

# **Appendix K**

## **Case Management Proposals**

1. Rule and Form Proposals
2. Comments of the Rules of Civil Procedure Committee
3. Best Practices Forms

## **1. Rule and Form Proposals**

**RULE 1.110. GENERAL RULES OF PLEADING**

(a) **Forms of Pleadings.** Forms of action and technical forms for seeking relief and of pleas, pleadings, or motions are abolished.

(b) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing , and the facts alleged therein are true and correct to the best of my knowledge and belief."

(c) **The Answer.** In the answer a pleader shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge, the defendant shall so state and such statement shall operate as a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of an averment, the pleader shall specify so much of it as is true and shall deny the remainder. Unless the pleader intends in good faith to controvert all of the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or may generally deny all of the averments except such designated averments as the pleader expressly admits, but when the pleader does so intend

to controvert all of its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial.

**(d) Affirmative Defenses.** In pleading to a preceding pleading a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if justice so requires, shall treat the pleading as if there had been a proper designation. Affirmative defenses appearing on the face of a prior pleading may be asserted as grounds for a motion or defense under rule 1.140(b); provided this shall not limit amendments under rule 1.190 even if such ground is sustained.

**(e) Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

**(f) Separate Statements.** All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth.

**(g) Joinder of Causes of Action; Consistency.** A pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if separate items make up the cause of action, or if 2 or more causes of action are joined. A party may also set forth 2 or more statements of a claim or defense alternatively, either in 1 count or defense or in separate counts or defenses.

When 2 or more statements are made in the alternative and 1 of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both. All pleadings shall be construed so as to do substantial justice.

**(h) Subsequent Pleadings.** When the nature of an action permits pleadings subsequent to final judgment and the jurisdiction of the court over the parties has not terminated, the initial pleading subsequent to final judgment shall be designated a supplemental complaint or petition. The action shall then proceed in the same manner and time as though the supplemental complaint or petition were the initial pleading in the action, including the issuance of any needed process. This subdivision shall not apply to proceedings that may be initiated by motion under these rules.

#### **Committee Notes**

**1971 Amendment.** Subdivision (h) is added to cover a situation usually arising in divorce judgment modifications, supplemental declaratory relief actions, or trust supervision. When any subsequent proceeding results in a pleading in the strict technical sense under rule 1.100(a), response by opposing parties will follow the same course as though the new pleading were the initial pleading in the action. The time for answering and authority for defenses under rule 1.140 will apply. The last sentence exempts post judgment motions under rules 1.480(c), 1.530, and 1.540, and similar proceedings from its purview.

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

**I. CASE STYLE**

(Name of Court) \_\_\_\_\_

Plaintiff \_\_\_\_\_

Case #: \_\_\_\_\_

\_\_\_\_\_

Judge: \_\_\_\_\_

vs.

Defendant \_\_\_\_\_

\_\_\_\_\_

**II. TYPE OF CASE** (Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution <input type="checkbox"/> Dissolution <input type="checkbox"/> Support — IV-D <input type="checkbox"/> Support — Non IV-D <input type="checkbox"/> UIFSA — IV-D <input type="checkbox"/> UIFSA — Non IV-D <input type="checkbox"/> Domestic violence <input type="checkbox"/> Other domestic relations	<input type="checkbox"/> Professional malpractice <input type="checkbox"/> Products liability <input type="checkbox"/> Auto negligence <input type="checkbox"/> Other negligence	<input type="checkbox"/> Contracts <input type="checkbox"/> Condominium <input type="checkbox"/> Real property/ —Mortgage foreclosure <u>Mortgage foreclosure</u> <input type="checkbox"/> Residential/homestead <input type="checkbox"/> Residential/not homestead <input type="checkbox"/> Commercial <input type="checkbox"/> Eminent domain <input type="checkbox"/> Challenge to proposed constitutional amendment <input type="checkbox"/> Other

**III. IS JURY TRIAL DEMANDED IN COMPLAINT?**

Yes

No

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY FOR PARTY  
INITIATING ACTION \_\_\_\_\_

**FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET**

**I. Case Style.** Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

**II. Type of Case.** Place an "X" in the appropriate box. If the cause fits more than one type of case, select the most definitive. Definitions of the cases are provided below.

- (A) Simplified Dissolution of Marriage — petitions for the termination of marriage pursuant to Fla.Fam.L.R.P. 12.105.
- (B) Dissolution of Marriage — petitions for the termination of marriage other than simplified dissolution.
- (C) Support — IV-D — all matters relating to child or spousal support in which an application for assistance has been filed under Title IV-D, Social Security Act, except for such matters relating to dissolution of marriage petitions (sections 409.2564, 409.2571, and

409.2597, Florida Statutes), paternity, or UIFSA.

- (D) Support — Non IV-D — all matters relating to child or spousal support in which an application for assistance has not been filed under Title IV-D, Social Security Act.
- (E) UIFSA — IV-D — all matters relating to Chapter 88, Florida Statutes in which an application for assistance has been filed under Title IV-D, Social Security Act.
- (F) UIFSA — Non IV-D — all matters relating to Chapter 88, Florida Statutes, in which an application for assistance has not been filed under Title IV-D, Social Security Act.
- (G) Domestic Violence — all matters relating to injunctions for protection against domestic violence pursuant to section 741.30, Florida Statutes.
- (H) Domestic Relations — all matters involving adoption, paternity, change of name, child custody, separate maintenance, annulment, or other matters not

- included in categories (A) through (G).
- (I) Auto Negligence — all matters arising out of a party's allegedly negligent operation of a motor vehicle.
  - (J) Professional Malpractice — all professional malpractice lawsuits.
  - (K) Products Liability — all matters involving injury to person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.
  - (L) Other Negligence — all actions sounding in negligence, including statutory claims for relief on account of death or injury, not included in categories (I), (J), and (K).
  - (M) Condominium — all civil lawsuits pursuant to Chapter 718, Florida Statutes, where a condominium association is a party in the lawsuit.
  - (N) Eminent Domain — all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, and public service corporations.
  - (O) Real Property/Mortgage Foreclosure — all matters relating to the possession, title, and boundaries of real property except mortgage foreclosure. All ~~matters involving foreclosures and sales, including foreclosures associated with condominium associations and condominium units.~~
  - (P) Mortgage Foreclosure Residential/Homestead all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption.
  - (Q) Mortgage Foreclosure Residential/ Not Homestead all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption.
  - (R) Mortgage Foreclosure Commercial all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property.
  - (P)(S) Contract and indebtedness — all contract actions relating to promissory notes and other debts, including those arising from the sale of goods. Excludes contract disputes involving condominium associations.
  - (Q)(T) Challenge to proposed constitutional amendment — a challenge to a legislatively initiated proposed constitutional amendment. Excludes challenges to citizen-initiated proposed constitutional amendments, because the Florida Supreme Court has direct jurisdiction of such challenges.



~~(R)~~ (U) Other Civil — all civil matters not included in categories (A) through (R).

**III. Is Jury Trial Demanded In Complaint?** Check the appropriate box to indicate whether a jury is being demanded in the complaint.

DATE AND ATTORNEY  
SIGNATURE. Date and sign the civil cover sheet.

**REVISED [August 7, 2009]**  
**IN RE: Amendments to the Florida Rules of Civil Procedure –**  
**Management of Cases Involving Complex Litigation, SC08-1141**

---

**Form 1.997 Civil Cover Sheet**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions for completion).

---

**I. CASE STYLE**

(Name of Court) \_\_\_\_\_

Plaintiff \_\_\_\_\_

Case #: \_\_\_\_\_

Judge: \_\_\_\_\_

vs.

