everyone of a meeting that will take place concerning the reporting of foreclosures for each month to come. Joe has asked that I e-mail all of you, as it would be helpful to have you there. The meeting will be this Wednesday, September 22, 2010 at 2:00 p.m. in Room 506. If you have any questions please e-mail me. I hope to see you all there.

Thanks,

Sara

Description

Court Administration is in need of an application that will track the status of the foreclosure backlog and new foreclosure cases. With limited office staff the ability to pull the data directly from the Clerk of Courts case management system into the Court Admin table would significantly reduce the workload on the Court Administration staff.

Goals

The Goals of this application are to:

- Provide Court Administration nightly updates from the Clerk of Court's Foreclosure Case Tracking System
- Provide a WEB application that will allow Court Administration to view the status of cases moving through the Foreclosure Economic Recovery court process
- Provide Court Administration statistics on demand
- Provide a means to build the excel file for monthly submissions to OSCA
- Provide an option to include tracking Nassau and Clay County cases within the same application

Solution

The Clerk of Court will write a WEB application that will be hosted on the Clerk's servers. The data from the initial backlog excel file will be imported into a table. The table will be updated nightly with new cases, new reopen cases and the case status changes.

The application will provide:

- Case Search Capabilities
- Filter list of cases by Case Age, Case Status, Case Year, Case Initiated Date
- An Export for the Monthly File Submission
- A Statistical Report of totals by Month
- All updates will come from the Clerk's case management system

Cost Summary

Scripts to Update FERCTS table	Hours	Hourly Fee	Cost
Insert New Cases	2	\$ 75.00	\$ 150.00
Insert New Reopen Cases	2	\$ 75.00	\$ 150.00
Update Disposition Date and Court Action	2	\$ 75.00	\$ 150.00
Update Reopen Date	2	\$ 75.00	\$ 150.00
Update Reopen Close Date	2	\$ 75.00	\$ 150.00
Update Case Status from Docket Information	4	\$ 75.00	\$ 300.00
Application			
Write the WEB page to display, filter and sort the Foreclosure FERCTS Cases	40	\$ 75.00	\$ 3,000.00
Write a WEB page to display Monthly Stats	10	\$ 75.00	\$ 750.00
Clay/Nassau			
Write a WEB service to process insert and updates from Clay and Nassau	10	\$ 75.00	\$ 750.00
Modify WEB pages to filter by Clay, Nassau and Duval	10	\$ 75.00	\$ 750.00
Monthly File Processing			
Write an application to export data by county for submission to OSCA	10	\$ 75.00	\$ 750.00
Monthly processing time	12	\$ 75.00	\$ 900.00

Total	106	\$ 75.00	\$ 7,950.00
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Report Samples:

All Cases Month	Case Counts				Court Calendar		
	New Cases	Disposed Cases	Reopen Cases	Closed Reopen Case	Scheduled	Rescheduled	Cancelled
2010 July	884	563	517	435	206	20	105
2010 Aug	920	769	595	551	651	78	199
2010 Sept	433	212	240	172	763	55	159
2010 Nov					981	46	81
2010 Dec					1,028	38	76
2011 Jan					484	15	26
2011 Feb					4	-	-
2011 Mar							
2011 Apr							
2011 May							
2011 Jun							
Total	2,237	1,544	1,352	1,158	4,117	252	646

Original Backlog Cases Month	Case Counts				Court Calendar		
	New Cases	Disposed Cases	Reopen Cases	Closed Reopen Case	Scheduled	Rescheduled	Cancelled
2010 July		514	69	104			
2010 Aug		725	64	70			
2010 Sept		198	42	32			
2010 Nov							
2010 Dec							
2011 Jan							
2011 Feb							
2011 Mar							
2011 Apr							
2011 May							
2011 Jun							
Total		1,437	175	206			

Mock image of the WEB page:



Duval County Clerk of Courts

Home Page

Reports

Username: Burge, JashD

Access Type: Clerk/Bar

Wed Sep 22 2010 - 10:55:31 AM

Help Desk by
H&B Systems, Inc. (813) 291-1100
BJDF (28.5K)

Foreclosure Economic Recovery Initiative

Search Criteria
 File Date
 Case Age
 Search

Record Set												
UNC	File Date	Reopen Date	Date Disposed	Disposition	Reopen Close Date	Status Change	Status Change Type	Deleted	Closed for Court Action	Court Action Close Date	Case Age	Comments
162003CA00066760002MA	01/23/2003	10/16/2003	09/22/2010	Summary/Final Judgment	Sep 22 201	07/01/2010	Inactivity - Other (see Case Comments)		No			Select
162003CA001640000MA	02/24/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2767	Select
162003CA0016690000MA	02/25/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2766	Select
162003CA0028120000MA	03/14/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2746	Select
162003CA0046210000MA	07/01/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2640	Select
162003CA0053460000MA	07/29/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2612	Select
162003CA0053630000MA	07/29/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2612	Select
162003CA0057470000MA	09/23/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2555	Select
162003CA0071140000MA	10/07/2003					07/01/2010	Inactivity - Other (see Case Comments)		No		2542	Select
162003CA0073370000MA	10/20/2003	05/29/2010	03/22/2004	Summary/Final Judgment		07/01/2010	Inactivity - Other (see Case Comments)		Yes		117	Select
162003CA0076300000MA	10/27/2003					07/01/2010	Inactivity - Other (see Case Comments)		Yes		2622	Select
162003CA0077370000MA	11/04/2003					07/01/2010	Inactivity - Other (see Case Comments)		Yes		2614	Select
162003CA0081840000MA	11/19/2003					07/01/2010	Inactivity - Other (see Case Comments)		Yes		2499	Select
162003CA0081170000MA	11/20/2003					07/01/2010	Inactivity - Other (see Case Comments)		Yes		2498	Select

Stelma, Joe

From: P.J. Stockdale [stockdap@flcourts.org]
Sent: Wednesday, September 29, 2010 2:54 PM
To: Stelma, Joe
Cc: Kristine Slayden; Arlene Johnson
Subject: RE: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

Joe,

Thank you for your submission of Foreclosure and Economic Recovery Initiative data. I apologize for not being able to look at the documents you sent before now. I'm afraid we've had all we can do just getting the data we had in and validated.

Unfortunately, Joe, the data you sent is not what we need for this project. This project does not depend on summary case counts. For the Initiative, we are looking for actual foreclosure case data for the 4th circuit. In July, we sent you a set of Excel workbooks for Clay, Duval and Nassau named 04_10Clay_FERCTS.xls, 04_16Duval_FERCTS.xls and 04_45Nassau_FERCTS.xls. These workbooks contained both an initial list of all open or reopened cases pending in your circuit as of June 30, 2010 and a tracking application to assist foreclosure and economic initiative staff in tracking these cases as they move through the court system and in adding new cases as they come in to the system.

