

SAME LENDER WAS NOT BARRED FROM BRINGING A SUBSEQUENT ACTION AFTER A DISMISSAL FOR LACK OF STANDING

In Florida, a plaintiff seeking to foreclose a mortgage must have “standing” to foreclose the mortgage as of the date it files its foreclosure complaint.^[1] That is, if the plaintiff is not the original lender, it must establish that the promissory note and mortgage had been assigned to it prior to or as of the time the lawsuit was filed.^[2] Where the complaint fails to demonstrate that a purported assignee has standing to enforce the loan documents, trial courts are directed to dismiss the purported assignee’s complaint.^[3] Until recently, no Florida court had addressed whether, after a foreclosure action is dismissed for lack of standing, the same lender may bring a subsequent action based on the same default.

On January 29, 2016, in an appeal handled by Rogers Towers, P.A., the Fifth District Court of Appeal held that the same lender was not barred from bringing a subsequent action after a dismissal for lack of standing.^[4] Recognizing that the action presented an issue that did not “appear to have been previously addressed in Florida,” the Fifth DCA cited to decisions from various other jurisdictions explaining that dismissal of a foreclosure action for lack of standing is not an “adjudication on the merits” and had no effect on the underlying duties, rights, or obligations of the parties.^[5] Accordingly, even if an assignee fails to establish standing at the time it filed its first foreclosure action, it will not be barred from re-filing its complaint with sufficient evidence of standing.

^[1] E.g., Focht v. Wells Fargo Bank, N.A., 124 So. 3d 308, 310 (Fla. 2d DCA 2013) (“[S]tanding must be established as of the time of filing the foreclosure complaint.”).

^[2] Id. (“A plaintiff who is not the original lender may establish standing to foreclose a mortgage loan by submitting a note with a blank or special endorsement, an assignment of the note, or an affidavit otherwise proving the plaintiff’s status as the holder of the note.”)

^[3] See Tomlinson v. GMAC Mortg., 173 So. 3d 1121, 1123 (Fla. 2d DCA 2015).

^[4] Brown v. M & T Bank, No. 5D15-1397, 2016 WL 347183, at *1 (Fla. 5th DCA Jan. 29, 2016).

^[5] Id.