Defendant \_\_\_\_\_

**II. TYPE OF CASE** (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

Condominium	<u>Homestead residential foreclosure \$0 - \$50,000</u>
Contracts and indebtedness	<u>Homestead residential foreclosure \$50,001 - \$249,999</u>
Eminent domain	<u>Homestead residential foreclosure \$250,000 or more</u>
Auto negligence	<u>Nonhomestead residential foreclosure \$0 - \$50,000</u>
Negligence—other	<u>Nonhomestead residential foreclosure \$50,001 - \$249,999</u>
Business governance	<u>Nonhomestead residential foreclosure \$250,000 or more</u>
Business torts	<u>Other real property actions \$0 - \$50,000</u>
Environmental/Toxic tort	<u>Other real property actions \$50,001 - \$249,999</u>
Third party indemnification	<u>Other real property actions \$250,000 or more</u>
Construction defect	<u>Other real property actions \$0 - \$50,000</u>
Mass tort	<u>Other real property actions \$50,001 - \$249,999</u>
Negligent security	<u>Other real property actions \$250,000 or more</u>
Nursing home negligence	<u>Professional malpractice</u>
Premises liability—commercial	Malpractice—business
Premises liability—residential	Malpractice—medical
Products liability	Malpractice—other professional
Real property/Mortgage foreclosure	
<u>Commercial foreclosure \$0 - \$50,000</u>	
<u>Commercial foreclosure \$50,001 - \$249,999</u>	
<u>Commercial foreclosure \$250,000 or more</u>	

Other

Antitrust/Trade regulation  
Business transactions  
Constitutional challenge—statute or ordinance  
Constitutional challenge—proposed amendment  
Corporate trusts

Discrimination—employment or other  
Insurance claims  
Intellectual property  
Libel/Slander  
Shareholder derivative action  
Securities litigation  
Trade secrets

III. REMEDIES SOUGHT (check all that apply):

monetary;  
non-monetary declaratory or injunctive relief;  
punitive

IV. NUMBER OF CAUSES OF ACTION: [ ]  
(specify)

\_\_\_\_\_

V. IS THIS CASE A CLASS ACTION LAWSUIT?

yes  
no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

no  
yes If "yes", list all related cases by name, case number, and court.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

yes  
no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature \_\_\_\_\_ Fla. Bar # \_\_\_\_\_  
Attorney or party (Bar # if attorney)

(type or print name) \_\_\_\_\_ Date \_\_\_\_\_

FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET  
Plaintiff must file this cover sheet with first paperwork filed in the action or proceeding (except small claims cases or other county court cases, probate, or family cases). Domestic and juvenile cases should be accompanied by a completed Family Court Cover Sheet, Florida Supreme Court Approved Family Law Form 12.928. Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.

**I. Case Style.** Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

**II. Type of Case.** Place an "X" in the appropriate box. If the cause fits more than one type of case, select the most definitive. If the most definitive label is a subcategory (indented under a broader category label, place an "X" in the category and subcategory boxes. Definitions of the cases are provided below in the order they appear on the form.

(A) Condominium - all civil lawsuits pursuant to Chapter 718, Florida Statutes, in which a condominium association is a party.

(B) Contracts and indebtedness - all contract actions relating to promissory notes and other debts, including those arising from the sale of goods, but excluding contract disputes involving condominium associations.

(C) Eminent domain - all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, or public service corporations.

(D) Auto negligence - all matters arising out of a party's allegedly negligent operation of a motor vehicle.

(E) Negligence—other - all actions sounding in negligence, including statutory claims for relief on account of death or injury, that are not included in other main categories.

(F) Business governance - all matters relating to the management, administration, or control of a company.

(G) Business torts - all matters relating to liability for economic loss allegedly caused by interference with economic or business relationships.

(H) Environmental/Toxic tort - all matters relating to claims that violations of environmental regulatory provisions or exposure to a chemical caused injury or disease.

(I) Third party indemnification - all matters relating to liability transferred to a third party in a financial relationship.

(J) Construction defect - all civil lawsuits pursuant to Chapter 558, Florida Statutes, in which damage or injury was allegedly caused by a failure to follow acceptable construction trade standards.

(K) Mass tort - all matters relating to a civil action involving numerous plaintiffs against one or more defendants.

(L) Negligent security - all matters involving injury to a person or property allegedly resulting from insufficient security.

(M) Nursing home negligence - all matters involving injury to a nursing home resident resulting from negligence of nursing home staff or facilities.

(N) Premises liability—commercial - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a commercial property.

(O) Premises liability—residential - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a residential property.

(P) Products liability - all matters involving injury to a person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.

(Q) Real property/Mortgage foreclosure - all matters relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property, including foreclosures associated with condominium associations or condominium units.

(R) Commercial foreclosure - all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(S) Homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(T) Nonhomestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(U) Other real property actions - all matters relating to land, land improvements, or property rights not involving commercial or residential foreclosure. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(V) Professional malpractice - all professional malpractice lawsuits.

(W) Malpractice—business - all matters relating to a business's or business person's failure to exercise the degree of care and skill that someone in the same line of work would use under similar circumstances.

(X) Malpractice—medical - all matters relating to a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.

(Y) Malpractice—other professional - all matters relating to negligence of those other than medical or business professionals.

(Z) Other - all civil matters not included in other categories.

(AA) Antitrust/Trade regulation - all matters relating to unfair methods of competition or unfair or deceptive business acts or practices.

(AB) Business transactions - all matters relating to actions that affect financial or economic interests.

(AC) Constitutional challenge—statute or ordinance – a challenge to a statute or ordinance, citing a violation of the Florida Constitution.

(AD) Constitutional challenge—proposed amendment – a challenge to a legislatively initiated proposed constitutional amendment, but excluding challenges to a citizen-initiated proposed constitutional amendment because the Florida Supreme Court has direct jurisdiction of such challenges.

(AE) Corporate trusts - all matters relating to the business activities of financial services companies or banks acting in a fiduciary capacity for investors.

(AF) Discrimination—employment or other - all matters relating to discrimination, including employment, sex, race, age, handicap, harassment, retaliation, or wages

(AG) Insurance claims - all matters relating to claims filed with an insurance company.

(AH) Intellectual property - all matters relating to intangible rights protecting commercially valuable products of the human intellect.

(AI) Libel/Slander - all matters relating to written, visual, oral, or aural defamation of character.

(AJ) Shareholder derivative action - all matters relating to actions by a corporation's shareholders to protect and benefit all shareholders against corporate management for improper management.

(AK) Securities litigation - all matters relating to the financial interest or instruments of a company or corporation.

(AL) Trade secrets - all matters relating to a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.

---

**III. Remedies Sought.** Place an "X" in the appropriate box. If more than one remedy is sought in the complaint or petition, check all that apply.

**IV. Number of Causes of Action.** If the complaint or petition alleges more than one cause of action, note the number and the name of the cause of action.

**V. Class Action.** Place an "X" in the appropriate box.

**VI. Related Cases.** Place an "X" in the appropriate box.

**VII. Is Jury Trial Demanded In Complaint?** Check the appropriate box to indicate whether a jury trial is being demanded in the complaint

**ATTORNEY OR PARTY SIGNATURE.** Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that the filer has provided accurate information on the civil cover sheet.

[page intentionally left blank]

[page intentionally left blank]



[page intentionally left blank]

**NEW FORM FOR AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY**

I, *(full legal name)* \_\_\_\_\_ (individually or an Employee of \_\_\_\_\_), being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the current residence of \_\_\_\_\_. **Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[ all that apply]

\_\_\_\_\_ Inquiry of Social Security Information

\_\_\_\_\_ Telephone listings in the last known locations of defendant's residence

\_\_\_\_\_ Statewide directory assistance search

\_\_\_\_\_ Internet people finder search {specify sites searched}

\_\_\_\_\_ Voter Registration in the area where defendant was last known to reside.

\_\_\_\_\_ Nationwide Masterfile Death Search

\_\_\_\_\_ Tax Collector's records in area where defendant was last known to reside.

\_\_\_\_\_ Tax Assessor's records in area where defendant was last known to reside

\_\_\_\_\_ Department of Motor vehicle records in the state of defendant's last known address

\_\_\_\_\_ Driver's License records search in the state of defendant's last known address.

\_\_\_\_\_ Department of Corrections records in the state of defendant's last known address.

\_\_\_\_\_ Federal Prison records search.

\_\_\_\_\_ Regulatory agencies for professional or occupational licensing.

\_\_\_\_\_ Inquiry to determine if defendant is in military service.

\_\_\_\_\_ Last known employment of defendant.

{List all additional efforts made to locate defendant}

---

---

---

---

Attempts to Serve Process and Results

---

---

---

---

2. \_\_\_\_\_ **current residence**

[√ one only]

\_\_\_\_\_ a. \_\_\_\_\_'s current residence is unknown to me

\_\_\_\_\_ b. \_\_\_\_\_'s current residence is in some state or country other than Florida and \_\_\_\_\_'s last known address is:

---

---

\_\_\_\_\_ c. The \_\_\_\_\_, having residence in Florida, has been absent from Florida for more than 60 days prior to the date of this affidavit, or conceals him (her) self so that process cannot be served personally upon him or her, and I believe there is no person in the state upon whom service of process would bind this absent or concealed \_\_\_\_\_.