The Excel application was provided as a tool to assist the circuits with case tracking. It is true that you do not need to use the application in your day to day operations. Many of the medium and large circuits have better mechanisms for case tracking already in place. However, the workbooks provide the standardized format that we need to process the foreclosure case data each month. Therefore, initiative staff should update and return the workbooks to the OSCA each month by the 10th.

I'm always available to assist your staff in using or updating and submitting these workbooks or to answer any general questions they may have. Please have them give me a call.

Thank you
PJ

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

From: Stelma, Joe [mailto:Jstelma@coj.net]
Sent: Monday, September 20, 2010 12:02 PM
To: P.J. Stockdale
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

i thought these were already sent to you but was told by the person that completed them, that they were not. I

2/8/2011

4th Cir 00225

apologize. this is Duval County. i will be forwarding the other counties now.

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508

Jacksonville, Florida 32202

Work: (904) 630-1655

Fax:(904) 630-8209

From: Sourbeer, Jeff

Sent: Friday, September 17, 2010 3:22 PM

To: Stelma, Joe

Cc: Norris, Elizabeth

Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

2/8/2011

4th Cir 00226

Report Month	New Cases	Disposed Cases	Total New Reopen	Total Reopen Closed
July	884	563	517	435
Aug	920	769	595	551
Sept	433	212	240	172
Total	2,237	1,544	1,352	1,158

Difference between New Cases and Disposed Case Count Totals **693**
Difference between New Reopen Cases and Reopen Closed Cases **194**

Cases Disposed by Disposition is below...

Disposition	Number Disposed
Dismissed After Hearing - Pursuant to Settlement	3
Dismissed After Hearing - Other	169
Dismissed Before Hearing - Pursuant to Mediated Settlement	1
Dismissed Before Hearing - Pursuant to Settlement	92
Dismissed Before Hearing - Other	445
Disposed by Default	377
Disposed by Judge	420
Other	37
Total Disposed Cases	1,544

Cases Disposed by Disposition and Month is below...

Disposition	Month	Number Disposed
Dismissed After Hearing - Other	7	130
Dismissed Before Hearing - Pursuant to Settlement	7	64
Dismissed Before Hearing - Other	7	194
Disposed by Default	7	84
Disposed by Judge	7	88
Other	7	3
Total	Jul	563
Dismissed After Hearing - Pursuant to Settlement	8	3
Dismissed After Hearing - Other	8	34
Dismissed Before Hearing - Pursuant to Settlement	8	20
Dismissed Before Hearing - Other	8	196
Disposed by Default	8	226
Disposed by Judge	8	270
Other	8	20
Total	Aug	769
Dismissed After Hearing - Other	9	5
Dismissed Before Hearing - Pursuant to Mediated Settlement	9	1
Dismissed Before Hearing - Pursuant to Settlement	9	8
Dismissed Before Hearing - Other	9	55
Disposed by Default	9	67
Disposed by Judge	9	62
Other	9	14
Total	Sept	212



CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT OF FLORIDA

CAROLINE C. EMERY, ESQ.
COURT COUNSEL

DUVAL COUNTY COURTHOUSE
330 E. BAY STREET, RM. 220
JACKSONVILLE, FLORIDA 32202
TEL: (904) 630-7256
FAX: (904) 630-8334

April 18, 2011

Larry Schwartztol, Esq.
ACLU
125 Broad Street
18 Floor
New York, NY 10004-2400

Dear Mr. Schwartztol:

We are in receipt of ACLU's payment in the amount of \$830.00 and the request to proceed pursuant to Rachel Goodman's e-mail dated February 28, 2011. In anticipation of such payment, I started reviewing the e-mails at that time. Pursuant to the request, attached are copies of the e-mails of Chief Judge Donald R. Moran, Trial Court Administrator Joe Stelma, and Court Counsel Caroline Emery, regarding the six items listed in the records request which you sent on October 19, 2010.

We are not including the voluminous Foreclosure Economic Recovery Initiative Reports that are attached to some e-mails, not only because they are so lengthy, but also because the reports and data have already been produced on the CD provided in our previous response dated February 14, 2011. Also, please realize that, in an effort to save paper, a copy of the 52-page "Residential Foreclosure Bench Book" is being provided only one time under Tab 1, although it was attached to several e-mails, including those under Tab 2.

Tab 1 consists of all e-mails to and from Chief Judge Moran that are relevant to the six items requested by ACLU. All e-mails have the name "D'Amour, Rose" indicated on the top left-hand corner because she is his Judicial Assistant and the e-mails were produced from her computer and printer. I have not included e-mails that were not relevant to the six items requested nor e-mails that concerned drafts of Administrative Orders since drafts are exempt pursuant to 2.420(c)(1), Florida Judicial Administration Rules.

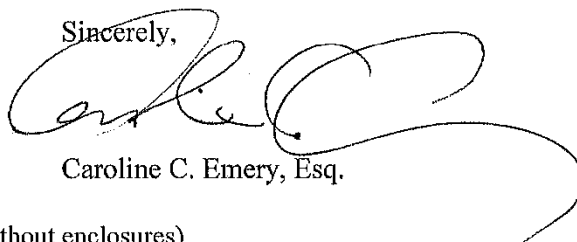
Tab 2 includes all e-mails to and from the Fourth Judicial Circuit's Trial Court Administrator, Joe Stelma. These also include only e-mails that are relevant to the six items requested by ACLU.

Finally, as for e-mails to and from Court Counsel, Caroline Emery (me), we have none to produce. I have diligently, and in good faith, reviewed all e-mails three times, to make sure that nothing was overlooked. Most e-mails are not relevant to the items requested. For example, many e-mails are merely to and from attorneys involved in Tobacco litigation, which I worked on with Judge Mitchell, who is a Senior Judge. Those e-mails simply mentioned that Judge Mitchell was not available for various Tobacco-related matters because he was handling "foreclosures" - which is the search term I used for these e-mails. Other e-mails were about the Mortgage Mediation Program, which you had indicated you were not interested in. In addition, many e-mails are not being produced because they involved drafts and discussions concerning drafts of Administrative Orders that I prepared at the Court's direction, so we believe those are exempt under Rule 2.420(c)(1). We have previously produced the actual Administrative Orders that were entered in final form.

While comparing the e-mails to the relevancy of the six items requested in the October 19, 2010 letter, I discovered for the first time, that item 5 requests records relating to public access, regardless of whether they concern foreclosures. Therefore, Tab 3 provides a copy of Administrative Order No. 92-2 (signed on January 9, 1992). The Order does not relate to foreclosures. Instead, it concerns general procedures for media access to high profile proceedings and, therefore, should have been included in my last response to item number 5, regarding public access. Ironically, in September-October 2010, I was drafting an amended order to vacate and revise this Order, because it is so archaic and extremely outdated. This Circuit had been disregarding most of the procedures outlined in the Administrative Order for many years, in deference to 2.450, Florida Rules of Judicial Administration. Unfortunately, I had to set the draft aside to work on other projects (in addition to this one) that had pressing deadlines and took priority. I was able to finish the draft Amended Administrative Order No. 92-2 recently, and it was signed by Chief Judge Moran on April 7, 2011. This Amended Administrative Order 92-2 is also included under Tab 3.

