

**IN THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA**

**ADMINISTRATIVE ORDER S-2011-029
(Supersedes Administrative Orders S-2009-098, S-2010-052, and S-2010-087)**

FORECLOSURE PROCEDURES

In 2010 the Florida Legislature authorized and designated funds for the purpose of processing a backlog of residential mortgage foreclosure cases. The court thereafter created two sections within the General Civil Division – staffed with senior judges, case managers and administrative assistants – to effectuate the legislative purpose of reducing the residential foreclosure backlog. In 2011 the Florida Legislature did not renew the designated funding. In light of this reduction in resources for residential mortgage foreclosures cases and the Clerk of the Circuit Court’s conduction of a large volume of judicial sales in Hillsborough County, it is necessary to update the procedures for the processing of mortgage foreclosure cases.

By the power vested in the chief judge under article V, section 2(d) of the Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of Judicial Administration 2.215(b)(2), it is therefore **ORDERED**:

1. Constructive Service – Affidavit of Diligent Search and Inquiry

To obtain constructive service in a case, plaintiff’s counsel must complete and file an affidavit of diligent search and inquiry as provided in Form 1.924, Florida Rules of Civil Procedure. A uniform Affidavit of Search and Inquiry may be accessed at <http://www.fljud13.org/Forms.aspx>.

2. Military Service – Memorandum for Certificate of Military Service

If plaintiff’s counsel does not know whether a defendant is on active duty in a branch of the United States military service, plaintiff’s counsel must complete and file a certificate of military service substantially similar to the memorandum for certificate of military service designated as Florida Family Law Rule of Procedure Form 12.912(a). A uniform Memorandum for Certificate of Military Service may be accessed at <http://www.fljud13.org/Forms.aspx>.

3. Default Judgment – Nonmilitary Affidavit

If plaintiff’s counsel seeks a default judgment and the defendant has been properly served and has not responded to the mortgage foreclosure complaint, plaintiff’s counsel must complete and file a nonmilitary affidavit substantially similar to the affidavit designated as Florida Family Law Rule of Procedure Form 12.912(b). A uniform Nonmilitary Affidavit may be accessed at <http://www.fljud13.org/Forms.aspx>.

4. Disposition of Non-Summary Judgment Motions

Unless the presiding judge directs otherwise, a copy of all non-summary judgment motions must be served on the presiding judge when the original motion is filed with the Clerk of the Circuit Court (“clerk”). The presiding judge may decide to rule on a non-summary judgment motion either with or without a hearing. If a judge decides to rule on a non-summary judgment motion without a hearing, the judge will enter an order disposing of the motion within 30 days from the date of service of a copy of the motion on the presiding judge. Unless the

presiding judge directs otherwise, a party may not set a non-summary judgment motion for hearing until at least 30 days have elapsed from the date of service of a copy of the motion on the presiding judge. The court may require a party filing a non-summary judgment motion to submit, along with the motion, an original and appropriate copies of a proposed order and addressed stamped envelopes to all parties.

5. Calendaring

Attorneys must schedule all summary judgment motion hearings and any non-summary judgment motions authorized to be set for hearing under section 4 of this administrative order through the Judicial Automated Workflow System (“JAWS”). The JAWS may be accessed at the following link: <http://www.fljud13.org/JAWS.aspx>. A signed copy of any motion scheduled and the notice of hearing must be uploaded at the time the hearing is scheduled. The court may unilaterally cancel without notice any hearing set on the JAWS if the court has already entered an order on a non-summary judgment motion.

6. Summary Judgment Motions

A. Prerequisites to Scheduling Hearing

Prior to selecting a mortgage foreclosure summary judgment hearing date on the JAWS, attorneys of record for plaintiffs must file with the clerk the motion for summary judgment and a uniform affidavit titled “Affidavit of Compliance with Foreclosure Procedures.” The uniform affidavit form may be found at <http://www.fljud13.org/Forms.aspx>. The affidavit swears or affirms that certain requisite actions have been completed and the dates on which they have occurred. Hearings scheduled on the JAWS prior to the filing of the summary judgment motion and the affidavit will be cancelled by the court without notice.