**I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.**

Dated: \_\_\_\_\_  
Signature of Plaintiff \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Telefacsimile: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to or affirmed and signed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_  
(Print, Type or Stamp Commissioned Name of Notary Public)

\_\_\_\_\_ Personally known  
\_\_\_\_\_ Produced identification  
\_\_\_\_\_ Type of identification produced  
\_\_\_\_\_

**NOTE:** This form is used to obtain constructive service on the defendant.

**NEW FORM FOR MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE**

Comes now \_\_\_\_\_, Plaintiff, by and through undersigned counsel, and respectfully moves this Court to cancel and reschedule a mortgage foreclosure sale and as grounds therefore states as follows:

1. On \_\_\_\_\_ this Court entered a Summary Final Judgment of Foreclosure pursuant to which a foreclosure sale was scheduled for \_\_\_\_\_, 20 \_\_\_\_\_.

2. Said sale needs to be canceled for the following reason(s):

a. \_\_\_\_\_ Plaintiff and Defendant are continuing to be involved in loss mitigation;

b. \_\_\_\_\_ Defendant is negotiating for the sale of the property which is the subject of this matter and Plaintiff is desirous of allowing the Defendant an opportunity to sell same and pay off the debt which is due and owing to Plaintiff.

c. \_\_\_\_\_ Defendant has entered into a contract to sell the property which is the subject of this matter and Plaintiff is desirous of allowing the Defendant an opportunity to consummate the sale and pay off the debt which is due and owing to Plaintiff.

d. \_\_\_\_\_ Defendant has filed a Chapter \_\_\_\_\_ Petition under the Federal Bankruptcy Code;

e. \_\_\_\_\_ Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f. \_\_\_\_\_ Plaintiff and Defendant have entered into a Forbearance Agreement;

g. \_\_\_\_\_ Other

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Should this Court cancel the foreclosure sale Plaintiff respectfully requests that the Court re-schedule same.

WHEREFORE PREMISES CONSIDERED Plaintiff requests that this Court cancel the foreclosure sale previously scheduled for \_\_\_\_\_ and to re-schedule same.

---

---

---

---

---

---

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**NOTE.** This form is used to move the court to cancel and reschedule a foreclosure sale.

## **2. Comments of the Rules of Civil Procedure Committee**



Gerard F. Richman 1,5  
 Alan G. Greer 1,5  
 Kenneth J. Weil  
 John M. Brumbaugh 1  
 Bruce A. Christensen 2  
 Charles H. Johnson 3  
 Gary S. Betensky 5  
 Diane Wagner Katzen 6  
 Manuel A. Garcia-Linares 4  
 Mark A. Romance  
 John G. White, III  
 Lyle E. Shapiro  
 Michael J. Napoleone  
 Ronald P. Ponzoli, Jr.  
 John R. Whittles  
 Melissa Fernandez  
 Eric M. Sodhi  
 Leora B. Freire  
 Adam M. Myron  
 Ethan J. Wall  
 Joshua L. Spoon

Steven Naclerio, Of Counsel

Ray H. Pearson (1922-2004)

Robert L. Floyd (1918-2007)

1 Certified in Civil Trial Law  
 By The Florida Bar

2 Certified in Marital & Family Law  
 By The Florida Bar

3 Certified in Wills, Trusts & Estates  
 By The Florida Bar

4 Also, Certified Public Accountant  
 In Florida

5 Certified in Business Litigation  
 By The Florida Bar

6 Florida Supreme Court  
 Certified Civil Court Mediator

REPLY TO:  
 Miami Office

August 11, 2009

**Via Electronic Mail**

Honorable Jennifer D. Bailey  
 Administrative Judge, Civil Division  
 11<sup>th</sup> Judicial Circuit  
 Miami-Dade County Courthouse  
 73 W. Flagler St., Room 1307  
 Miami, Florida 33130

Re: Supreme Court Task Force on Residential Mortgage  
 Foreclosure Cases; Florida Bar Civil Rules  
 Committee Comments

Dear Judge Bailey,

As you know, the Florida Supreme Court requested the Florida Bar Civil Rules Committee to provide comments to the Supreme Court Task Force on Residential Mortgage Foreclosure Cases on the limited issue of amendments that the Task Force may propose to Civil Procedure rules or forms as part of the Task Force's final report. The Supreme Court requested that Civil Rules provide the comments before the Task Force submits its final report to the Supreme Court on August 15, 2009.

On Tuesday, August 4, 2009, the Task Force provided to me the amendments to the Civil Rules that the Task Force intends to propose as part of its final report, which are as follows: (1) amendment to Rule 1.100 to require residential mortgage foreclosures to be verified; (2) amendment to Form 1.997 entitled Civil Cover Sheet; (3) a new form entitled Affidavit of Diligent Search and Inquiry; and (4) a second proposed new form entitled Motion To Cancel and Reschedule Foreclosure Sale.

The Civil Rules Committee appointed a subcommittee consisting of Judge Claudia Isom and attorney Dan Bean to evaluate the Task Force's proposed amendments and new forms. On August 5, 2009, the Subcommittee provided some limited comments to the Task Force on certain technical aspects of the proposals, including a recommendation



MIAMI OFFICE: Miami Center, Suite 1000  
 201 South Biscayne Boulevard • Miami, Florida 33131  
 305.373.4000 • Broward 954.528.4297 • Fax 305.373.4099  
 E-Mail: info@richmangreer.com

WEST PALM BEACH OFFICE: One Clearlake Centre, Suite 1504  
 250 Australian Avenue, South • West Palm Beach, Florida 33401  
 561.803.3500 • Fax 561.820.1608  
 www.richmangreer.com



August 11, 2009  
Page 2

that the verification requirement be added to Rule 1.110(b), not Rule 1.100. The Task Force accepted those technical recommendations and on August 6, 2009, the Task Force returned the revised proposed amendments to the Civil Rules subcommittee. Thereafter, the Task Force withdrew the proposal to amend Form 1.997 Civil Cover Sheet because that form is undergoing a more comprehensive overhaul by another Task Force.

In a written report, the Civil Rules subcommittee recommended that the Civil Rules Committee approve the proposed amendments to Rule 1.110(b) and the two new forms in the form submitted by the Task Force on August 6, 2009. Unfortunately, because of the time restrictions, the Civil Rules Committee was unable to conduct any discussion or debate about the proposals. However, in an attempt to provide some feedback to the Task Force, on August 7, 2009, I submitted the subcommittee's recommendation to the full Civil Rules Committee and requested a vote on the subcommittee's recommendation. In addition, I invited the Civil Rules Committee members to submit their comments to me to be shared with the Task Force. The deadline to vote was today, August 11, 2009. A copy of my email with the subcommittee's report is attached. Thirty-two members of the Committee voted.

In a close vote, the Civil Rules Committee voted to support amendment of Rule 1.110(b) requiring that residential mortgage foreclosure complaints be verified, and by a fairly wide margin, supports the two new forms. The specific Civil Rules Committee's vote was as follows:

1. Proposed Amendments to Rule 1.110(b) requiring complaints to be verified:  
**18** voted **Yes** (to support amendment) **14** voted **No** (against the amendment)
2. Proposed new form entitled Affidavit of Diligent Search and Inquiry:  
**30** voted **Yes** (to support the new form) **2** voted **No** (against the new form)
3. Proposed new form entitled Motion To Cancel and Reschedule Foreclosure Sale  
**26** voted **Yes** (to support the new form) **6** voted **No** (against the new form)

In response to my email vote, I received comments both opposing the proposals and in favor of the proposals. In addition, member Terry Rankin submitted comprehensive comments. The comments of the individual members of the Civil Rules Committee are attached.

RICHMAN GREER, P.A.

Miami • West Palm Beach

August 11, 2009  
Page 3

If the Civil Rules Committee can be of further assistance to the Task Force,  
please let me know.

Sincerely,

A handwritten signature in black ink that reads "Mark Romance". The signature is written in a cursive, flowing style.

Mark A. Romance  
Chair  
Florida Bar Civil Rules Committee

**RICHMAN GREER, P.A.**

Miami • West Palm Beach

August 11, 2009

Page 4

## COMMENTS OPPOSING PROPOSALS

*Member Don Christopher voted against the requirement that all residential foreclosure complaints be verified and said as follows:*

My reason for voting "no" as to the first proposal is that I believe this is a matter for statute, not rule. Many other statutes contain verification requirements. Numerous examples, include: 914.24 (witness or victim harassment), 618.18 (injunction to preclude breach of agricultural marketing agreement), 573.124 (breach of an agricultural marketing order), 76.08 (attachment); 71.021 (reestablishment of trademark or brand), 713.346 (complaint in subcontractor or materialmen's claim on a private contract that general contractor has already received payment from the owner but failed to timely pay for work), 607.07401 (complaint in corporate derivative action), 608.601 (complaint in limited liability company derivative action), 255.071 (complaint in subcontractor or materialmen's claim on a public job that general contractor has received payment from governmental entity but failed to timely pay for work), 619.07 (injunction to preclude breach of non-profit cooperative marketing agreement), 932.704 (complaint in civil forfeiture proceedings by a law enforcement agency) 409.2561 (paternity complaints), 774.207 (verified written report to accompany any complaint seeking damages for asbestos exposure), 68.02 (writ of *ne exeat*), 77.031 (motion for prejudgment writ of garnishment), 78.068 (petition for prejudgment writ of replevin), 83.11 (complaint for distress of rent), 83.3111 (petition to establish or modify a child support order), 63.087 (petition to terminate parental rights), and 38.825 (petition to appoint guardian advocate).