As you can imagine, responding to this second part of the records request has consumed many days and required numerous hours of conscientious, analytical reading of hundreds of e-mails. Please realize that I was the only person performing this task. Therefore, if you find that an e-mail was left out, please feel free to contact me to request it, and I will be happy to supplement our response. I can assure you that if any e-mail appears to be missing, it is merely due to an unintentional oversight or human error because this task has been taken very seriously and was completed in good faith.

Sincerely,



Caroline C. Emery, Esq.

cc. Rachel Goodman, Esq., ACLU (without enclosures)
The Honorable Donald R. Moran, Jr., Chief Judge, Fourth Judicial Circuit
The Honorable A.C. Soud, Foreclosure Division
Joseph G. Stelma, Jr., Trial Court Administrator

D'Amour, Rose

From: Stelma, Joe
Sent: Tuesday, February 01, 2011 1:44 PM
To: Moran, Donald R.
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)
Attachments: Foreclosure Counts.xls

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax: (904) 630-8209

From: Stelma, Joe
Sent: Tuesday, February 01, 2011 1:42 PM
To: Janocko, Eve; Emery, Caroline; Paruolo, Vincent
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax: (904) 630-8209

From: Norris, Elizabeth
Sent: Tuesday, February 01, 2011 1:41 PM
To: Stelma, Joe
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

From: Stelma, Joe
Sent: Tuesday, February 01, 2011 1:40 PM
To: Norris, Elizabeth
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508

3/1/2011

Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Stelma, Joe
Sent: Monday, September 20, 2010 12:02 PM
To: 'P.J. Stockdale'
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

i thought these were already sent to you but was told by the person that completed them, that they were not. I apologize. this is Duval County. i will be forwarding the other counties now.

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Sourbeer, Jeff
Sent: Friday, September 17, 2010 3:22 PM
To: Stelma, Joe
Cc: Norris, Elizabeth
Subject: FW: Foreclosure and Economic Recovery Initiative Case Data List (DUVAL)

3/1/2011

4th Cir 00231

Duval Foreclosure Statistics

Total Cases	Case Counts				Court Calendar			Disposition		
Month	New Cases	Disposed Cases	Reopen Cases	Closed Reopen Case	Scheduled	Rescheduled	Cancelled	Dismissed	Summary / Final Judgment	Unknown
2010 Jul	884	567	423	369	2	20	105	383	182	2
2010 Aug	920	764	381	355	206	78	199	252	494	18
2010 Sep	962	636	320	272	651	58	208	208	405	23
2010 Oct	618	585	531	450	719	67	481	273	303	9
2010 Nov	454	454	432	367	664	66	925	192	247	15
2010 Dec	422	260	286	195	643	26	409	177	72	11
2011 Jan	411	623	316	273	424	37	115	324	276	23
2011 Feb	80	67	65	49	935	1	2	33	32	2
2011 Mar					87	1				
2011 Apr					2					
2011 May										
2011 Jun										
Total	4,751	3,956	2,754	2,330	4,333	354	2,444	1,842	2,011	103

Type of Status Change						Original Backlog Cases	Case Counts		
Total Foreclosure Cases	Active	Inactivity - Attorney inactivity	Inactivity - Other	Stayed - Appeal pending	Stayed - Bankruptcy		Disposed Cases	Reopen Cases	Closed Reopen Case
2010-2011	13,582	3	6,789	1	346	Total Backlog	14,291		
2010 Jul							505	61	90
2010 Aug							717	34	47
2010 Sep							599	65	60
2010 Oct							519	220	191
2010 Nov							381	213	178
2010 Dec							196	114	84
2011 Jan							530	136	121
2011 Feb							55	32	22
2011 Mar									
2011 Apr									
2011 May									
2011 Jun									
Total							3,502	876	793

4th Cir 00232

Foreclosure Counts

All Foreclosure Case Stats

Report Month	New Cases	Disposed Cases	Total New Reopen	Total Reopen Closed
July	884	563	517	435
Aug	920	769	595	551
Sept	433	212	240	172
Total	2,237	1,544	1,352	1,158

Difference between New Cases and Disposed Case Count Totals **693**

Difference between New Reopen Cases and Reopen Closed Cases **194**

Cases Disposed by Disposition is below...

Disposition	Number Disposed
Dismissed After Hearing - Pursuant to Settlement	3
Dismissed After Hearing - Other	169
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Dismissed Before Hearing - Pursuant to Settlement	92
Dismissed Before Hearing - Other	445
Disposed by Default	377
Disposed by Judge	420
Other	37
Total Disposed Cases	1,544

Cases Disposed by Disposition and Month is below...

Disposition	Month	Number Disposed
Dismissed After Hearing - Other	7	130
Dismissed Before Hearing - Pursuant to Settlement	7	64
Dismissed Before Hearing - Other	7	194
Disposed by Default	7	84
Disposed by Judge	7	88
Other	7	3
Total	Jul	563
Dismissed After Hearing - Pursuant to Settlement	8	3
Dismissed After Hearing - Other	8	34
Dismissed Before Hearing - Pursuant to Settlement	8	20
Dismissed Before Hearing - Other	8	196
Disposed by Default	8	226
Disposed by Judge	8	270
Other	8	20
Total	Aug	769
Dismissed After Hearing - Other	9	5
Dismissed Before Hearing - Pursuant to Mediated Settlement	9	1
Dismissed Before Hearing - Pursuant to Settlement	9	8
Dismissed Before Hearing - Other	9	55
Disposed by Default	9	67
Disposed by Judge	9	62
Other	9	14
Total	Sept	212

Foreclosure and Economic Recovery Status Report
Balance of Backlog
First Quarter and Second Quarter FY 2010-11

Circuit	Real Property/ Mortgage Foreclosure Backlog as of June 30, 2010¹	First Quarter of FY 2010-11 Initiative Dispositions² (July 2010 to September 2010)	Second Quarter of FY 2010-11 Initiative Dispositions² (October 2010 to December 2010)	Total First and Second Quarter of FY 2010-11 Initiative Dispositions²	Balance of Backlog After First and Second Quarter of FY 2010-11³
1	10,979	1,099	930	2,029	8,950
2	3,460	162	242	404	3,056
3	1,115	211	187	398	717
4	17,916	2,415	1,687	4,102	13,814
5	16,281	981	1,055	2,036	14,245
6	31,791	2,998	1,473	4,471	27,320
7	18,440	3,856	2,163	6,019	12,421
8	1,926	533	518	1,051	875
9	39,700	7,824	5,327	13,151	26,549
10	11,045	3,143	1,573	4,716	6,329
11	75,326	5,553	5,092	10,645	64,681
12	21,617	1,999	2,508	4,507	17,110
13	32,843	4,213	1,726	5,939	26,904
14	3,897	849	508	1,357	2,540
15	46,438	10,236	3,918	14,154	32,284
16	2,259	183	233	416	1,843
17	48,675	9,813	3,784	13,597	35,078
18	27,117	4,212	2,264	6,476	20,641
19	19,061	1,399	607	2,006	17,055
20	32,453	9,835	4,416	14,251	18,202
Total	462,339	71,514	40,211	111,725	350,614

¹ Real Property/Mortgage Foreclosure Backlog as of June 30, 2010 was determined by subtracting the number of SRS dispositions from the number of SRS filings for July 1, 2006 through June 30, 2010.

