

**IN THE TWELFTH JUDICIAL CIRCUIT COURT FOR
DESOTO, MANATEE AND SARASOTA COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER 2010-12.1

**ADMINISTRATIVE ORDER ESTABLISHING STANDARD PROCEDURES
FOR ATTORNEYS PROSECUTING AND DEFENDING RESIDENTIAL AND
COMMERCIAL MORTGAGE FORECLOSURE ACTIONS**

(Vacating AO 2008-14.1 and AO 2008-15.1)

WHEREAS, the Twelfth Judicial Circuit is experiencing an unprecedented number of mortgage foreclosures and the influx of these cases is straining the capacity of the courts to manage them efficiently; and

WHEREAS, reductions in judicial branch funding in the State of Florida have resulted in the elimination of support and administrative staff in the circuit, making the review of documentation submitted in connection with foreclosure summary judgments problematic; and

WHEREAS, standardized procedures are required to facilitate efficient processing of foreclosure cases and verification that cases are ripe for final disposition; and

WHEREAS, the court no longer has the personnel to undertake foreclosure file reviews or to confirm the accuracy of summary judgment hearing packets submitted by the parties; and

WHEREAS, judges in the Twelfth Circuit have had persistent difficulties communicating with parties filing foreclosure actions or their attorneys regarding logistical and efficiency issues, and this frustrates the orderly disposition of cases resulting in unnecessary delay and docket congestion; and

WHEREAS, standard procedures for the electronic filing of papers, pleadings and uniform checklists are necessary to assist the Court and Clerk in the processing of large numbers of documents submitted in connection with actions to foreclose mortgages; and the supreme court has mandated statewide managed mediation in AOSC09-54 and the retirement of the circuit's homestead conciliation program;

NOW, THEREFORE, it is **ORDERED** that the following procedures shall be in force in the Twelfth Judicial Circuit on or after June 21, 2010:

This Administrative Order regulates local procedures governing the filing of actions by attorneys to foreclose residential and commercial mortgages on real property located within the boundaries of the Twelfth Judicial Circuit. Consequently, this Order does not apply to independent actions to foreclose other interests in real property such as homeowner association liens, condominium or cooperative association liens, mechanic liens, governmental entity, tax or equitable liens. An independent action is one that does

not include as a party a person or entity foreclosing a commercial or residential mortgage in the same case.

However, when their clients are parties to a commercial or residential foreclosure, attorneys defending a commercial or residential foreclosure and attorneys representing homeowner associations, condominium or cooperative associations, and government entities with liens are required to E-File all defensive motions and pleadings in accordance with procedures set forth herein.

This Order does not regulate the filing of motions or pleadings in foreclosure cases by *pro se* litigants who are required to comply with all applicable Florida Rules of Civil Procedure.

I. Procedures Applicable to Foreclosure Actions in All Counties On or After June 21, 2010

The following procedures are applicable to all parties represented by counsel filing or defending residential or commercial mortgage foreclosure actions in Manatee, Sarasota, and Desoto Counties regardless of the date the complaint was filed, and to attorneys who set for hearing foreclosure summary judgments or motions relating to such foreclosure cases on or after June 21, 2010,

A. Standard Form Final Judgment Required

Based on supreme court Form 1.996(a), the circuit has adopted a standard foreclosure Final Judgment. This form shall be used in all cases by represented parties seeking to foreclose mortgages. A copy of this form and all forms referenced in this Administrative Order are available on the circuit's website: www.jud12.flcourts.org/

B. Use of JACS to Schedule Hearings in Foreclosure Cases

The Twelfth Circuit employs a **Judicial Automated Calendaring System (JACS)**. Information concerning the use of JACS can be found through a link on the circuit's internet home page: www.jud12.flcourts.org. JACS may only be accessed by members of The Florida Bar using their bar number. Each judge serving in the Civil Division of circuit court reserves time in JACS for the setting of hearings, including motions for summary judgment in foreclosure actions.

Attorneys are required to have an email address as part of the JACS registration process. Hearing dates reserved and cancelled through JACS will be confirmed through email generated by the calendaring system. Instructions for updating JACS registration are available on the circuit's web site.

Civil Division judges have published their individual policies governing the setting of hearings on the JACS home page. Because these policies differ from judge to judge, they should be consulted by counsel and regularly reviewed for updates and modifications.

This is especially true when new judges rotate into the Civil Division. Blocks of time have been set aside specifically for foreclosures.