Chapter 702 already contains detailed requirements as to how foreclosure proceedings are initiated and should proceed. Requiring a verified complaint should be effected by an amendment to that Chapter, not by further cluttering up the civil rules. Query, why reference verified foreclosure complaints in the rules if the rules are silent as to the myriad of other complaints or petitions that must be verified? As expressed before, I am a staunch "less is better" proponent of condensing rather than expanding the civil rules whenever possible.

Also, I question why reference to a declaration is necessary in the civil rules when this is an alternative the Legislature has already clearly authorized and spelled out as part of the perjury statutes, 92.525?

*Member Neal Sivyer voted no as to the requirement that all residential foreclosure complaints be verified and said as follows:*

I don't know of any other complaint that must be verified and I don't know why this would be required for foreclosure cases only. I see no study or detailed evidence of multiple plaintiffs suing on the same note. These requirements and mandatory

RICHMAN GREER, P.A.

Miami • West Palm Beach

August 11, 2009  
Page 5

mediation are not practical. It is impractical to "round up" a defaulting mortgage and try to set up a mediation in most cases. If you cannot find the defendant to serve them or they simply don't respond, why should the note holder be prejudiced by further delay and expense. While there are instances of large lenders being abusive, the cold hard fact is that in most of these cases the defendant simply stopped making payments and has no sufficient funds or source of income to "refinance".

### **COMMENTS IN FAVOR OF PROPOSAL**

*Member Tom Bateman, who is working with the Task Force, voted yes as to all three proposals, and added the following comments:*

I agree with the subcommittee's suggestion that the language in 92.925, F.S., should be in the jurat in the verified complaint. It is clearer, straightforward, and eliminates the waffling, subject-to-interpretation language of "best information and belief;" it also eliminates words like "therein," one word among many that should be banned from the rules, pleadings, motions and orders any way. I believe the same language should be used in the Affidavit of Diligent Search, a new form which I agree is needed and strongly support. Finally, I agree that the uniform Motion to Cancel and Reschedule Foreclosure Sale should be included in the Rules of Civil Procedure. If left to an administrative order, some judges (in fact, many judges), will consider it discretionary and will not require it in the face of the administrative order ... a simple fact of life learned from experience. Inclusion in the Rules of Court, will mandate its use.]

*Member Cherry Shaw voted in favor of all three proposals and commented as follows:*

I am in strong favor of improvements and a more efficient process for mortgage foreclosures, especially relating to a verified complaint and the required 2 forms. Currently, it appears that the practice of mortgage foreclosure litigation is akin to an auto assembly line. Property homeowners are not to be "assembled" in a process that seeks to remove them from their homes, because they meet unforeseen events. There has to be some checks and balances, a requirement to provide sworn testimony in the complaint is a start. Such a requirement will force the mortgagor and/or their attorney to provide testimony, under oath, regarding the actual channels or process the mortgagor has taken regarding a potential foreclosure of one's home. As a land use attorney, I am familiar with numerous cases wherein individuals file for a foreclosure as soon as the local government notifies the homeowner of code enforcement violations. Perhaps, this is a remote observation, but something has to give.

### **COMMENTS OF TERRY RANKIN**

**RICHMAN GREER, P.A.**

Miami • West Palm Beach

August 11, 2009  
Page 6

I have had a long letter to the Task Force "in press" for several weeks but will spare the Task Force and the Committee that epistle and pass on the following \$2.98 (or maybe \$19.95) version.

1. The Rule 1.100 amendments.

I am OK with the suggestion and would add a sub-part as follows:

(g): in all actions to foreclose a mortgage on real property:

(1) the action shall be brought in the name of the all legal, beneficial, and other derivative owner(s) of the mortgage and any promissory notes or other instruments secured by the mortgage;

(2) any holder of the promissory notes or other instruments secured by the mortgage who is not an owner shall be made a party defendant;

(2) if the originals of the promissory notes or other instruments secured by the mortgage are not filed when the action is filed the foreclosure action shall be stayed until an evidentiary hearing is held under Sec. 673.3091 Fla. Stat. to set the terms of a bond, or other security to protect the obligor(s).

(3) prior to or contemporaneous with the filing of the action there must be recorded in the public records of the counties where the property subject to the mortgage is located instruments showing the ownership of the of the mortgage(s) sued upon to be in the plaintiff(s).

Rational: The UCC does not require ownership but only "holdership" to enforce a note. The requirement to plead ownership of the note and mortgage to enforce a mortgage securing such a note has been in texts and form books for 80+ years and hinted at but not always required in cases. I have not had time to go to a law school library that would have historical texts that would explain that given that "holdership" is enough to enforce a note why is ownership required to enforce a mortgage based on that note. Maybe someone in this group has the answer.

In any event, as might be expected, unless the notes are removed from circulation they keep "coming around". Never underestimate the creativity of "bottom fishers". My experience is that when you file a motion to require a bond in the amount of the note plus 5 years (the note SOL) of interest the note magically appears!

Forcing the recording in the public records of assignments of mortgages has several purposes. The main one is to keep the "lost" notes and their mortgages from "coming around again". Several months back I asked a banker at one of the large banks that has

RICHMAN GREER, P.A.

Miami • West Palm Beach

August 11, 2009  
Page 7

since "gone down" why they did not record the assignments of mortgage. The answer, "to save the \$10.50 recording fee!" I'd think that failing to record assignments of mortgages would bring down the wrath of the FDIC; but, they are otherwise occupied.

Many of the problems from these mass foreclosures arise because the whole process is largely "default driven". With justification the judges and the clerks are reluctant to "play lawyer". However we can no longer afford that luxury. The results of the foreclosure process no longer "go away" or "self-liquidate". Its a closed system. The circuit judges in the MERS Cases\* tried but were rebuffed. These cases probably set back solutions to the crisis two or more years.

One example, the foreclosure mills usually file the cases pled in rem, not knowing how hard it will be to personally serve the defendants. Before the case is over they get personal service on the important defendants (e.g., the debtors and junior lien holders). After all the defaults are entered a Final Summary Judgement of Foreclosure comes out from under a judge's pen reserving jurisdiction to enter a deficiency judgement. To go back and amend to sue in persona would slow down the train, require serving the defendants again, etc. However, because the judges are not vigilant the Plaintiff's get what they want in spite of never pleading it.

## 2. Form 1.997 Civil Cover Sheet

I'd add the "tax" homestead exemption statute's cite: Sec. 196.031 Fla. Stat.

## 3. Affidavit of Diligent Search

There is a mistake, "Property Appraiser" should be "Tax Assessor" (see bottom of page 1).

I'd require attaching the Property Appraiser's property information form. Unfortunately these forms are not uniform statewide. In Lee County our Appraiser has an excellent form that is all in one place and can easily be printed out. If interested go to [www.leepa.org](http://www.leepa.org) and put in "Terry T R & Kristine" and you will see our house (the oak tree left in Wilma!) and all the info.

## 4. Motion to Cancel/Re-schedule Sale

A plaintiff can do this now by simply not paying the \$75 sale fee.

I'd add the sale fee and all other "post-filing" fees and costs, including a deposit toward the Notice of Sale's newspaper ad and recording the Certificate of Title, to the initial filing fee. However, this would require amending the statute.

**RICHMAN GREER, P.A.**

Miami • West Palm Beach

August 11, 2009  
Page 8

Control would be achieved by the judges refusing to sign the final judgements of foreclosure until the sale fee is paid. After all, the court is ordering the sale not the Plaintiff. The plaintiff should not be able to at their discretion violate a court order by canceling the sale.

#### SOME THOUGHTS ON MEDIATION, MANDATED AND OTHERWISE.

First, if a case is going to settle the court must require that the "true" or "real" "real parties in interest" be before the court. The real or true real parties in interest may be legal owners, beneficial owners, or other types of "derivative owners". With all due respect to the Second and Third DCA, the so called "MERS Cases"\* demonstrated naivete about how the world of real estate finance works in practice. The "real party in interest" rule is a judge made rule based on public policy. Statutes do not intrude much on the real party in interest rule. The real estate finance industry has created various "tricks and traps" (apologies to Professor Elizabeth Warren) to try to avoid the rule. Its sad that the courts were taken in by a lack of knowledge of real estate finance; this lack of knowledge allowed this crisis to occur.