² Initiative Dispositions are based on data that is provided to the OSCA on a monthly basis by each trial court. First and second quarter data are the reported information on cases disposed using the new resources. Total represents the sum of the first and second quarters. In addition, Desoto County and Okeechobee County did not receive Foreclosure and Economic Recovery funding and are not included above.

³ Balance of Backlog After First and Second Quarter of Fiscal Year 2010-11 was determined by subtracting the Total First and Second Quarter of FY 2010-11 Initiative Dispositions from the number of Real Property/Mortgage Foreclosure Backlog as of June 30, 2010.

Foreclosure and Economic Recovery Status Report

Type of Dispositions¹

October 1, 2010 through December 31, 2010

Circuit	Dismissed	Summary/ Final Judgment	Trial	Other ²	Unidentified	Total Disposed
1	605	323	1	0	1	930
2	49	164	0	29	0	242
3	114	73	0	0	0	187
4	831	821	0	0	35	1,687
5	858	189	2	1	5	1,055
6	130	1,343	0	0	0	1,473
7	934	1,146	5	78	0	2,163
8	318	143	2	55	0	518
9	3,022	2,304	1	0	0	5,327
10	693	880	0	0	0	1,573
11	3,437	1,655	0	0	0	5,092
12	1,854	654	0	0	0	2,508
13	0	1,726	0	0	0	1,726
14	290	217	0	0	1	508
15	2,763	1,150	4	0	1	3,918
16	171	61	0	0	1	233
17	2,077	1,707	0	0	0	3,784
18	1,690	546	0	0	28	2,264
19	248	358	1	0	0	607
20	1,238	3,174	4	0	0	4,416
Total	21,322	18,634	20	163	72	40,211

¹ Type of Dispositions are based on the initiative data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed from October 1, 2010 through December 31, 2010 using the new resources. Desoto County and Okeechobee County did not receive Foreclosure and Economic Recovery funding and are not included above.

² Other is used to report cases disposed when they are: administratively dismissed, consolidated into a primary case, transferred or have a change of venue, etc.

Note: Numerous methods are used by the circuits to calendar real property/mortgage foreclosure cases which could affect the number of dismissals within a circuit. These methods are: 1) following a review by a case manager; 2) at the request of the plaintiffs' attorney; and 3) after hearing by a judge. The majority of circuits calendar hearings following a case review by a case manager. These cases are calendared for either a case management or lack of prosecution hearing. A number of circuits also calendar cases at the request of the plaintiffs' attorneys. These cases are either calendared based upon the request alone or based upon the request and assurance that the case meets the threshold for a summary/final judgment. Circuits that use the threshold method for setting calendars typically have low or zero dismissals.

Foreclosure and Economic Recovery Status Report

Type of Dispositions¹

July 1, 2010 through December 31, 2010

Circuit	Dismissed	Summary/ Final Judgment	Trial	Other ²	Unidentified	Total Disposed
1	977	1,047	2	0	3	2,029
2	72	303	0	29	0	404
3	196	202	0	0	0	398
4	1,821	2,198	0	0	83	4,102
5	1,222	806	2	1	5	2,036
6	229	4,241	1	0	0	4,471
7	2,155	3,720	7	137	0	6,019
8	500	469	6	76	0	1,051
9	5,236	7,912	2	1	0	13,151
10	1,602	3,113	1	0	0	4,716
11	7,575	3,070	0	0	0	10,645
12	2,084	2,416	5	2	0	4,507
13	225	5,714	0	0	0	5,939
14	660	691	0	0	6	1,357
15	5,751	8,396	6	0	1	14,154
16	240	175	0	0	1	416
17	4,453	8,999	1	0	144	13,597
18	3,233	3,170	3	0	70	6,476
19	831	1,155	3	0	17	2,006
20	2,504	11,735	5	0	7	14,251
Total	41,566	69,532	44	246	337	111,725

¹ Type of Dispositions are based on the initiative data that is provided to the OSCA on a monthly basis by each trial court. These data represent the reported information on cases disposed from July 1, 2010 through December 31, 2010 using the new resources. In addition, Desoto County and Okeechobee County did not receive Foreclosure and Economic Recovery funding and are not included above.

² Other is used to report cases disposed when they are: administratively dismissed, consolidated into a primary case, transferred or have a change of venue, etc.

Note: Numerous methods are used by the circuits to calendar real property/mortgage foreclosure cases which could affect the number of dismissals within a circuit. These methods are: 1) following a review by a case manager; 2) at the request of the plaintiffs' attorney; and 3) after hearing by a judge. The majority of circuits calendar hearings following a case review by a case manager. These cases are calendared for either a case management or lack of prosecution hearing. A number of circuits also calendar cases at the request of the plaintiffs' attorneys. These cases are either calendared based upon the request alone or based upon the request and assurance that the case meets the threshold for a summary/final judgment. Circuits that use the threshold method for setting calendars typically have low or zero dismissals.

Foreclosure and Economic Recovery Status Report Case Status¹

As of December 31, 2010

Circuit	Cases Disposed	Cases Active ²	Cases Inactive ³	Cases Stayed ⁴
1	2,029	286	8,732	39
2	404	1,132	2,908	26
3	398	396	497	13
4	4,102	10,037	10,649	335
5	2,036	2,239	13,836	0
6	4,471	1,652	30,254	88
7	6,019	6	13,432	98
8	1,051	1,164	1,039	20
9	13,151	5,911	36,757	17
10	4,716	9,154	2,701	24
11	10,645	54,574	18,375	0
12	4,507	1,309	16,368	55
13	5,939	27,313	313	5
14	1,357	2,574	1,445	44
15	14,154	36,429	5,718	104
16	416	1,026	1,121	31
17	13,597	24,750	25,837	0
18	6,476	634	24,286	433
19	2,006	16,784	3,981	0
20	14,251	19,291	529	1,012
Total	111,725	216,661	218,778	2,344

¹ Cases Status is based on the initiative data that is provided to the OSCA on a monthly basis by each trial court. Cases Disposed represent the reported information on dispositions from July 1, 2010 through December 31, 2010 using the new resources and the status of the remaining pending cases. In addition, Desoto and Okeechobee Counties did not receive Foreclosure and Economic Recovery funding and are not included above.

