

### **Trying to back out of a settlement agreement? Think again**

In *U.S. Bank N.A. vs. Benoit, et al.*, 4D14-4052 (Fla. 4th DCA, May 4, 2016), the Fourth DCA held that a court must enforce a settlement agreement and enter a final judgment of foreclosure when both Parties agree to the terms of an agreement even where the foreclosing party is unable to produce the original promissory note because Florida law highly favors settlement. In *U.S. Bank, N.A.*, Plaintiff filed an action to foreclose on its mortgage and attached a copy of the mortgage and promissory note endorsed in blank to the complaint. The Parties ultimately entered into a settlement agreement, which stipulated that the loan had been assigned to Plaintiff and that Defendant was in default. In the agreement, Defendant released all of its defenses and causes of action against Plaintiff.

Ultimately, when Plaintiff moved for its consent final judgment, it was unable to produce the original note, which was lost at some point after the complaint was filed. The lower court rejected Plaintiff's motion for a consent final judgment and at trial dismissed the matter. The Fourth DCA reversed, and held that despite not possessing the original note, because a judgment of foreclosure does not always require a party to surrender the original note, such as when the note is lost or when Defendant agrees to waive its right to assert defenses, the settlement agreement should be enforced and a final judgment of foreclosure must be entered.