

- **Summary Judgment:** borrower movant for summary judgment could not shift burden of proof to lender before proving case by competent evidence in form of timely served affidavit (at least 5 days prior to hearing) - [Wells Fargo Bank, N.A. v Bilecki](#), Case Nos. 4D14-1015 & 15-67 (Fla. 4th DCA May 18, 2016) (reversed and remanded)
- **Foreclosure/Hearsay/Business Records:** it was not necessary for witness to have personal knowledge of prior servicer's business practices or to participate in boarding process to lay foundation for business records exception to hearsay - [Michel v. The Bank of New York Mellon f/k/a The Bank of New York as trustee for holder of Structured Asset Mortgage Investments II Trust 2006-ARS](#), Mortgage Pass-Through Certificates Series 2006-ARS et al. No. 2D14-3022 (Fla. 2d DCA May 13, 2016) (affirmed in part, reversed in part, and remanded)
- **Foreclosure/Standing:** plaintiff failed to prove that it had standing to foreclose where plaintiff failed to provide evidence that it was in possession of original note at time lawsuit was filed - [Rosa v. Deutsche Bank National Trust Co., as Trustee for Fremont Home Loan Trust 2006-1](#), No. 2D14-5710 (Fla. 2d DCA May 13, 2016) (reversed and remanded)
- **Foreclosure/Discovery:** trial court abused its discretion in denying plaintiff relief from technical admissions where record evidence was contrary to technical admissions and defendant failed to show prejudice - [Wells Fargo Bank, National Association, as Trustee for the Certificateholders of SARM 2005-15 v. Voorhees et al.](#) No. 2D15-2055 (Fla. 2d DCA May 13, 2016) (reversed and remanded)
- **Foreclosure/Statute of Limitations:** applying Beauvais, court held five-year statute of limitations in foreclosure action does not bar a second foreclosure lawsuit filed on a subsequent payment default if that subsequent default occurred within the five-year period preceding commencement of second foreclosure lawsuit - [Arnoux v. Bank of New York, etc., et al.](#) No. 3D14-1407 (Fla. 3rd DCA May 11, 2016) (affirmed).
- **Foreclosure/Notice of Default:** undisputed evidence established default notice substantially complied with requirements of paragraph 22 of mortgage - [Nationstar Mortgage, LLC v. Craig et al.](#) No. 3D15-568 (Fla. 3d DCA May 11, 2016) (reversed and remanded)
- **Foreclosure/Default:** court's judgment not supported by competent, substantial evidence, where bank did not actually accelerate note before borrower tendered past due payment - [Reano v. US Bank, National Association, as Trustee for Credit Suisse First Boston CSFB2005-3 et al.](#), No. 4D14-886 and 4D15-0212 (Fla. 4th DCA May 11, 2016) (reversed)

- **Foreclosure/Bankruptcy:** borrower's actions and orders of bankruptcy court fully resolved foreclosure matter where borrower admitted in bankruptcy proceeding he owed a non-contingent, undisputed mortgage debt to bank and he surrendered property to bank - [Rivera v. Bank of America, N.A., successor by merger to BAC Home Loans Servicing, L.P., f/k/a Countrywide Home Loans Servicing, L.P.](#), No. 5D13-1618 (Fla. 5th DCA May 13, 2016) (dismissed)
- **Foreclosure/Bankruptcy Stay:** **because borrower's notice of appeal was filed during pendency of bankruptcy stay it was a nullity, and appellate court lacked jurisdiction to consider appeal** –[Hewett v. Wells Fargo Bank, N.A., as Trustee](#), No. 2D15-1074 (Fla. 2d DCA June 1, 2016) (dismissing appeal)
- **Foreclosure/Dismissal as Sanction:** trial court did not err in failing to apply Kozel factors before dismissing mortgagee's claim without prejudice because those factors need only be considered when dismissal is with prejudice or the functional equivalent – [Fed. Nat'l Mortg. Ass'n v. Linner, as Trustee](#), No. 2D15-1631 (Fla. 2d DCA June 3, 2016) (affirming, and certifying conflict)
- **Foreclosure/Redemption:** reversing order dismissing foreclosure action based on redemption of subject mortgage because amount required to redeem was unliquidated and required evidentiary support – [Wells Fargo Bank, Nat'l Ass'n, as Trustee v. Sawh](#), No. 3D14-2707 (Fla. 3d DCA June 1, 2016) (reversing and remanding for evidentiary hearing)
- **Foreclosure/Standing:** bank failed to prove standing to foreclose because it did not provide sufficient evidence establishing merger of predecessors; thus, there was no evidence that bank's predecessor had authority to transfer note to bank – [Segall v. Wachovia Bank, N.A., as Trustee](#), No. 4D14-4424 (Fla. 4th DCA June 1, 2016) (reversing and remanding for entry of involuntary dismissal)
- **Foreclosure/Modification of Note:** bank violated best evidence rule by failing to introduce written modification to promissory note as evidence at trial; without its introduction, error to admit testimony regarding modification –[Rattigan v. Central Mortg. Co.](#), No. 4D15-1087 (Fla. 4th DCA June 1, 2016) (reversing and remanding for entry of involuntary dismissal)
- **Foreclosure/Substantial Compliance:** trial court improperly applied strict compliance standard in finding plaintiff's notice of default deficient; notices of default need only substantially comply – [Green Tree Servicing, LLC v.](#)