B. Original Note or Lost Instrument Affidavit Required

Section four of the above-referenced Affidavit of Compliance with Foreclosure Procedures requires the attorney of record for the plaintiff to swear that the note and mortgage were filed with the clerk on a specific date or that an affidavit of lost instrument was filed with the clerk on a specific date. If an affidavit of lost instrument is filed with the clerk, the affidavit must contain an agreement to indemnify the maker(s) or other adequate consideration. See section 673.3091(2), Florida Statutes (“The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected.”). If the note does not name the plaintiff as the payee, the plaintiff must submit evidence of: (1) the note bearing a special indorsement in favor of plaintiff; (2) the note bearing a blank indorsement; (3) the payee having assigned the note to the plaintiff; or (4) an affidavit of ownership to prove its status as a holder of the note.

C. Notice of Hearing

Within 3 days of obtaining a summary judgment hearing date, attorneys of record for plaintiffs must serve a notice of hearing for the summary judgment hearing on defendant(s).

D. Cancellations

Cancellations less than 20 days before the hearing date require a notice of cancellation with an explanation of the reason for cancellation.

7. Telephonic Hearings

For any multi-party telephonic hearings, all parties must be conferenced into the call prior to the call being placed to the presiding judge's office.

8. Foreclosure Judgment Packet

All foreclosure judgment packets must be received by the presiding judge's office at least five business days prior to all scheduled hearing dates for motions for summary judgment. The foreclosure judgment packet consists of the following documents:

- Proposed Final Judgment (sale date will be inserted by the court at the time of the hearing) with sufficient copies. A uniform final judgment form must be used. The most current Uniform Final Judgment form may be accessed at <http://www.fljud13.org/Forms.aspx>;
- Certificate of Sale;
- Certificate of Disbursements;
- Certificate of Title; and
- Three copies of stamped addressed envelopes.

9. Judicial Sales Dates

Judicial sales will be held by the clerk daily (excluding weekends and holidays) at 10:00 a.m. and 2:00 p.m.

10. Judicial Sales Procedures

A. Decorum

The same decorum and behavior in courtrooms and chambers must be adhered to during judicial sales. Conduct that disrupts the deputy clerk from conducting the judicial sale will not be tolerated. Cellular telephones and other electronic devices must be muted during the conduct of judicial sales. Any person who needs to communicate verbally by cellular telephone during the conduct of any judicial sale must exit the room, or, if the sales are not conducted in a room, from the immediate vicinity where the judicial sale is being conducted. The clerk is empowered to establish any administrative rules to ensure judicial sales are conducted expeditiously and without disruption.

B. Bidding Increments

The deputy clerk conducting the sale will require all tendered bids to be in increments of at least one hundred dollars (\$100.00). Any attempt to tender a bid to the deputy clerk conducting the judicial sale that is less than the minimum one hundred dollar increment (\$100.00) will not be recognized by the deputy clerk conducting the judicial sale.

C. Waiver of Reading of Legal Descriptions

The plaintiff's representative has the right to request the deputy clerk conducting the judicial sale to waive reading of the legal description of the property being sold. The deputy clerk has the authority to honor this request and not read the legal description of the property being sold, unless it can be established that there is a defect in the legal description of such property.

D. Debarment for Failure to Pay Any Part of the Bid Price

Any successful bidder who cannot pay the required deposit at the time of the judicial sale or who fails to pay the balance of the bid or other required costs of the judicial sale within the time required by the Clerk shall be reported to the judge who ordered the judicial sale. The court may enter an order debaring that bidder from participating in future judicial sales conducted by the clerk in Hillsborough County for a period of time, up to one month, or longer if such conduct is found to have been repetitive within the past 12 months. The deputy clerk conducting the judicial sale will maintain all orders and enforce the orders by prohibiting debarred bidders from participating in the judicial sales during the term established in the respective order.

E. Authority to Stop the Judicial Sales to Enforce These Procedures

If the deputy clerk conducting the judicial sale determines that one or more persons in the vicinity of the judicial sale is acting in a manner that disrupts the deputy clerk from performing the activities of the judicial sale, the deputy clerk must stop the judicial sale immediately and seek the cooperation of the person or persons to abide by the provisions of this administrative order. If the person or persons refuse(s) to cooperate with the deputy clerk, the deputy clerk must suspend the judicial sale and seek assistance from the court's bailiff or an administrative bailiff to maintain order, including removal of such person or persons. Any continuing disruptive conduct must be reported to the judge who ordered the judicial sale and the conduct may be considered as contempt of court. Once order has been restored, the deputy clerk will proceed to conduct the remaining judicial sales.