² Cases Active represents those cases the court is actively working to resolve. Court administration may not be made aware immediately when a case moves from inactive to active status.

³ Cases Inactive represents cases where judicial action cannot be concluded due to extenuating circumstances. This includes, but is not limited to, cases inactive due to attorney inactivity, cases with insufficient pleadings or documentation, cases involved in mediation/settlement negotiations, and other similar matters. All cases at the beginning of the initiative in July 2010 were identified as inactive.

⁴ Cases Stayed includes bankruptcy cases, cases pending resolution of another case, cases where there is an agreement of the parties, and cases pending appeal.

Foreclosure and Economic Recovery Status Report
Number of Additional Real Property/Mortgage Foreclosure Cases
Added to Backlog and Percent of Cases Disposed
Quarter Ending September 2006 through December 2010

Quarter	Number of Additional Backlog Cases Added ¹	Clearance Rate ²
July -September 2006	4,199	78.6%
October - December 2006	8,702	64.5%
January - March 2007	13,810	56.9%
April - June 2007	16,852	54.6%
July -September 2007	26,233	45.9%
October - December 2007	38,843	39.7%
January - March 2008	50,105	38.4%
April - June 2008	51,031	43.8%
July -September 2008	53,250	45.5%
October - December 2008	49,528	49.9%
January - March 2009	50,157	53.6%
April - June 2009	36,545	63.0%
July -September 2009	35,033	64.0%
October - December 2009	28,972	69.5%
January - March 2010	15,187	81.5%
April - June 2010	-15,152	124.0%
July -September 2010	-16,284	125.0%
October - December 2010	-17,806	154.2%

¹ Number of Additional Backlog Cases Added was determined by subtracting the number of SRS dispositions from the number of SRS filings for the quarters ending September 30, 2006 through December 31, 2010.

² Clearance Rate was determined by dividing the number of SRS dispositions by the number of SRS filings for the quarters ending September 30, 2006 through December 31, 2010.

D'Amour, Rose

From: Stelma, Joe
Sent: Tuesday, February 01, 2011 1:44 PM
To: Moran, Donald R.
Subject: FW: Status of Foreclosures Stats for Nassau
Attachments: FORECLOSURE REPORT JULY AUG 2010 CLAY NASSAU.doc

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax: (904) 630-8209

From: Stelma, Joe
Sent: Tuesday, February 01, 2011 1:43 PM
To: Janocko, Eve; Emery, Caroline; Paruolo, Vincent
Subject: FW: Status of Foreclosures Stats for Nassau

This information was forwarded from Jeff to Libby in September.

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax: (904) 630-8209

From: Norris, Elizabeth
Sent: Tuesday, February 01, 2011 1:42 PM
To: Stelma, Joe
Subject: FW: Status of Foreclosures Stats for Nassau

From: Stelma, Joe
Sent: Tuesday, February 01, 2011 1:41 PM
To: Norris, Elizabeth
Subject: FW: Status of Foreclosures Stats for Nassau

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508

3/1/2011

Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Stelma, Joe
Sent: Monday, September 20, 2010 12:04 PM
To: 'P.J. Stockdale'
Subject: FW: Status of Foreclosures Stats for Nassau

here are our other counties, Clay and Nassau

Fourth Circuit Court Administrator
330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Sourbeer, Jeff
Sent: Friday, September 17, 2010 3:46 PM
To: Stelma, Joe
Cc: Norris, Elizabeth
Subject: FW: Status of Foreclosures Stats for Nassau

3/1/2011

4th Cir 00240

**Foreclosure and Economic Recover Initiative
Clay County, Fl. Fourth Circuit**

July 2010	CLAY	NASSAU
Cases Filed:	192	55
Cases Disposed:		
Dismissed Before Hearing:	75	50
Dismissed After Hearing:	0	0
Disposed by Default:	0	0
Disposed By Judge:	155	37
Disposed by Other:	0	9
Cases Reopened:	103	40
Closings on Reopens:	94	
Certificate of Titles Issued:	98	43
Sales Scheduled:	221	37
Sales Cancelled:	92	9
August 2010		
Cases Filed:	176	65
Cases Disposed:		
Dismissed Before Hearing:	71	18
Dismissed After Hearing:	0	2
Disposed By Judge:	106	56
Disposed By Other:	0	0
Cases Reopened:	130	49
Closings on Reopens:	102	
Certificate of Titles Issued:	121	37
Sales Scheduled:	162	59
Sales Cancelled:	80	4

D'Amour, Rose

From: Kristine Slayden [slaydenk@flcourts.org]
Sent: Tuesday, February 01, 2011 12:24 PM
To: Trial Court Chief Judges; Trial Court Administrators
Cc: Lisa Goodner; Craig Waters; Blan Teagle; Laura Rush; Greg Youchock; P.J. Stockdale; Arlene Johnson; Charlotte Jerrett; Dorothy Wilson
Subject: Foreclosure and Economic Recovery Status Report
Attachments: Second Quarter of FY 2010-11 Status Report.pdf

Chief Judges/Trial Court Administrators: Attached is the Foreclosure and Economic Recovery Status Report, updated with data from the second quarter of Fiscal Year 2010-11.

As you can see from the attached document, the number of dispositions have dropped in the second quarter. Based on various newspaper articles, what we have heard from the field, and from hearing cancellation reports we have received from your offices, we believe that this drop in dispositions is due in part to the voluntary moratorium imposed by some of the major lenders in Florida and a significant cancellations of hearings during October through December 2010.

Please let me know if you have any questions. Kris

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

3/1/2011

4th Cir 00242

D'Amour, Rose

From: Stelma, Joe
Sent: Tuesday, January 11, 2011 11:21 AM
To: Moran, Donald R.
Subject: FW: Foreclosure and Economic Recovery Initiative
Attachments: 04_16Duval_FERCTS.xls

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Janocko, Eve
Sent: Tuesday, January 11, 2011 10:57 AM
To: 'Arlene Johnson'
Cc: Stelma, Joe; Norris, Elizabeth; Sourbeer, Jeff; Talley, Alana; Soud, A.C.; Strong, Chuck R; Misra, Jill A; 'P.J. Stockdale'
Subject: RE: Foreclosure and Economic Recovery Initiative

Dear Arlene,

Thank you for your e-mail dated December 23, 2010. We have been working with our Clerk's staff and Foreclosure staff to answer your questions. We provide the following explanations.