C. Procedures for Scheduling and Canceling Summary Judgment Hearings

Several law firms engaged in volume foreclosure filings have developed the practice of reserving hearing time for summary judgment before the motion is filed and have consistently failed to comply with judges' cut-off dates for filing summary judgment packets. This has resulted in the waste of valuable hearing time for other litigants when the motion is not forthcoming and the hearing is not canceled by the party. The following procedures are necessary to facilitate the efficient disposition of large numbers of foreclosure filings:

1. No Summary Judgment Hearings to be Scheduled Without a Motion and Supporting Documents Ready for Filing

Hearing time for motions for summary judgments in foreclosure cases shall not be reserved on JACS until the motion, with complete supporting documentation, is prepared and ready for filing with the Clerk. Motions and summary judgment packets shall be transmitted electronically to the Clerk immediately after the hearing time is obtained. Judges will monitor compliance with this requirement and may cancel hearings that have been set without the contemporaneous filing of a motion. Sanctions also may be imposed for chronic disregard of this requirement.

Contested summary judgments filed by plaintiff or defense should be set for hearing on the judges' regular civil docket. Depending on the budget allocated to the circuit by the legislature, special dockets may be established to address foreclosure backlogs. In this event, senior judges, judges serving in other divisions, or magistrates may be assigned to preside over contested or uncontested foreclosures.

2. Updating Costs and Affidavits After Summary Judgment Hearing is Scheduled

A complete foreclosure packet with such information as is currently available to plaintiff is required to be E-filed contemporaneous with the obtaining of hearing time. However, if circumstances change or additional costs are incurred after the acquisition of the hearing date, an amended cost affidavit and proposed final judgment should be E-filed with the Clerk accompanied by a Notice of Filing. Updated or amended documents are required to be in the Clerk's possession at least **three (3)** business days prior to the hearing.

3. Summary Judgment Pleadings and Related Documents to be Sent to Clerks; Checklist Required

On or after the effective date of this order, parties seeking summary judgment in foreclosure actions shall transmit the documentation supporting the motion, including the

original proposed Final Judgment, note and mortgage, to the Clerks. **They are not to be sent to the judges' chambers, nor are copies of these papers to be sent to chambers.** As noted above, no summary judgment hearing time shall be obtained on JACS until the motion for summary judgment and complete package of supporting documentation is in final form and ready for immediate filing with the Clerk.

The summary judgment documentation submitted to the Clerks shall include the Twelfth Circuit's *Mortgage Foreclosure Summary Judgment Checklist*, a form approved by the chief judge and available on the circuit's website, www.jud12.flcourts.org. The checklist requires counsel's confirmation that appropriate steps have been taken to prepare the case for disposition by summary judgment, and that all documents supporting the motion have been timely filed or submitted.

The *Mortgage Foreclosure Summary Judgment Checklist* requires counsel to accurately set forth the status of the case and to inform the court of any deficiencies. The *Checklist* shall be signed by the attorney of record. Plaintiffs' submissions will be spot checked to verify that required document have been filed and that all certifications required by this order and by AO 2010-11.1 (Administrative Order For Case Management of Residential Foreclosure Cases and Mandatory Referral of Mortgage Foreclosure Cases Involving Homestead Residences to Mediation), have been complied with. It remains the responsibility of the filing attorney to accurately complete the *Checklist* as the judge will rely upon the attorney's representation as an officer of the court as to its accuracy.

Hearings on motions for summary judgment may be canceled if the forms required by this Administrative Order (e.g., circuit-approved Final Judgment, *Mortgage Foreclosure Summary Judgment Checklist*, Certificate of Compliance with the Residential Mortgage Foreclosure Mediation Program, a copy of the most recently filed Form A) do not accompany the summary judgment motion or are not used, or if the documents required by the checklist are not timely filed, are missing and their absence is not adequately explained.

For good cause shown, upon the request of a party the assigned judge may waive the requirements of this Administrative Order or the production of any item or document required by the checklist. Such requests shall be made before the checklist is filed and the hearing on the motion for summary judgment is scheduled.

4. Procedures Applicable to Cases Filed On or After June 21, 2010 - Prerequisite Relating to Homestead Properties - Compliance with Residential Mortgage Foreclosure Mediation Program - Attorney's Certificate;

By separate Administrative Order, AO 2010-11.1, effective June 21, 2010, the circuit has adopted a Residential Mortgage Foreclosure Mediation Program (RMFM Program). Before a summary judgment hearing is scheduled to foreclose a lien on **homestead property** in the Twelfth Circuit, the requirements of the program must be met.

On or after June 21, 2010, when a foreclosure complaint is filed against homestead property the RMFM Program requires plaintiff's counsel to include with the summons a *Notice to Homeowners Facing Foreclosure*, which explains the program and invites eligible homeowners to participate in the Program. The RMFM Program is being facilitated by a Program Manager, who acts as an independent contractor charged with the primary responsibility of administering homestead mediations.