A good text on the subject is Brueggman & Fisher's Real Estate Finance and Investments, 13th Edition, McGraw-Hill Irwin (2008). The 13th edition closed before the current troubles. I'd pay special attention to the two chapters on the secondary mortgage markets (Chapters 20 & 21). I have scanned those two chapters and selected portions of other parts of the book under the "fair use" doctrine. I guess I'd be safe emailing them to this "limited group".

Freddie Mac and Fannie Mae are to this day so sloppy that they are still requiring that notes that they buy be signed over to them in blank! A first year law student can see that this is a poor practice. Maybe some of you have a little influence. This sloppy practice allows them to hide in the weeds of the "tricks and traps" and avoid being made parties. [They each have a website that allows you to put in the property's address and find out if they own the loan. They put up quite a squawk when you use this information to bring them into the law suit.]

In this default driven environment mandating mediation needs to be done carefully.

First, an educated estimate is that 1/3 of the current foreclosures are homesteads. The balance are vacant land or lots, investment housing, or commercial. In most of these cases where a work-out is realistic they are probably in Chapter 11 bankruptcy. Of course, in some of these situations compelling mediation might push a "short sale" through.

RICHMAN GREER, P.A.

Miami • West Palm Beach

August 11, 2009  
Page 9

Second, many factors influence whether or not a homestead foreclosure mediation has a chance of succeeding. Many of these factors may not ethically under the mediation rules be made known to the judge. However, a "screening mediator" should ethically be able to learn these factors.

Third, my 5 principal Screening Mediator "settlement potential factors" are:

1. If there has not been a payment in any amount made in over 5 or 6 months there is a low probability of a successful mediation. Of course, if per chance payments have been tendered and refused it is probably worth a try.
2. Are any family members working regularly? If at least one adult family member has a steady job mediation may be worth a try. If the incomes are only from unemployment there is not much chance.
3. Are rooms or the whole house (in spite of violating Sec.196.031 Fla. Stat.) being rented out? If so, mediation may be worth a try.
4. What is the borrowers' "affordability calculation"? Since the homeowners' cramdown bankruptcy legislation did not pass congress lenders are slow to write off principal. Thus, unless there is some indication that there will be a significant reduction in principal, no matter how low the interest rate goes, settlement is unlikely.

In April of 2008 I did an "affordability calculation" (a term of my concoction) for a monthly column I write for the Lee County Bar's monthly magazine, Res Gestae. I assumed that the average family income that a working family can count on year in and year out is \$45,000 per year. Using typical Florida insurance and tax rates, following the traditional "25% Rule" (for annual incomes below \$100,000 per year I think it is foolish to use a 31% rule) and assuming an 80%, 7%, 30 year mortgage I calculated that the most expensive house that such a family could be afforded was \$85,000. The mortgage was \$65,000. I'll email copies.

In my April 2008 "affordability calculation" I calculated an "affordable mortgage payment" of \$430 per month. Cutting the interest rate to 6% would support a \$71,720, 30 year mortgage which (for an 80% mortgage you divided by .8) yields a \$89,650 house. The lesson is that over the long haul unless the principal of the foreclosed mortgage is reduced down to the \$70,000 range settlement will be difficult.

5. Has the court required all of the "real parties in interest", not just the "MERS Cases Owners' Group", to be at the mediation? The reason is that without all of them there you can not fulfill "Mediator Terry's Mediation Agenda", vis:

RICHMAN GREER, P.A.

Miami • West Palm Beach



August 11, 2009  
Page 10

A. Are the lender/note owner(s) realistic about what they will realize at or after the foreclosure sale.

(The Lee County property Appraiser's website, see above, lets you sit at the mediation and bring up recent sales in the neighborhood.)

B. Are the lender/note owner(s) willing to be a landlord? For how long? Are they willing to talk lease-purchase?

C. Are the lender/note owner(s) "in the dozens" with their regulator(s)?

D. Does the lender/note owner(s) risk the wrath of their regulator(s) or principals if the loss is finally realized on their books by a settlement prior to the clerk's sale.

E. Have any short sales been discussed or proposed?

F. Does amending the note (i.e., refinancing) with the lender/note owner(s) have a chance given some of the new governmental foreclosure mitigation programs?

G. Is a voluntary turn over and surrender of possession in "suitable condition" an agreeable alternative?

H. Will the lender/note owner(s) allow the borrower to rent in an apartment property owned or controlled by them?

Hopefully the above will be helpful as the Task Force moves through its work and of some value to the Committee as we consider the Task Force's assignments to us.

Anyone having questions or wanting copies of any of the things mentioned call or email.

I'd particularly like to know any history of the "owner and holder" issue. For reasons that in the 1940's, '50's, and '60's were important the UCC was written very "anti-title" which I suppose meant "anti-owner". The concept of the "holder" was the central legal theory of Article 3 of the UCC. Of course the UCC was not to apply to real estate. I think the fact that the "owner and holder" history is not well known contributed to the MERS Cases\* outcome.

\*Mortgage Electronic Registration System, Inc (MERS) v. Azize, 965 So. 2d 151 (Fla. DCA 2, 2007) and MERS v. Revoredo, 955 So. 2d 33 (Fla DCA 3, 2007)

T. Rankin  
8/8/2009

*Mr. Rankin provided additional commentary on 8/10/2009 as follows:*

RICHMAN GREER, P.A.

Miami • West Palm Beach

August 11, 2009  
Page 11

I am inclined to agree with Don; it will require a statutory basis. Thus, I vote no.

The general purpose of this is to "smoke out" the original note and its owners and holders (however defined). My "(g)" suggestions are partly drafted to have this purpose.

Maybe my "(g)" suggestions should be added to Rule 1.210 Parties. as sub-section (c).

Sadly, my faith in the power of written oaths is somewhat diminished. Also, I don't see our budget short state attorneys trotting off to North Dakota to prosecute a bank clerk for false swearing.

Requiring a lender wanting to foreclose a \$250,000 mortgage to put up a five year, \$250,000 bond plus five years of interest at the statutory rate (this year 8% or another \$100,000) will most of the time cause them to "stand and deliver" the originals including originals of all of the "ownership and holdership documents" (alonge's and such).

T. Rankin  
8/10/2009

RICHMAN GREER, P.A.

Miami • West Palm Beach

**Mark A. Romance**

---

**From:** Mark A. Romance  
**Sent:** Friday, August 07, 2009 3:15 PM  
**To:** lee@bcrlaw.net; tbateman@lawfla.com; daniel.bean@hklaw.com; vbobet@bobetlaw.com; linzie.bogan@famu.edu; elfynb@bellsouth.net; gb@bgalaw.com; gbrown@hwhlaw.com; jbrown@petersonmyers.com; vbuchanan@levinlaw.com; fjc@hassell-legal.com; acastro@rnc-attorneys.com; dec@litChris.com; vcocotas@orlandolaw.net; gcoleman@bcclaw.com; kcruz-brown@carltonfields.com; dancytrynlaw@yahoo.com; sdanon@hunton.com; bdavis@ddslaw.net; tdemetriades@whww.com; jdishow1@17th.flcourts.org; wdouberley@dc-atly.com; vgary@gjlawgroup.com; arg@carmanbeauchamp.com; mgg@appeal.com; judge.green@fcourts1.gov; jhenning@17th.flcourts.org; hogan@terrellhogan.com; jianno@carltonfields.com; isomcr@fljud13.org; gjames@ghj.com; jjohnson@babbitt-johnson.com; kjohnson@tsg-law.com; rjohnson@gray-robinson.com; russell.kent@myfloridalegal.com; lhk@aswmpa.com; rlandon@kennynachwalter.com; jorgelopez@dadeschools.net; jlucente@winstonlaw.com; rmahler\_law@rocketmail.com; Rmansbach@zkslawfirm.com; jennifer.mansfield@hklaw.com; tmasterson@mastersonlaw.com; dmena@arhmf.com; jmestre@riverolaw.com; jmiddleton@rtlaw.com; dmilian@crplaw.com; antonio.morin@akerman.com; nmurphy@murphyandersonlaw.com; nielsera@fljud13.org; passaro@litchfieldcavo.com; lisa.raleigh@myfloridalegal.com; ramirez@flcourts.org; hriviera@qpwbaw.com; Mark A. Romance; asaikali@shb.com; ksx@searcylaw.com; CherryS@coj.net; nsivyer@sbwlegal.com; trerry@gmail.com; Robyn.Vines@Gray-Robinson.com; gward@wardkim.com; Robyn.Vines@ruden.com  
**Cc:** Madelon Horwich; Mark A. Romance  
**Subject:** Supreme Court Task Force - Vote Needed  
**Attachments:** Committee Report and Recommendations.pdf; Committee Report and Recommendations Addendum.pdf

Dear Civil Procedure Rules Committee Member,

As Madelon mentioned in her email yesterday, the Supreme Court has asked our Committee to provide comments to the Supreme Court's Task Force on Residential Mortgage Foreclosure Cases as to the Task Force's recommended changes to any amendments to any Civil Procedure rules or forms before the Task Force submits its final report to the Supreme Court on August 15th.