- 1) There were zero jury trials conducted for the reporting period of July to December 2010.
- 2) The Clerk's staff have identified cases falling into the "Unknown" disposition category to determine their status. Programming changes have been made to report appropriate cases to the "Summary/Final Judgment" category. Clerk's staff are reviewing the disposition information for cases still reported under "Unknown". Some of the cases fall into the SRS category "Other". We will send updated information once the review has concluded.
- 3) The data for "Attorney Inactivity" and "Insufficient Pleadings or Documentation" is correct as submitted.
- 4) In Duval County, foreclosure cases are calendared as follows:

Law firms e-mail the Foreclosure Assistant requesting hearings for cases. Each law firm is allowed a maximum request of 12 cases per day to be calendared. The Foreclosure Assistant calendars the cases requested and e-mails the law firm a confirmation of the scheduled hearings. If a law firm wishes to cancel a hearing they notify the Foreclosure Assistant via e-mail.

Attached is the submission of the FERCTS data through December 2010 for Duval County. If you have

3/1/2011

any more questions, please contact me at 904-630-1644 or at ejanocko@coj.net.

Thanks,

Eve

Eve Janocko
 Court Operations Program Assistant
 Duval County Courthouse
 330 East Bay Street, Room 512B
 Jacksonville, Florida 32202
 Voice: (904)-630-1644
 Fax: (904)-301-3810
ejanocko@coj.net

From: Stelma, Joe
Sent: Thursday, December 23, 2010 1:28 PM
To: Janocko, Eve; Norris, Elizabeth
Subject: Fwd: Foreclosure and Economic Recovery Initiative

Sent from my iPhone

Begin forwarded message:

From: Arlene Johnson <johnsona@flcourts.org>
Date: December 23, 2010 12:01:14 PM EST
To: "Joseph Stelma, Jr." <jstelma@coj.net>
Subject: Foreclosure and Economic Recovery Initiative

Joe. In preparation for the second quarter fiscal year 2010-11 Foreclosure and Economic Recovery status report (October to December 2010) we have completed a review of your foreclosure initiative statistics for July 2010 to November 2010. Below are 3 tables that summarize your foreclosure statistics through November 2010. Following the tables is a list of questions pertaining to these summary statistics. Please note that this summary does not include the dispositions or status of reopened cases.

TABLE 1:	
Number of Dispositions By Month	
Month	Number
July	856
August	844
September	712
October	763
November	602
Total	3,777

TABLE 2:	
Number of Dispositions By Type	
Type	Number
Dismissed	1,595
Summary/ Final Judgment	1,822
<i>Trial</i>	<i>0</i>
<i>Unknown</i>	<i>360</i>
Total	3,777

3/1/2011

4th Cir 00244

TABLE 3:	
Status of Cases	
Status	Number
Disposed	3,777
Active	7,130
Stayed-Bankruptcy	306
Stayed-Pending Resolution of Another Case	0
Stayed-By Agreement of Parties	0
Stayed-Appeal Pending	1
<i>Inactive-Attorney Inactivity</i>	<i>29</i>
<i>Inactive-Insufficient Pleadings or Documentation</i>	<i>0</i>
Inactive-Mediation/Settlement Negotiations	6
Inactive-Other	10,894
Total	22,143

Questions:

1. In Table 2, please verify that zero "Trials" were conducted from July to November 2010.
2. In Table 2, there are 360 cases with an "Unknown" type of disposition. Would you please provide the type of disposition for these cases in your next monthly transmission (due January 10, 2011)?
3. In Table 3, please verify that there are only 29 cases inactive due to "Attorney Inactivity" and zero cases inactive due to "Insufficient Pleadings or Documentation."
4. To assist us in describing some of the statewide variation in the reporting of type of dispositions, would you please explain how these cases are calendared in your counties? Some examples are: upon request by the attorney, after a review by a case manager, after the attorney has met the threshold for a summary judgment, etc.

Arlene Johnson

OSCA, Research and Data

Telephone 850.922.5103

Facsimile 850.414.1342

Article V Revenue Estimating Conference Comparisons
 July 2010 and ****New**** November 2010
 FY 2010/11 and FY 2011/12 Revenue Estimates (in millions)

Article V Revenue Conferences	SCRTF		MATF		CETF	
	FY 2010/11	FY 2011/12	FY 2010/11	FY 2011/12	FY 2010/11	FY 2011/12
July 2010 Estimate	\$335.9	\$350.5	\$17.1	\$16.4	\$3.7	\$3.5
November 2010 Estimate	\$312.4	\$352.7	\$16.7	\$16.3	\$3.6	\$3.3
Difference	(\$23.5)	\$2.2	(\$0.4)	(\$0.1)	(\$0.1)	(\$0.2)

State Courts Revenue Trust Fund
Revenue Projections by Source (in millions)
FY 2010/11 and FY 2011/12

Source	FY 2010/11 Projected Revenue ¹ (Annual Projection)	FY 2011/12 Projected Revenue ¹ (Annual Projection)
\$5 Civil Traffic Assessment	\$12.2	\$12.2
\$25 Speeding Fine Increase	\$6.8	\$6.8
18% Driving School Reduction	\$6.5	\$6.5
Real Property/Foreclosure \$80 Redirect, \$100 Fee Increase and Graduated Filing Fee Increase	\$238.6	\$280.2
\$115 Increase in Probate	\$6.8	\$6.7
\$180 Redirect/Increase in Circuit Civil (Excluding Foreclosures)	\$34.2	\$32.7
\$80 Redirect in Family	\$6.5	\$6.7
Counterclaim Graduated Fee Increase	\$0.5	\$0.6
Appellate \$50 Filing Fee	\$0.3	\$0.3
Total	\$312.4	\$352.7

¹ FY 2010/11 and FY 2011/12 Projected Revenue from the November 2010 Article V Revenue Estimating Conference.

State Courts Revenue Trust Fund
FY 2010/11 Monthly Revenue Comparisons (Projected vs. Actual)