11. Cancellation of Foreclosure Sale

A. Deadline

The deadline for cancellation of a judicial sale and for payment of the clerk's sale fee is the day of the scheduled sale, no later than 9:30 a.m. for any 10:00 a.m. sale, and no later than 1:30 p.m. for any 2:00 p.m. sale.

B. Upon Plaintiff's Notice of Cancellation

The clerk will cancel any scheduled foreclosure sale upon receipt by the above-referenced deadline of a Notice of Cancellation of Foreclosure Sale submitted by plaintiff's counsel. The clerk will accept a facsimile of the Notice of Cancellation of Foreclosure Sale at the number designated on the clerk's website at www.hillsclerk.com (Foreclosure Sales) and the Thirteenth Judicial Circuit website at www.fljud13.org (General Civil Division). The original Notice of Cancellation of Foreclosure Sale must be filed with the clerk. The uniform Notice of Cancellation of Foreclosure Sale form may be accessed at <http://www.fljud13.org/Forms.aspx>.

C. Upon Suggestion of Bankruptcy

Unless otherwise directed by the presiding judge or a United States Bankruptcy Judge, the clerk will cancel any scheduled foreclosure sale if any deputy clerk assigned to the foreclosure department of the General Civil Division receives, no later than the above-referenced deadline, a suggestion of bankruptcy on behalf of a named defendant in a pending foreclosure action.

D. Upon Plaintiff's Failure to Pay Additional Filing Fee

If any difference between the estimated amount in controversy of the claim and the actual value of the claim causes there to be an additional filing fee owed by the plaintiff pursuant to section 28.241(1)(a), Florida Statutes (2010), the plaintiff must pay the additional fee prior to the judicial

sale. If any additional filing fee owed is not paid prior to the judicial sale, the clerk will cancel the judicial sale.

12. Verified Motion for Writ of Possession

The federal Protecting Tenants at Foreclosure Act of 2009 (Pub. L. No. 111-22, §§ 701 – 704 (2009)) (“Act”) provides that in the case of a foreclosure on any dwelling or residential real property, the party taking title to the property assumes the property subject to the rights of a bona fide tenant. Under the Act, any bona fide tenant occupying the property as of the date of a “notice of foreclosure” is protected by the Act’s provisions. The federal Protecting Tenants at Foreclosure Act Extension and Clarification (Pub. L. No. 111-203, § 1484 (2010)) clarifies that the date of the “notice of foreclosure” is “the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.” In Florida, complete title to a property is transferred to a successor entity when the certificate of title issues under section 45.031, Florida Statutes. In Florida, therefore, the Act protects any bona fide tenant who takes occupancy of the property before a certificate of title is issued to the successor in interest as a result of the foreclosure.

When a plaintiff seeks an order directing the clerk to issue a writ of possession, a verified motion must be filed swearing or affirming that the residence sold at the judicial sale is either: (1) unoccupied; or (2) occupied by the debtor; or (3) occupied by a bona fide tenant (as defined in the Act) who has been given at least a 90-day notice to vacate AND the motion does not seek an order that violates any tenant’s or tenants’ right to continued occupancy under the Act. A uniform verified motion for writ of possession may be accessed at <http://www.fljud13.org/Forms.aspx>.

13. Additional Procedures

Individualized procedures for each judge’s mortgage foreclosure cases may be accessed on the respective judge’s web page located on the Thirteenth Judicial Circuit website at http://www.fljud13.org/JudicialDirectory.aspx#General_Civil.

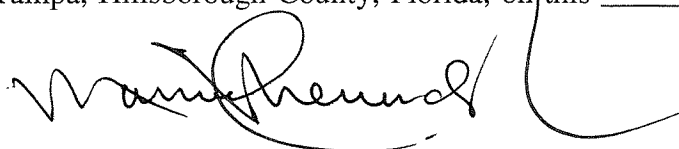
14. Previous Administrative Orders Superseded

This administrative order supersedes Administrative Orders S-2009-098 (*Foreclosure Procedures*), S-2010-052 (*Residential Foreclosure Procedures*), and S-2010-087 (*Residential Foreclosure Procedures – Case Management*).

15. Effective Date

This administrative order is effective July 1, 2011.

It is ORDERED in Tampa, Hillsborough County, Florida, on this 28th day of June, 2011.



Manuel Menendez, Jr., Chief Judge

Original to: Pat Frank, Clerk of the Court
Copy to: All General Civil Division Judges
Hillsborough County Bar Association