The Civil Rules Committee appointed a subcommittee, consisting of Judge Claudia Isom and Dan Bean, to evaluate the proposals of the Task Force that impact Civil Rules and to recommend comments to be made on behalf of the Committee to the Task Force. The subcommittee prepared the attached report which includes a recommendation to the full Committee on each of the three proposals. Thank you Judge Isom and Dan for your excellent work on this issue in a very short period of time.

By no later than **12:00 p.m. on Tuesday August 11, 2009**, I will need a **vote** from you on each of the three recommendations as to whether or not you approve the subcommittee's recommendation. The vote on each of the items must be either:

- Yes (meaning you agree with the subcommittee's recommendation), or
- No (meaning you do not agree with the subcommittee's recommendation).

In either event, you may also provide comments as to each of the proposals, which comments I will share with the Task Force as part of our response to request for comments.

To be clear, our Committee is NOT being asked at this time to comment on the Task Force's final report. In fact, the report is not yet final and we have not been provided a draft of the final report. Instead, our role at this time is very narrow. Specifically, we have been asked, on an expedited basis, to provide input that is limited to the

8/11/2009

portion of the Task Force's report that will recommend changes to Civil Procedure rules and forms as follows:

- 1) an amendment to Rule 1.110(b) to require that mortgage foreclosure complaints be verified when filed;
- 2) a new form entitled Affidavit of Diligent Search and Inquiry; and
- 3) a new form entitled Motion To Cancel and Re-Schedule Foreclosure Sale.

(You will see that the attached subcommittee report included a recommendation on a fourth proposal, regarding changes to the Civil Cover Sheet. However, the subcommittee then submitted the attached Addendum, explaining that no comments are needed on the Civil Cover Sheet at this time).

To make it easier for me to tabulate the votes, I request that you respond to this email to me (and not reply to all unless necessary) in the following format:

1. Rule 1.110(b) - [Yes or No]
  2. Form Affidavit of Diligent Search - [Yes or No]
  3. Form Motion To Cancel [Yes or No]
- [Comments]

Once the Task Force's report is final and submitted to the Supreme Court, it is my understanding that any member of the Bar will have the opportunity to provide comments to the Supreme Court about the report, and the Supreme Court may ask our Committee to comment on the report as well. For your information, the Task Force submitted an Interim Report on May 8, 2009, which report is available at [www.floridasupremecourt.org/pub\\_info/documents/05-08-2009\\_Foreclosure\\_TaskForce\\_Interim\\_Report.pdf](http://www.floridasupremecourt.org/pub_info/documents/05-08-2009_Foreclosure_TaskForce_Interim_Report.pdf).

Thank you for your quick turn-around on this.

Sincerely,

Mark A. Romance

8/11/2009

TO: Mark Romance, Chair  
Florida Rules of Civil Procedure Committee

FROM: Daniel Bean, Subcommittee Chair  
Residential Mortgage Foreclosure  
Hon. Claudia R. Isom, Member and  
Committee Representative to Supreme Court Task Force on  
Residential Mortgage Foreclosures

SUBJECT: Proposed Rule and Form Amendments Received  
From Hon. Jennifer Bailey, Chair  
Supreme Court Task Force on Residential Mortgage Foreclosures

DATE: Friday, August 7<sup>th</sup>, 2009

---

COMMITTEE REPORT AND RECOMMENDATIONS

---

The subcommittee consisting of The Honorable Claudia Isom (who also served as the Committee's representative on the Task Force), and Daniel Bean met on Wednesday, August 5<sup>th</sup> in response to the request from the chair of the Supreme Court Task Force on Residential Mortgage Foreclosures. The subcommittee's review was limited to reviewing one civil rule amendment and three civil rules form amendments being proposed by the Task Force as part of their final report. The final report is not being reviewed and is not before the Committee for its comments at this time, although it is anticipated that the Court will invite comments following the submission of the Final Report. The subcommittee was in general agreement with the need for each amendment and forwarded its suggestions to the Task Force regarding revisions, most of which have already been incorporated by the Task Force and are found as attachments to Judge Bailey's August 6<sup>th</sup> letter. After the revisions, the subcommittee has the additional comments as follows. To place the comments in context, the proposals of the Task Force (with slight paraphrasing to assist in readability) have been placed in italics.

PROPOSAL ONE: Rule 1.110 (b). General Rules of Pleading

*The Task Force recommends complaints for residential mortgage foreclosure be verified because of the new economic reality dealing with mortgage foreclosure cases in an era of securitization. Frequently, the note has been transferred on multiple occasions prior to default and filing of the foreclosure. Plaintiff's status as owner and holder of the note at the time of filing has become a significant issue in these cases, particularly because many firms file lost note counts as a standard alternative pleading in the Complaint. There have been situations where two different Plaintiffs have filed suit on the same note at the same time. Requiring the Plaintiff to verify its ownership of the note at time of filing provides incentive to review and ensures that the filing is accurate, ensures that investigation has been made and that the Plaintiff is the owner and holder of the note. It will reduce confusion, and will give the trial judges the authority to sanction those who file without assuring themselves of their authority to do so. The proposed rule was adapted from Florida Probate Rule 5.020.*

The subcommittee supports this change as well as the location in the rules in rule 1.110 (b). The original proposal was to locate this as an additional paragraph in rule 1.100, and the Task Force agreed to move it to the suggested location. The subcommittee does not support the wording of the verification ““Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.” The subcommittee recommends that the language be as provided in Florida Statute 92.925 “Under penalties of perjury, I declare that I have read the foregoing [complaint] and that the facts stated in it are true” to address the problems identified by the Task Force. The subcommittee notes that adoption of this proposal may result in the need for an additional form complaint to follow 1.944 Mortgage Foreclosure Complaint which will incorporate the verification language for residential mortgage foreclosure complaints.

**PROPOSAL TWO: Form 1.997, Civil Cover Sheet (existing and new versions)**

*The purpose of this proposal by the Task Force is to allow the Court to manage foreclosure cases. Residential cases will be case-managed differently than commercial cases. Those residential cases that are homestead will be managed differently than non-homestead properties. Requiring these designations on the Civil Cover Sheet permits categorization of the cases as early as possible. We elected to use homestead status as it is an objective analysis of whether the property currently has a homestead exemption with the property tax appraiser, a matter easily determined without requiring locating the borrower.*

The subcommittee supports this proposed form change. The proposal has been incorporated in the existing form and instructions for use for civil cover sheets and the new form and instructions for use which the Supreme Court approved for use beginning January 1, 2010 as part of the amendments for management of cases involving complex litigation in its May 28, 2009 opinion. The subcommittee supports this change in that it will facilitate case management of mortgage foreclosure cases and assist the court in determining appropriate resources to best facilitate early and equitable resolution.

**PROPOSAL THREE: Affidavit of Diligent Search Form (no number proposed)**

*The Task Force proposes inclusion in the Rules of Civil Procedure an Affidavit of Diligent Search. Many foreclosure cases are served by publication, and currently, affidavits of diligent search are formatted many different ways and include different information. This form was adapted from the Family Rules 12.913(b) and (c). These are categories of criteria that are available to locate a defendant, and only those utilized would be checked. The entire affidavit will be reviewed for diligence upon application for default. The most significant addition is the additional criteria that if the process server serves an occupant in the property, he inquires of that occupant whether he knows the location of the borrower-defendant. Currently, that is not occurring. Our logic is that those occupants are probably paying rent to a defendant-owner someplace. Our goal is to locate defendants and make sure they are on notice as efficiently as possible.*

The subcommittee recommends adoption of this proposal. The need for a uniform affidavit of diligent search and inquiry transcends the current mortgage foreclosure crisis and will be a

valuable aid to the courts in assuring uniformity in the efforts made prior to valid service of process through publication. If numbered sequentially, the form number would be 1.999.