Source	REC Official Estimate		Actual Monthly Revenues					FY 2010/11 Year to Date Collections
	FY 2010/11 Projected Revenue ¹ (Annual Projection)	FY 2010/11 Projected Revenue (One Month Projection)	Actual Revenues (June 2010 Collections/ July 2010 Remittance) ²	Actual Revenues (July 2010 Collections/ August 2010 Remittance) ²	Actual Revenues (August 2010 Collections/ September 2010 Remittance) ²	Actual Revenues (September 2010 Collections/ October 2010 Remittance) ²		
\$5 Civil Traffic Assessment	\$12,200,000	\$1,016,667	\$1,119,699	\$1,041,918	\$1,028,918	\$1,007,156	\$4,197,690	
Adjudication Withheld	NA	NA	\$457,222	NA	NA	NA	\$457,222	
\$25 Speeding Fine Increase	\$6,800,000	\$566,667	\$634,932	\$613,631	\$629,378	\$610,914	\$2,488,855	
18% Driving School Reduction	\$6,500,000	\$541,667	\$532,248	\$530,034	\$526,554	\$524,857	\$2,113,692	
Real Property/Foreclosure \$80 Redirect, \$100 Fee Increase and Graduated Filing Fee Increase	\$238,600,000	\$19,883,333	\$19,218,492	\$17,032,376	\$19,312,638	\$19,955,323	\$75,518,830	
\$115 Increase in Probate	\$6,800,000	\$566,667	\$568,079	\$557,944	\$549,272	\$515,942	\$2,191,237	
\$180 Redirect/Increase in Circuit Civil (Excluding Foreclosures)	\$34,200,000	\$2,850,000	\$3,013,667	\$3,139,771	\$2,930,952	\$2,891,560	\$11,975,951	
\$80 Redirect in Family	\$6,500,000	\$541,667	\$574,082	\$546,348	\$531,763	\$525,068	\$2,177,261	
Counterclaim Graduated Fee Increase	\$500,000	\$41,667	\$56,800	\$46,708	\$57,765	\$47,046	\$208,319	
Appellate \$50 Filing Fee	\$300,000	\$25,000	\$22,550	\$23,800	\$29,800	\$27,400	\$103,550	
Other (Refunds)	NA	NA	\$12,113	\$6,803	\$15,997	\$5,440	\$40,353	
Total	\$312,400,000	\$26,033,333	\$26,209,886	\$23,539,333	\$25,613,036	\$26,110,707	\$101,472,962	

Note: Monthly Projected Revenue represent 1/12 of the annual amount. Actual revenue will vary from month to month, and revenues will likely be lower in later months due to foreclosure cases slowing down as the economy improves. Any collection of revenue above the legislatively appropriated budget for the State Courts System is just excess cash that cannot be spent because the courts do not have the authority to spend it.

¹ FY 2010-11 Projected Revenue from the November 15, 2010 Article V Revenue Estimating Conference.

² As reported by in the Department of Revenue Consolidation Report; Appellate \$50 Filing Fee as reported by OSCA, Finance and Accounting

D'Amour, Rose

From: Stelma, Joe
Sent: Friday, December 10, 2010 2:47 PM
To: Janocko, Eve
Cc: Moran, Donald R.
Subject: RE: Foreclosure Cases

thanks eve.

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax: (904) 630-8209

From: Janocko, Eve
Sent: Friday, December 10, 2010 2:38 PM
To: Stelma, Joe
Cc: Norris, Elizabeth
Subject: Foreclosure Cases

Hi Joe,

Just met with Steve Johnroe and Judge Soud about dismissal of the older foreclosure cases. Judge Soud will be entering an order to get rid of these older cases. We should have these removed in about 60 days if folks don't show cause to keep them open.

I am heading out now. I will see you on Thursday.

Eve

Eve Janocko
Court Operations Program Assistant
Duval County Courthouse
330 East Bay Street, Room 512B
Jacksonville, Florida 32202
Voice: (904)-630-1644
Fax: (904)-301-3810
ejanocko@coj.net

3/1/2011

4th Cir 00249

D'Amour, Rose

From: Stelma, Joe
Sent: Thursday, December 09, 2010 9:30 AM
To: Moran, Donald R.
Subject: FW: Foreclosure Data

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Janocko, Eve
Sent: Thursday, December 09, 2010 9:05 AM
To: Soud, A.C.
Cc: Talley, Alana; Stelma, Joe; Johnroe, Steve G; Norris, Elizabeth
Subject: Foreclosure Data

Good Morning Judge Soud,

Joe and I would like to meet with you to discuss the older foreclosure cases that have not seen any activity in over 10 months. In reviewing the FERCTS data which we are required to send to the OSCA, many of these older cases are inflating the pending cases.

Please let me know what works for your schedule.

Thank You,

Eve

Eve Janocko
Court Operations Program Assistant
Duval County Courthouse
330 East Bay Street, Room 512B
Jacksonville, Florida 32202
Voice: (904)-630-1644
Fax: (904)-301-3810
ejanocko@coj.net

3/1/2011

4th Cir 00250

D'Amour, Rose

From: Stelma, Joe
Sent: Tuesday, November 23, 2010 6:16 PM
To: Emery, Caroline; Moran, Donald R.
Subject: Fwd: ACLU Request - Clarification of Item #4

Sent from my iPhone

Begin forwarded message:

From: Laura Rush <RushL@flcourts.org>
Date: November 23, 2010 5:55:35 PM EST
To: Trial Court Administrators <TrialCourtAdministrators@flcourts.org>
Cc: "LKearson@jud11.flcourts.org" <LKearson@jud11.flcourts.org>, "Berghorn, Robin" <ctlcrl@ocnjcc.org>, 'Lisa DeBrauwere' <debrauwere1@jud14.flcourts.org>
Subject: ACLU Request - Clarification of Item #4

All,

ACLU agreed to the following revision to request item #4:

All records of the judicial branch that concern planning, proposing, creating, reviewing, approving, revising or distributing training for general magistrates or senior judges to preside over foreclosure cases. This request includes, but is not limited to, any manuals or other training materials provided to general magistrates or senior judges assigned to preside over foreclosure cases.

This request is not intended to encompass logistical e-mail, e.g., committee meeting notices, but is intended to encompass records preceding final work products.

Sincerely,

3/1/2011

4th Cir 00251

D'Amour, Rose

From: Heather Thuotte-Pierson [piersonh@flcourts.org]
Sent: Friday, November 19, 2010 3:21 PM
To: Trial Court Chief Judges; Trial Court Budget Commission; Trial Court Administrators
Cc: Lisa Goodner; Kristine Slayden; Charlotte Jerrett
Subject: November 15, 2010 Article V Revenue Estimating Conference
Attachments: TrustFundEstimatesNovember2010REC.pdf

The official estimates from the November 15, 2010 Article V Revenue Estimating Conference for the State Courts Revenue Trust Fund (SCRTF), the Mediation and Arbitration Trust Fund (MATF), and the Court Education Trust Fund (CETF) are attached. Proposed forecasts were provided to the conference principals by the Legislative Office of Economic and Demographic Research, the Executive Office of the Governor, the Office of the State Courts Administrator and the Clerks of Court Operations Corporation. Official estimates were based on four months of actual revenue data for FY 2010/11 and/or transaction data. More detailed information on the estimates can be found on the Office of Economic and Demographic Research website: <http://edr.state.fl.us/Content/conferences/articleV/index.cfm>

Foreclosure revenues are projected to decrease in FY 2010-11 in recognition of the continued lower level of foreclosure filings in the first quarter and in anticipation of a temporary dip in filings resulting from the "Robo-Signing Scandal". However, the higher number of filings is expected to resume in the second half of FY 2010-11 and then climb in the out years due to the high number of mortgages in various stages of default.

