

## **BANK MUST FILE ORIGINAL ALLONGE**

The District Court of Appeal of the State of Florida, Fourth District, recently affirmed a final judgment in favor of a borrower because **the foreclosing mortgagee failed to file the original allonge to the note, holding that as a result the mortgagee lacked standing to foreclose.**

A copy of the opinion is available at: [Link to Opinion.](#)

A mortgagee sued to foreclose the mortgage, attaching copies of the promissory note and an “Endorsement and Assignment of Note” to the complaint. The endorsement was “blank.”

At trial, the mortgagee offered the original note into evidence, but only a copy of the endorsement. After briefing, the trial court entered judgment in favor of the borrower and the mortgagee appealed.

On appeal, the mortgagee argued “that the endorsement and assignment was merely an assignment for which the original document was not required.” The Appellate Court rejected this argument and agreed with the borrower that **“the subject document was an allonge and, as such, [the mortgagee] was required to file the original.”**

The Appellate Court explained that **“[a] promissory note is a negotiable instrument ...’ [and] [w]here a document is a negotiable instrument, the best evidence rule, as codified [in § 90.953(1), Florida Statutes] requires the production of the original.”** Subsection 90.953(1) provides that **“[a] duplicate is admissible to the same extent as an original, unless ... [t]he document or writing is a negotiable instrument .... ‘Therefore, a party who seeks to foreclose on a mortgage must produce the original note.’”**

The Appellate Court explained further that an allonge is “an addition to a negotiable instrument” that must be “so firmly affixed thereto as to become a part thereof. ... Although Florida’s Uniform Commercial Code does not specifically mention an allonge, the Code provides that **‘[f]or the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a party of the instrument ... [under § 673.2041(1), Florida Statutes].’**”

The Appellate Court then reasoned that **when an allonge is blank or “does not identify a specific payee[,]” it is “payable to bearer.”** “If an

**instrument is payable to bearer, it may be negotiated by transfer of possession alone”** [pursuant to § 673.2011(2), Florida Statutes].”

The Appellate Court concluded that since ‘**an allonge is part of the note, and an original note is required, it follows that an original allonge is required. ... “or a satisfactory reason must be given for failure to do so.”**

**“Because [the mortgagee] failed to produce the original allonge and did not plead a lost instrument count,”** the Appellate Court affirmed the trial court’s judgment in favor of the borrower.