PROPOSAL FOUR: Motion to Cancel and Reschedule Foreclosure Sale (no number proposed)

*Another new form proposed by the Task Force is a standard Motion to Cancel and Reschedule Foreclosure Sale. Currently many foreclosure sales set by the Final Judgment and handled by the Clerks of Court are the subject of vague last-minute motions to reset sales without giving any specific information as to why the sale is being reset. It would be important to know why sales are being reset so as to determine when they could properly be reset, or whether the sales process is being abused. Therefore, this form requires that the movant advise the Court specifically as to why the foreclosure sale is being sought to reset. Again, this is designed at promoting effective case management and keeping properties out of extended limbo between final judgment and sale.*

The subcommittee is not sure that a uniform motion of this type is necessary or, if necessary, belongs as a form incorporated into the Rules. The subcommittee suggests a uniform motion might be incorporated into an administrative order addressing the current mortgage foreclosure crisis. If numbered sequentially, this form would be 1.1000. However, if the Task Force feels that inclusion in the Rules of Civil Procedure is a vital component of its proposal, the subcommittee has no objection.

Respectfully Submitted,

/s/ Daniel Bean, Chair

/s/ Hon. Claudia R. Isom

**Florida Supreme Court  
Task Force on Residential Mortgage Foreclosure Cases  
500 South Duval Street  
Tallahassee, FL 32399-1900  
Judge Jennifer D. Bailey, Chair**

August 6, 2009

Mr. Mark Romance,  
Chair, Florida Bar Rules of Civil Procedure Committee  
Mr. Dan Bean  
Florida Bar Rules of Civil Procedure Committee

Dear Mr. Romance and Mr. Bean:

Pursuant to our recent discussions, the Florida Supreme Court Task Force on Residential Mortgage Foreclosures submits one rule change and three forms for approval by the Civil Rules Committee. The rule change requires verification of mortgage foreclosure complaints and the forms add specificity to the Civil Cover Sheet, standardize affidavits of diligent search and clarify grounds for moving to cancel and reschedule a foreclosure sale.

We have narrowly tailored these requests because our work is directed at the current court emergency caused by the flood of mortgage foreclosure cases in Florida's courts. There are a number of forms that we will be recommending as "best practice" standard forms that chief judges throughout the state will be asked to consider using, but that we feel are directed at the underlying emergency. As such, these forms are not suitable for inclusion in the Rules of Civil Procedure which should be used on a long-term basis and stand the test of time, as opposed to being directed at what we hope is a short-term emergency. We will be submitting the "best practices" forms with our final report to the Florida Supreme Court on August 15, and I will forward you a copy of our report and those forms for further comment as the committee sees fit.

We submit the following as suitable for inclusion in the permanent rules.

1. We propose the following rule change:

Rule 1.110. General Rules of Pleading  
Verified Complaint (Attachment A)



We recommend this rule change because of the new economic reality dealing with mortgage foreclosure cases in an era of securitization. Frequently, the note has been transferred on multiple occasions prior to default and filing of the foreclosure. Plaintiff's status as owner and holder of the note at the time of filing has become a significant issue in these cases, particularly because many firms file lost note counts as a standard alternative pleading in the Complaint. There have been situations where two different Plaintiffs have filed suit on the same note at the same time. Requiring the Plaintiff to verify its ownership of the note at time of filing provides incentive to review and ensures that the filing is accurate, ensures that investigation has been made and that the Plaintiff is the owner and holder of the note. It will reduce confusion, and will give the trial judges the authority to sanction those who file without assuring themselves of their authority to do so. The proposed rule was adapted from Florida Probate Rule 5.020.

2. We propose one change to an existing form, the Civil Cover Sheet.

Form 1.997. Civil Cover Sheet (existing and new versions)  
(Attachments B & C)

The purpose of this proposal is to allow the Court to case manage foreclosure cases. Residential cases will be case-managed differently than commercial cases. Those residential cases that are homestead will be managed differently than non-homestead properties. Requiring these designations on the Civil Cover Sheet permits categorization of the cases as early as possible. We elected to use homestead status as it is an objective analysis of whether the property currently has a homestead exemption with the property tax appraiser, a matter easily determined without requiring locating the borrower.

3. We propose two new forms for the Affidavit of Diligent Search and the Motion to Cancel and Reschedule Foreclosure Sale.

Affidavit of Diligent Search Form  
(Attachment D)

We propose two new forms. The first is an Affidavit of Diligent Search. Many foreclosure cases are served by publication, and currently, affidavits of diligent search are formatted many different ways and include different information. This form was adapted from the Family Rules 12.913(b) and (c). These are categories of criteria that are available to locate a defendant, and only those utilized would be checked. The entire affidavit will be reviewed for diligence upon application for default. The most significant addition is the additional criteria that if the process

server serves an occupant in the property, he inquires of that occupant whether he knows the location of the borrower-defendant. Currently, that is not occurring. Our logic is that those occupants are probably paying rent to a defendant-owner someplace. Our goal is to locate defendants and make sure they are on notice as efficiently as possible.

Motion to Cancel and Reschedule Foreclosure Sale  
(Attachment E)

The second form is a standard Motion to Cancel and Reschedule Foreclosure Sale. Currently many foreclosure sales set by the Final Judgment and handled by the Clerks of Court are the subject of vague last-minute motions to reset sales without giving any specific information as to why the sale is being reset. It would be important to know why sales are being reset so as to determine when they could properly be reset, or whether the sales process is being abused. Therefore, this form requires that the movant advise the Court specifically as to why the foreclosure sale is being sought to reset. Again, this is designed at promoting effective case management and keeping properties out of extended limbo between final judgment and sale.

We would appreciate the support of the Civil Rules Committee in our efforts to streamline and case-manage the overwhelming number of foreclosure cases we face. These are the proposals that we feel are appropriate to become permanent and which will assist judges and attorneys long after we hope this crisis passes.

The Task Force was given a very short time frame to produce its final report for the court. We apologize for the submission of this material so close to the deadline, but in all candor, we could not have worked any harder or any faster. Your prompt response would be appreciated.

Sincerely,

Jennifer D. Bailey  
Chair,  
Florida Supreme Court Mortgage Foreclosure Task Force

ATTACHMENT A

**RULE 1.110. GENERAL RULES OF PLEADING**

(a) **Forms of Pleadings.** Forms of action and technical forms for seeking relief and of pleas, pleadings, or motions are abolished.

(b) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

(c) **The Answer.** In the answer a pleader shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge, the defendant shall so state and such statement shall operate as a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of an averment, the pleader shall specify so much of it as is true and shall deny the remainder. Unless the pleader intends in good faith to controvert all of the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or may generally deny all of the averments except such designated

averments as the pleader expressly admits, but when the pleader does so intend to controvert all of its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial.

**(d) Affirmative Defenses.** In pleading to a preceding pleading a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if justice so requires, shall treat the pleading as if there had been a proper designation. Affirmative defenses appearing on the face of a prior pleading may be asserted as grounds for a motion or defense under rule 1.140(b); provided this shall not limit amendments under rule 1.190 even if such ground is sustained.

**(e) Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

**(f) Separate Statements.** All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth.

**(g) Joinder of Causes of Action; Consistency.** A pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if separate items make up the cause of action, or if 2 or more causes of action are joined. A party may also set forth 2 or more statements of a claim or defense alternatively, either in 1 count or defense or in separate counts or defenses.

When 2 or more statements are made in the alternative and 1 of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both. All pleadings shall be construed so as to do substantial justice.

**(h) Subsequent Pleadings.** When the nature of an action permits pleadings subsequent to final judgment and the jurisdiction of the court over the parties has not terminated, the initial pleading subsequent to final judgment shall be designated a supplemental complaint or petition. The action shall then proceed in the same manner and time as though the supplemental complaint or petition were the initial pleading in the action, including the issuance of any needed process. This subdivision shall not apply to proceedings that may be initiated by motion under these rules.

#### **Committee Notes**

**1971 Amendment.** Subdivision (h) is added to cover a situation usually arising in divorce judgment modifications, supplemental declaratory relief actions, or trust supervision. When any subsequent proceeding results in a pleading in the strict technical sense under rule 1.100(a), response by opposing parties will follow the same course as though the new pleading were the initial pleading in the action. The time for answering and authority for defenses under rule 1.140 will apply. The last sentence exempts post judgment motions under rules 1.480(c), 1.530, and 1.540, and similar proceedings from its purview.

ATTACHMENT B

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

**I. CASE STYLE**

(Name of Court) \_\_\_\_\_

Plaintiff \_\_\_\_\_

Case #: \_\_\_\_\_

\_\_\_\_\_

Judge: \_\_\_\_\_

vs.