More details will be provided at the December 7, 2010 TCBC meeting.

Please let me know if you have any questions.

Thanks,
Heather

Heather Thuotte-Pierson
Office of the State Courts Administrator
Court Statistics Consultant
(850) 410-3376
piersonh@flcourts.org

3/1/2011

4th Cir 00252

D'Amour, Rose

From: Stelma, Joe
Sent: Thursday, November 18, 2010 1:07 PM
To: Moran, Donald R.
Subject: FW: Fourth Judicial Circuit Foreclosure Software

Fourth Circuit Court Administrator

330 E. Bay Street, Room 508
Jacksonville, Florida 32202
Work: (904) 630-1655
Fax:(904) 630-8209

From: Sourbeer, Jeff
Sent: Thursday, November 18, 2010 12:11 PM
To: 'johnsona@flcourts.org'; 'goodnerl@flcourts.org'
Cc: Stelma, Joe; Norrlis, Elizabeth
Subject: Fourth Judicial Circuit Foreclosure Software

Lisa - Joe Stelma asked me to update you and Arlene as to what the \$8,000 was going to provide regarding our Foreclosure program.

The Clerk's IT staff in Duval County would import data from their Case Maintenance system, ShowCase, which was developed by Aptitude Solutions. All new Foreclosures, Reopen cases and update status of existing Foreclosures would be extracted from ShowCase for the given reporting month using SQL code to access the database tables of information. This data is then used to automatically update the existing OSCA worksheet for the particular county. There is a provision to accept text format files from Clay and Nassau County which reflect the data from their respective Case Maintenance System (i.e., FACT from Nassau County and Odyssey from Clay County.) The text files are provided by the IT staff in the other counties based on the format the Duval County Clerk's IT staff has established. Thus, this code could be easily adapted by other Circuits as long as the data is provided in the same file format.

The Duval Clerk's IT staff is also developing a web based application that will allow one to open the OSCA worksheet for viewing and searching. This is a screenshot of that application. It should soon be available to the Court.

Let me know if you have any further questions regarding these applications.



3/1/2011

D'Amour, Rose

From: Stelma, Joe
Sent: Thursday, November 18, 2010 4:09 PM
To: D'Amour, Rose
Cc: Moran, Donald R.
Subject: FW: Message from Chief Justice Canady on Foreclosure Education
Attachments: Foreclosure Bench Book.pdf; Memo - Foreclosure Initiative.pdf

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Cc: Martha Martin

Subject: Message from Chief Justice Canady on Foreclosure Education

The Publications Committee of the Florida Court Education Council has posted the *Residential Foreclosure Bench Book* in the Court Education Resource Library on the Florida State Courts intranet. The *Residential Foreclosure Bench Book* was written in the spring of 2010 by the Eleventh Circuit's Judge Jennifer Bailey and Assistant General Counsel Doris Bermudez-Goodrich. Used for a judicial education course for judges assigned to hear foreclosure cases in the summer of 2010, this bench book presents readers with the nuts and bolts of current foreclosure law and procedures. However, please be aware that there may have been some changes in the law since this publication was first done. Therefore, it is important that you continue to do your own research for updates in the law. We hope to post an updated version of this bench book near the end of this year, or the first of 2011.

A PDF of the bench book is attached, but you can also access it from the Court Education Resource Library, at

https://intranet.flcourts.org/osca/Judicial_Education/Library/librarymain.shtml

(As the bench book will be periodically updated to reflect changes in foreclosure law and procedure, please visit the site for update notifications.)

This site can only be accessed from your court workstation computer unless you also have access to your court computer from your home.

If you have any questions about the bench book, contact Susan Leseman, OSCA Publications Attorney, at (850) 922-5085 or lesemans@flcourts.org

Also attached to this email is a memo from Judge John Laurent, Chair of the Trial Court Budget Commission, which was sent to all chief judges regarding the foreclosure case backlog tracking initiative.

Finally, if you were not able to attend the Circuit Judges' Conference in Marco Island in July 2010, the foreclosure course which was taught at that event was recorded. **If you would like a DVD of that course, please contact Ann Luchini at luchinia@flcourts.org and she will send it to you.**

(This message has been sent to all Senior Judges with email addresses on file with OSCA.)

3/1/2011

4th Cir 00255

RESIDENTIAL FORECLOSURE BENCH BOOK

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

Lender's Right to Foreclose

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

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

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

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

Default

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

Acceleration

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

Statute of Limitations

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

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

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

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

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

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

Jurisdiction

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

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

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

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

Parties to the Foreclosure Action

Plaintiff

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

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

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

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

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

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

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

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

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

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

Necessary and Proper Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Superior Interests

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

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

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

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

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

Association Liens and Assessments

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

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

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

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

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

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

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

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

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

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

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

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

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

Judgment Liens

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

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

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

Filing of the Lis Pendens

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

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

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

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

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

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

The Foreclosure Complaint

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

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

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

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

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

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

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

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

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

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

(j) Legal description of the subject real property.

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

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

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

Original Document Filing and Reestablishment of the Note

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fair Debt Collection Practices Act (FDCPA)

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

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

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

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

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

Mandatory Mediation of Homestead Foreclosures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Service of Process

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

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

Personal Service

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

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

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

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

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

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

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

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

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

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

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

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

Constructive Service by Publication

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

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

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

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

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

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

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

§49.10(1)(c)(2), Fla. Stat. (2010).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Service of process and timeshare real property:

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

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

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

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

Substitution of Parties

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

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

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

Entry of Default

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

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

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

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

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

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

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

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

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

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

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

(1) defendant is not in military service; or

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

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

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

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

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

Appointment of a Guardian ad Litem

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

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

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

Appointment of a Receiver

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

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

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

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

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

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

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

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

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

Summary Final Judgment of Foreclosure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) property inspections & appraisals,

(7) hazard insurance premiums and taxes.

(b) Affidavit of Costs - This affidavit details:

(1) the filing fee,

(2) service of process,

(3) and abstracting costs.

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

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

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

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

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

Affirmative Defenses

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

3. Affirmative defenses commonly raised:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TILA issues include:

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

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

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

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

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

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

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

Summary Judgment Hearing

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

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

Final Judgment

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

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

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

4. Checklist for Final Summary Judgment

(a) Final Judgment:

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

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

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

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

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

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

Right of Redemption

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

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

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

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

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

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

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

Judicial Sale

Scheduling the judicial sale

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

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

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

Notice of sale

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

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

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

Judicial sale procedure

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

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

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

Certificate of sale

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

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

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

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

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

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

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

Objection to sale

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

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

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

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

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

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

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

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

Sale vacated

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

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

Post Sale Issues

Certificate of title

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

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

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

Right of possession

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

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

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

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

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

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

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

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

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

Protecting Tenants at Foreclosure Act of 2009

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

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

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

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

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

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

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

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