

MONDAY, MARCH 16, 2010

## Changes to Florida Rules of Civil Procedure in Foreclosure Cases

On February 11, 2010, the Florida Supreme Court issued an opinion amending Florida Rules of Civil Procedure and adopted two new forms for use in connection with foreclosure cases filed in Florida. These changes come based upon recommendations of the Task Force on Residential Mortgage Foreclosure Cases, which was created by administrative order of the Florida Supreme Court dated March 27, 2009.

Most significant, Rule 1.110(b) was amended to require verification of mortgage foreclosure complaints involving residential real property. Verification requires that a representative of the lender sign the lawsuit under penalty of perjury attesting that all facts within the lawsuit are true to the best of their knowledge and belief. This is significant in that the lender will be attesting by its signature that it owns and holds the note and mortgage – effectively eliminating any defense that the note was “misplaced” or “lost.”

In fact, the Supreme Court specifically stated that the primary purposes of this new requirement are “(1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded ‘lost note’ counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.”

It is likely that those within the industry, both attorney and non-attorney alike, may now lose some of their leverage in a foreclosure defense action when the plaintiff claims to have “lost the promissory note” making it even more important to seek competent legal counsel at the time the foreclosure is first filed.

The Supreme Court made other forms changes, briefly:

1. New Form 1.924 – Affidavit of Diligent Search and Inquiry (for use when the plaintiff is unable to find or serve the lawsuit on the defendant(s)); and
2. New Form 1.996(b) – Motion to Cancel and Reschedule Foreclosure Sale (to make uniform and reduce the often vague, last-minute motions filed by the plaintiff’s attorney to cancel foreclosure sale when a loan modification, short sale, or other work-out is pending).

These new forms can be found online, or by consulting with a Florida attorney.

-Shawn M. Yesner, Esq.  
Yesner & Boss, P.L.

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