In addition, the RMFM Program requires plaintiffs' counsel to file a copy of the most recently filed Form A (see Paragraph 17, AO2010-11.1), and an *Attorney's Certificate of Compliance* at the same time the motion for summary judgment is filed and the hearing date is booked on JACS. This is a prerequisite to scheduling a hearing on the motion for summary judgment and is part of the *Mortgage Foreclosure Summary Judgment Checklist* and documentation required to schedule a summary judgment hearing. [Forms available on circuit website, www.jud12.flcourts.org.]

5. Cancellation of Summary Judgment Hearings

JACS should be used to cancel summary judgment hearings whenever possible. However, JACS will not authorize a cancellation when it would result in short notice to the parties. When JACS does not permit cancellation, the party who has noticed the hearing may cancel it telephonically or via email by contacting the judge's judicial assistant. The cancellation communication should be followed promptly by a Notice of Cancellation filed with the Clerk. When the cancellation occurs shortly before the hearing, persons who are required to receive notice should be advised of the cancellation by the most expeditious means.

6. Cancellation of Foreclosure Sales

In the event it becomes necessary to cancel a foreclosure sale on short notice, the original motion to cancel and a proposed order shall be filed with the Clerk with copies FAXED to the judge's chambers. These motions will be reviewed expeditiously, and a copy of the signed order will be faxed or emailed to the attorney. Assigned judges may require a new motion setting foreclosure sales. Upon request of counsel, Clerks may set new sale dates upon receiving written notification from judges that a sale has been cancelled. **NOTE: Supreme Court Form 1.996(b) should be used to cancel and reschedule foreclosure sales.**

D. Legal Standards for Summary Judgment to Be Followed

Parties seeking to foreclose a mortgage by summary judgment are required to establish, through admissible evidence, that they hold the note and mortgage that is the subject of the action. This is a crucial element of standing. Documentation submitted with the motion must support the assertion of ownership. Mere allegations of ownership do not suffice. *BAC Funding Consortium Inc. v. Jean-Jacques*, 28 So.3d 936 (Fla. 2d DCA 2010).

Moreover, in the typical case, to prevail on summary judgment there must be shown a clear chain of note ownership linking the originator of the loan to the party claiming ownership. *Verizzo v. Bank of New York*, 28 So.3d 976 (Fla. 2d DCA 2010). This linkage is frequently missing and is a major cause of denials of motions for summary judgment.

E. Complaints to Foreclose Residential Mortgages To Be Verified

On February 11, 2010, the supreme court amended Rule of Civil Procedure 1.110(b) requiring verification of mortgage foreclosure complaints involving residential property. The court gave the following reasons for the new rule:

The primary purposes of this amendment 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. *In Re: Amendments to the Florida Rules of Civil Procedure*, No. SC09-1490, pp. 3-4..

Complaints filed in violation of this requirement before or after the effective date of this order may be subject to dismissal *sua sponte* without prejudice to file a new action, and assigned division judges may require a new complaint, case number, and clerk’s fee as a sanction for non-compliance.

F. Appointment of Circuit Foreclosure Liaison

Any plaintiff who has filed five (5) or more foreclosure actions in the Twelfth Judicial Circuit while this Administrative Order is in effect shall appoint two circuit liaisons, one of whom shall be a lawyer and the other a representative of the entity servicing the plaintiff’s mortgages, if any, and, if none, a representative of the plaintiff. Plaintiff’s counsel shall provide written notice of the name, phone number (including extension), email, and mailing address of both liaisons to the chief judge within 30 days after the effective date of this Administrative Order, and on the first Monday of each July thereafter while this Administrative Order is in effect.

The liaisons shall be informed of the requirements of this Administrative Order and shall be capable of answering questions concerning the administrative status of pending cases and the party’s internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff’s cases through courts of the Twelfth Circuit. Plaintiff’s counsel shall promptly inform the chief judge of any changes in designation of the liaisons and the contact information of the liaisons. The liaisons shall act as the court’s point of contact

in the event the plaintiff fails to comply with this Administrative Order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.

II. Attorneys Required to Electronically File Affirmative and Defensive Pleadings and Motions in Manatee and Sarasota County Residential and Commercial Foreclosures.

The Clerks of Manatee and Sarasota Counties are part of a Supreme Court sanctioned project to establish procedures for the electronic filing of pleadings. Known as E-Filing, this innovative system saves litigants money and reduces processing and document review time for the Clerks. Except for a limited number of original documents or exhibits, such as notes and mortgages, E-Filing eliminates the necessity of providing hardcopies of documents or pleadings to the Clerk. The electronic version replaces them. Judges and attorneys of record will be able to view the electronically filed documents on line.

Since December 1, 2008, parties with attorneys have been required to use the E-Filing system when filing foreclosure pleadings, motions and litigation-related documents in Manatee and Sarasota Counties, and in connection with summary or final judgment hearings scheduled on or after that date. The requirement for E-Filing of foreclosure actions continues under this Administrative Order and is mandatory for attorneys representing clients seeking to foreclose or defend commercial or residential mortgages.

