



ADMINISTRATIVE OFFICE OF THE COURTS
INTER-OFFICE

MEMO 2015-36

TO: Honorable Carolyn Timmann
Honorable Sharon Robertson
Honorable Joseph E. Smith
Honorable J.R. Smith

FROM: Thomas A. Genung, Trial Court Administrator

DATE: September 2, 2015

RE: **Administrative Order 2015-07**
RE: RESIDENTIAL FORECLOSURE CASES

A handwritten signature in black ink, consisting of a large, stylized loop and a horizontal line extending to the right.

Attached please find an original **Administrative Order 2015-07** for filing with the Court.

If you have any questions regarding the above, please do not hesitate to contact me.

TAG/js
Attachment

cc w/attach: All Judges in the Nineteenth Judicial Circuit
All Magistrates and Hearing Officers in the Nineteenth Judicial Circuit
All Staff Attorneys in the Nineteenth Judicial Circuit
Honorable Bruce Colton, State Attorney's Office
Honorable Diamond Litty, Public Defender's Office
All County Attorneys in the Nineteenth Judicial Circuit
All Local Law Libraries
All Local Bar Presidents
IT

THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER, MARTIN, OKEECHOBEE,
AND ST. LUCIE COUNTIES, STATE OF FLORIDA

ADMINISTRATIVE ORDER 2015-07

IN RE: RESIDENTIAL FORECLOSURE CASES

WHEREAS, Rule 2.545, Florida Rules of Judicial Administration mandates that trial judges "shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter"; that Rule 2.250 has set forth a 12 month time period as a presumptively reasonable time period for the complete of civil non-jury cases; that the Florida Supreme Court has amended Florida Rules of Civil Procedure and adopted a new Final Judgment of Foreclosure Form; that Rule 2.516 requires e-filing of all pleadings and many of the judiciary are using the portal to e-file their orders; that since 2009, the Court has adopted various administrative orders to handle the increasing number of foreclosure cases it was handling and many of those processes are no longer necessary since the caseload has been reduced and case management practices have been adopted; and

NOW, therefore, pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215, it is ORDERED as follows:

1. This Administrative Order replaces and supersedes Administrative Orders 2009-01, 2009-15, 2010-03, 2010-08, 2011-01, 2011-06, 2012-01 (previously terminated mediation); 2013-01 and 2013-13.

2. **Original Loan Documents**. Plaintiff shall comply with the certification requirements specified in Section 702.15(4), Florida Statutes, and Florida Rule of Civil

Procedure 1.115. The Court will not enter any judgment until the original promissory note and allonges have been filed with the Clerk or delivered to the Court. The Court prefers that Plaintiff deliver the original note and allonges to the Court at the time of final hearing.

3. **Diligent Prosecution and Rules of Judicial Administration.** All motions must be promptly set for hearing upon filing. Failure to set motions for hearing may result in these motions being deemed abandoned or denied without hearing by the presiding judge. Motions to quash service or for default shall be promptly prosecuted upon execution of service or attempted service. Rule 2.550(c) shall be followed when an attorney has a conflict. Substitution of counsel shall be in accordance with Rule 2.505. Service on an attorney through E-portal service shall be deemed sufficient.

4. **Final Judgments.** Effective immediately, all submitted proposed Final Judgments shall be in the same or similar format as the form attached hereto as Exhibit "A." Upon entry of the Final Judgment, the Plaintiff shall submit to the Court three (3) sets of envelopes addressed to the parties and a sale package containing the sale and clerk fees, Certificate of Sale, Certificate of Title and Certificate of Disbursements. Plaintiff shall file a properly executed Form 1.998 and must comply with the sale notice publication requirements specified in Section 45.031(2), Florida Statutes.

5. **Local Procedure.** Local rule shall govern the procedure for each judge's summary judgment and trial requirements, and each judge's procedures shall be posted on the Circuit's website, www.circuit19.org. The Judge(s) and/or Circuit may alter the procedures from time to time as dictated by resources, efficiencies and existing circumstances, without the necessity of reissuance of the administrative order. All changes will be posted on the Circuit's website at www.circuit19.org.

6. **Foreclosure Sales.** All parties to the foreclosure action, as well as sale bidders/participants, shall abide by and follow the administrative policy and procedures of the Clerk(s) and Administrative Order 2010-09 (electronic judicial sales procedures). Foreclosure Plaintiffs shall submit the clerk's sale fees and the proof of publication to the Clerk of Court at least five (5) business days prior to the online sale or the sale will not be held by the Clerk.

7. **Cancellation of Sale.** A court order shall be required to cancel any scheduled foreclosure sale, except where a bankruptcy petition, satisfaction of judgment or notice of redemption has been filed. Any party seeking to cancel and/or reschedule a sale shall file the written motion (which shall include the number of times the sale has been cancelled) at least five (5) business days prior to the sale date, pay the \$50 reopen fee (if filed more than 90 days after the final judgment) and provide the respective Judge a proposed Order as prescribed in his/her procedures.

8. **Writs of Possession.** Writs of possession shall be issued by the Clerk only upon order of the Court and in accordance with Sections 83.561 and 83.62, Florida Statutes.