[Goins](#), No. 4D14-4722 (Fla. 4th DCA June 1, 2016) (reversing and remanding for further proceedings)

- **Foreclosure/Evidence of Damages:** trial court erred in finding bank failed to submitted reliable evidence of damages because current servicer's loan history reflecting starting principal balance, along with testimony regarding current unpaid principal balance, were admitted as evidence at trial, albeit erroneously – [Deutsche Bank Nat'l Trust Co., as Trustee v. Baker](#), No. 4D15-1293 (Fla. 4th DCA June 1, 2016) (reversing and remanding for new trial on damages)
- **Foreclosure/International Service:** where process is served and return of process is completed by an official of a country that is a signatory to the Hague Service Convention, any additional requirement which may be imposed by either Florida law or international law is pre-empted - [Bevilacqua v. U.S. Bank, N.A.](#), Case No. 3D15-1684 (Fla. 3d DCA May 25, 2016) (Affirmed)
- **Foreclosure:** a foreclosure sale cannot be held while a timely motion for rehearing is pending because enforcement of a **final judgment is suspended by the filing of a rehearing motion** - [944 CWELT-2007 LLC v. Bank of Am., N.A.](#), Case No. 3D15-2091 (Fla. 3d DCA May 25, 2016) (granting petition for certiorari)
- **Foreclosure/Summary Judgment Evidence:** summary judgment improper where lender's affidavit in support of summary judgment neither stated that a notice of acceleration was sent nor attached acceleration correspondence allegedly sent to borrower - [Brooks v. Bank of Am., N.A.](#), Case No. 4D14-3337 (Fla. 4th DCA May 25, 2016) (reversed and remanded)
- **Foreclosure/Standing:** where a copy of a note is attached to the complaint and the plaintiff later files the original note in the same condition as the copy attached to the complaint, the combination is sufficient to establish standing to bring the foreclosure action, absent any testimony or evidence to the contrary - [U.S. Bank Nat. Ass'n. v Clarke](#), Case No. 4D14-3398 (Fla. 4th DCA May 25, 2016) (reversed and remanded)
- **Foreclosure:** lender's default letter need only substantially comply with its notice obligations under the mortgage - [Bank of N.Y. Mellon v. Baloun](#), Case No. 5D14-4470 (Fla. 5th DCA May 27, 2016) (reversed and remanded)
- **Business Records:** a party who fails to object to a certificate of authenticity of business records prior to trial waives any objection to the admissibility of the certificate - [Wilmington Savings Fund Society, FSB v. Aldape](#), Case No. 5D15-369 (Fla. 5th DCA May 27, 2016) (reversed and remanded)
- **Final Judgments:** a trial court is without jurisdiction to award relief that was not requested in the pleadings or tried by consent and a court may

relieve a party from a final judgment or decree that is void - [Deutsche Bank Nat. Trust Co. v. Patino](#), Case No. 5D15-474 (Fla. 5th DCA May 27, 2016) (reversed and remanded)