It is the intent of this Order that all papers filed by plaintiff or defense attorneys in foreclosure cases on or after June 21, 2010, except for original notes, mortgages, negotiable instruments or items of evidentiary value, be accomplished by use of the E-Filing procedures approved by this court; and that copies of original notes, mortgages, negotiable instruments, and items of evidentiary value be E-Filed at the same time the originals are submitted to the Clerk. For documents, motions or pleadings submitted by counsel on or after June 21, 2010, regardless of the filing date of the complaint, after once warning non-compliant attorneys, Clerks are authorized to return original pleadings or motions submitted by members of The Florida Bar who are non-compliant with the E-Filing rules set forth in this Order.

E-Filing procedures are similar in both counties but are not identical. Parties shall use the E-Filing word processing formats prescribed by the Clerks. Litigants and their counsel should consult each Clerk's website for detailed instructions: www.sarasotaclerk.com/ or www.manateeclerk.com.

A. Requests for Exemption: Requests for exemption from E-Filing requirements may be directed to the Clerk, and if denied, referred by written request for consideration and final decision to the Chief Judge.

B. Rules for E-Filers: The following rules apply to parties E-Filing in Sarasota and Manatee County who submit pleadings or motions, or who set final or summary

judgment hearings on or after the effective date of this Order regardless of the date the complaint was filed:

1. **Original Documents:** Original documents of evidentiary value such as promissory notes and mortgages shall be delivered to the Clerk and accompanied by a Notice of Filing. Copies of original documents also shall be included in the parties' E-Filing submission. Only one copy of original documents needs to be E-Filed.

2. **Plaintiffs to Provide Copies of Final Summary Judgments to Parties:** The Twelfth Circuit requires the personal appearance in court of attorneys requesting mortgage foreclosure summary judgments. When the judge approves a summary judgment, the clerk will provide sale dates. If so directed by the Clerk, it shall be the responsibility of plaintiffs' counsel to enter the sale dates into judgment copies and to mail conformed copies to interested parties. To facilitate preparation of these documents, the court will provide a conforming stamp for counsel's use at the hearing.

3. **Plaintiffs to Provide Envelopes to Clerks for Foreclosure Documents and Certificates of Sale and Title:** At the time of any hearing scheduled on or after June 21, 2010, parties obtaining foreclosure summary judgments shall provide the clerks with sufficient pre-addressed and stamped envelopes for service of all required legal documents, including certificates of sale and certificates of title. Clerks are authorized to adopt standard procedures to facilitate the transmission of foreclosure documents to and from attorneys and the parties that are not inconsistent with this Order.

4. **Notices of Sale, Proof of Publication, and Notices of Re-scheduled Sales:** It shall be plaintiffs' responsibility to complete and submit Notices of Sale directly to the newspaper. On or before the close of the business day preceding the sale, the original Notices of Sale shall be filed with the Clerk together with affidavits in proof of publication prior. Clerks are authorized to cancel sales if the Notice of Sale and affidavit in proof of publication have not been timely filed. Upon entry of a court order re-scheduling sales, plaintiffs shall submit Notices of Sale and affidavits in proof of publication to the Clerk in the same manner.

5. **Other Orders Submitted by Counsel:** In the course of litigation, it may be necessary for E-Filers to submit proposed or stipulated orders for the judge's consideration. These shall be E-Filed; however, in addition hard copies shall be sent directly to the assigned judge. The copies sent to the judge shall be accompanied by self-addressed, stamped envelopes for each party entitled to service of conformed copies.

III. Sanctions for Non-Compliance

Failure to comply with the provisions of this Administrative Order may result in the cancellation of hearings, termination of the privilege of telephone hearings, or other sanctions. Chronic offenders may be denied access to JACS and required to request hearing time by email, which may result in substantial delays in the processing of cases.

IV. Effective Date

Except as otherwise provided, the procedures set forth in this Administrative Order shall be effective June 21, 2010 as to cases filed on or after that date. Administrative Order 2008-14.1 (Establishing Standard Procedures for Foreclosures) and Administrative Order 2008-15.1 (Establishing Homestead Conciliation Program) are vacated and no longer effective as of June 21, 2010.

DONE AND ORDERED in Sarasota, Sarasota County this 20th day of MAY, 2010.



Lee E. Haworth, Chief Judge

cc: All Judges in the Twelfth Circuit
Gulf Coast Legal Services
Legal Aid of Manasota
Florida Rural Legal Services
Florida Legal Services
Clerks of Court, Twelfth Circuit
Manatee County Bar Association
Sarasota County Bar Association
Plaintiffs' Foreclosure Liaisons: Dr. Greg Firestone, USF, & Collins Center for
Public Policy