DONE and ORDERED in quadruplicate in chambers this 1st day of September, 2015 at Stuart in Martin County, Florida.


ELIZABETH A. METZGER, CHIEF JUDGE

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s),

CASE NO.

v.

Defendant(s).

_____ /

FINAL JUDGMENT OF FORECLOSURE

This action was heard before the court on **[date of hearing]** and on the evidence presented and being otherwise duly advised in the premises,

IT IS ORDERED AND ADJUDGED that:

1. **Motion Granted [or] Final Judgment.** There is no dispute of material facts and plaintiff's motion for summary judgment is granted **[or]** Plaintiff is entitled to entry of final judgment **[or]** The parties have consented to entry of this final judgment.

2. **Amounts Due.** Plaintiff, **[plaintiff's name and address]**, is due:

Principal	\$.....
Interest on the note and mortgage from [date] to [date]	.....
Per diem interest at [rate] % from [date] to [date]	.....
Title search expense	.....
Taxes	.....
Insurance premiums	.....
Attorneys' fees	.....
Finding as to reasonable number of hours	.....
Finding as to reasonable hourly rate	.....
Attorneys' fees total	.....
Court costs	.....
Filing fee	.....
Service of Process at \$ [amount] per defendant	.....

Publication for [reason]	.....
Additional Costs	
[list separately]	.....
Subtotal (if applicable)	\$.....
LESS: Escrow balance	.....
LESS: Unearned insurance premiums	.....
LESS: Other [describe]	.....
TOTAL	\$.....

3. **Interest.** The total amount in paragraph 2 shall bear interest from this date forward at the prevailing statutory rate of interest.

4. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), (with the exception of any assessments that are superior pursuant to Section 718.116, or 720.3085, Florida Statutes) on the following described property in **[Indian River/St. Lucie/Martin/Okeechobee]** County, Florida:

[Describe property]; Property address: **[Street address]**

5. **Sale of Property.** If the total sum with interest at the rate described in paragraph 2 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on _____, 2015, to the highest bidder for cash, except as prescribed in paragraph 6, by electronic sale at **[Indian River]** www.indian-river.realforeclose.com **[St. Lucie]** www.stlucie.clerkauction.com **[Martin]** www.martin.realforeclose.com **[Okeechobee]** www.clerk.co.okeechobee.fl.us/Foreclosures beginning at 10:00 a.m. in accordance with section 45.031, Florida Statutes. **The public sale shall not be postponed or canceled without a court order. All orders postponing or canceling the sale must be filed with the clerk of court no later than 5:00 p.m. five (5) business days before the sale date. Counsel for plaintiff must be certain that all sale and clerk fees are paid and that the original proof of publication is filed no less than five (5) business days before the sale date. Failure to timely file the original proof of publication of the notice of sale and pay the sale and clerk fees will stop the sale. Additionally, the failure of plaintiff's counsel to pay the sale fee and properly and timely publish the notice of sale may result in sanctions against the plaintiff, plaintiff's counsel individually, and the law firm representing the plaintiff.** Any electronic sale by the clerk shall be in accordance with the written administrative policy for electronic sales published by the clerk at the official website for the clerk and posted in the public areas of the clerk's offices.

6. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, plaintiff shall file an affidavit within 5 business days and the clerk shall credit plaintiff's bid with the total sum with post-judgment interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full. The clerk shall receive the service charge imposed in Section 45.031, Florida Statutes.

7. **Distribution of Proceeds.** On filing the certificate of title, the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale; and by retaining any remaining amount pending further order of this court.

8. **Right of Redemption.** On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any.

9. **Right of Possession.** Upon filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant or tenant remains in possession of the property, an Order Granting the Motion For Writ of Possession shall be entered without further notice or hearing, subject to the purchaser's compliance with Section 83.561, Florida Statutes.

10. **Jurisdiction Retained.** Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment, writs of possession and such supplemental relief or judgments as may be appropriate.

11. **Lost Note.** **[Delete this paragraph unless a lost note has been reestablished]** The Court finds that the Plaintiff has re-established the terms of the lost note and its right to enforce the instrument as required by Section 673.3091, Florida Statutes. Plaintiff shall hold the Defendant(s) maker of the note harmless and shall indemnify Defendant(s) from any loss they may incur by reason of a claim by any other person to enforce the lost note. Adequate protection is provided as required by Section 673.3091, Florida Statutes, by the following means: **[identify means of security per statute 702.11: a written indemnification agreement, a surety bond, a letter or credit**

or cash collateral or other, which include specific detail] Judgment is hereby entered in favor of Plaintiff as to its request to enforce the lost note.

[Any language which needs to be added to the final judgment shall be inserted at this point using paragraphs numbered sequentially beginning with paragraph 11]

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT. IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (FLRS-NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED on [date] at [City], Florida.

[NAME] CIRCUIT JUDGE

Copies Furnished by e-portal to:

(E-mail addresses)

Plaintiff's counsel shall serve paper copies on all Defendants not otherwise served by

U.S. Mail to:

[Distribution list]