

## **FOURTH DCA ADDRESSES FORECLOSURE STANDING**

Sometimes, even where the lender has the original note and introduces it into evidence at a trial in a foreclosure, the borrower challenges standing. Such was the case in *Ortiz v. PNC Bank, NA*, Case No. 4D15-242 (Fla. 4th DCA March 30, 2016).

The loan in question was originated by a non-party bank, which endorsed the note to a second non-party bank, which in turn endorsed the note in blank. When PNC filed the foreclosure, it attached to its complaint a copy of the note showing the endorsements. At trial, PNC introduced the original note and mortgage, but did not have evidence that PNC had the original note in its possession at the time of filing the suit. The defendants moved for involuntary dismissal, which the trial court denied.

On appeal, **PNC argued that the combination of the endorsements and introduction into evidence of the original note was sufficient to establish standing. The Fourth DCA ultimately agreed. The court held that because the note was endorsed in blank and the original note introduced into evidence matched the copy attached to the complaint, PNC sufficiently proved it had possession of the original at the time of filing. As a result, the court held, PNC had standing to foreclose.**

Notably, three weeks before the Fourth DCA issued the *Ortiz* decision, a different Fourth DCA panel reversed a foreclosure judgment in *Lewis v. U.S. Bank, N.A.*, Case No. 4D14-815 (Fla. 4th DCA March 9, 2016) in which the endorsements on an allonge to the note were undated, the lender's witness could not testify when they were placed on the allonge, and the lender did not attach a copy of the note to the complaint.