Defendant \_\_\_\_\_

\_\_\_\_\_

**II. TYPE OF CASE** (Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution <input type="checkbox"/> Dissolution <input type="checkbox"/> Support C IV-D <input type="checkbox"/> Support C Non IV-D <input type="checkbox"/> UIFSA C IV-D <input type="checkbox"/> UIFSA C Non IV-D <input type="checkbox"/> Domestic violence <input type="checkbox"/> Other domestic relations	<input type="checkbox"/> Professional malpractice <input type="checkbox"/> Products liability <input type="checkbox"/> Auto negligence <input type="checkbox"/> Other negligence	<input type="checkbox"/> Contracts <input type="checkbox"/> Condominium <input type="checkbox"/> Real property/ <del>Mortgage foreclosure</del> <u>Mortgage foreclosure</u> <input type="checkbox"/> Residential/homestead <input type="checkbox"/> Residential/not homestead <input type="checkbox"/> Commercial <input type="checkbox"/> Eminent domain <input type="checkbox"/> Challenge to proposed constitutional amendment <input type="checkbox"/> Other

**III. IS JURY TRIAL DEMANDED IN COMPLAINT?**

Yes

No

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY FOR PARTY  
INITIATING ACTION \_\_\_\_\_

FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET

I. **Case Style.** Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

II. **Type of Case.** Place an "X" in the appropriate box. If the cause fits more than one type of case, select the most definitive. Definitions of the cases are provided below.

- (A) Simplified Dissolution of Marriage C petitions for the termination of marriage pursuant to Fla.Fam.L.R.P. 12.105.
- (B) Dissolution of Marriage C petitions for the termination of marriage other than simplified dissolution.
- (C) Support C IV-D C all matters relating to child or spousal support in which an application for assistance has been filed under Title IV-D, Social Security Act, except for such matters relating to dissolution of marriage petitions (sections 409.2564, 409.2571, and 409.2597, Florida Statutes), paternity, or UIFSA.
- (D) Support C Non IV-D C all matters relating to child or spousal support in which an application for assistance has not been filed under Title IV-D, Social Security Act.
- (E) UIFSA C IV-D C all matters relating to Chapter 88, Florida Statutes in which an application for assistance has been filed under Title IV-D, Social Security Act.
- (F) UIFSA C Non IV-D C all matters relating to Chapter 88, Florida Statutes, in which an application for assistance has not been filed under Title IV-D, Social Security Act.
- (G) Domestic Violence C all matters relating to injunctions for protection against domestic violence pursuant to section 741.30, Florida Statutes.
- (H) Domestic Relations C all matters involving adoption, paternity, change of name, child custody, separate maintenance, annulment, or other matters not included in categories (A) through (G).
- (I) Auto Negligence C all matters arising out of a party's allegedly negligent operation of a motor vehicle.
- (J) Professional Malpractice C all professional malpractice lawsuits.
- (K) Products Liability C all matters involving injury to person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.
- (L) Other Negligence C all actions sounding in negligence, including statutory claims for relief on account of death or injury, not included in categories (I), (J), and (K).
- (M) Condominium C all civil lawsuits pursuant to Chapter 718, Florida Statutes, where a condominium association is a party in the lawsuit.
- (N) Eminent Domain C all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, and public service corporations.
- (O) Real Property/~~Mortgage Foreclosure~~ C all matters relating to the possession, title, and boundaries of real property except mortgage foreclosure. All matters involving foreclosures and sales, including foreclosures associated with condominium associations and condominium units.
- (P) Mortgage Foreclosure Residential/Homestead all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption.
- (Q) Mortgage Foreclosure Residential/ Not Homestead all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption.
- (R) Mortgage Foreclosure Commercial all matters relating to the termination of a



business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property.

~~(P)~~(S) Contract and indebtedness C all contract actions relating to promissory notes and other debts, including those arising from the sale of goods. Excludes contract disputes involving condominium associations.

~~(Q)~~(T) Challenge to proposed constitutional amendment C a challenge to a legislatively initiated proposed constitutional amendment. Excludes challenges to citizen-initiated proposed constitutional amendments, because the Florida Supreme Court has direct jurisdiction of such challenges.

~~(R)~~(U) Other Civil C all civil matters not included in categories (A) through (R).

**III. Is Jury Trial Demanded In Complaint?**  
Check the appropriate box to indicate whether a jury is being demanded in the complaint.

DATE AND ATTORNEY SIGNATURE. Date and sign the civil cover sheet.

**ATTACHMENT C**  
(Effective January 10, 2010)

**Form 1.997 Civil Cover Sheet**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is ~~required~~ shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions ~~on the reverse of the form for completion~~).

**I CASE STYLE**

(Name of Court) \_\_\_\_\_

Plaintiff \_\_\_\_\_  
\_\_\_\_\_

Case #: \_\_\_\_\_  
Judge: \_\_\_\_\_

vs.

Defendant \_\_\_\_\_  
\_\_\_\_\_

**II. TYPE OF CASE** (Place an x in one box only. If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- |  |  |  |
|--|--|--|
| <del>Domestic Relations</del>                                | <del>Torts</del>   | <del>Other Civil</del>   |
| <input type="checkbox"/> <del>Simplified dissolution</del>   | <input type="checkbox"/> <del>Professional malpractice</del> | <input type="checkbox"/> <del>Contracts</del>                                      |
| <input type="checkbox"/> <del>Dissolution</del>              | <input type="checkbox"/> <del>Products liability</del>       | <input type="checkbox"/> <del>Condominium</del>                                    |
| <input type="checkbox"/> <del>Support IV D</del>             | <input type="checkbox"/> <del>Auto negligence</del>          | <input type="checkbox"/> <del>Real property/ Mortgage foreclosure</del>            |
| <input type="checkbox"/> <del>Support Non IV D</del>         | <input type="checkbox"/> <del>Other negligence</del>         | <input type="checkbox"/> <del>Eminent domain</del>                                 |
| <input type="checkbox"/> <del>UIFSA IV D</del>               |  | <input type="checkbox"/> <del>Challenge to proposed constitutional amendment</del> |
| <input type="checkbox"/> <del>UIFSA Non IV D</del>           |  | <input type="checkbox"/> <del>Other</del>  |
| <input type="checkbox"/> <del>Domestic violence</del>        |  |  |
| <input type="checkbox"/> <del>Other domestic relations</del> |  |  |

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability—commercial
  - Premises liability—residential
- Products liability
- Real property
  - Mortgage foreclosure
    - Commercial foreclosure
    - Homestead residential foreclosure
    - Nonhomestead residential foreclosure
  - Other real property actions
- Professional malpractice
  - Malpractice—business
  - Malpractice—medical
  - Malpractice—other professional
- Other
  - Antitrust/Trade regulation
  - Business transactions
  - Constitutional challenge—statute or ordinance
  - Constitutional challenge—proposed amendment
  - Corporate trusts
  - Discrimination—employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
- Shareholder derivative action
  - Securities litigation
  - Trade secrets

III. REMEDIES SOUGHT (check all that apply):

- monetary;
- non-monetary declaratory or injunctive relief;
- punitive

IV. NUMBER OF CAUSES OF ACTION: [ 1 ]

(specify):

---



---

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If "yes," list all related cases by name, case number, and court.

---



---



---

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

Date: \_\_\_\_\_ SIGNATURE OF ATTORNEY FOR PARTY  
 INITIATING ACTION \_\_\_\_\_

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature \_\_\_\_\_ Fla. Bar # \_\_\_\_\_  
 Attorney or party \_\_\_\_\_ (Bar # if attorney)

(type or print name) \_\_\_\_\_ Date \_\_\_\_\_

FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET  
Plaintiff must file this cover sheet with first paperwork filed in the action or proceeding (except small claims cases or other county court cases, probate, or family cases). Domestic and juvenile cases should be accompanied by a completed Family Court Cover Sheet, Florida Supreme Court Approved Family Law Form 12.928. Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.

**I. Case Style.** Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

**II. Type of Case.** Place an "X" in the appropriate box. If the cause fits more than one type of case, select the most definitive. If the most definitive label is a subcategory (indented under a broader category label, place an "X" in the category and subcategory boxes. Definitions of the cases are provided below in the order they appear on the form.

~~(A) Simplified Dissolution of Marriage—petitions for the termination of marriage pursuant to Fla. Fam. L. R. P. 12.105.~~

~~(B) Dissolution of Marriage—petitions for the termination of marriage other than simplified dissolution.~~

~~(C) Support—IV D—all matters relating to child or spousal support in which an application for assistance has been filed under Title IV D, Social Security Act, except for such matters relating to dissolution of marriage petitions (sections 409.2564, 409.2571, and 409.2597, Florida Statutes), paternity, or UIFSA.~~

~~(D) Support—Non IV D—all matters relating to child or spousal support in which an application for assistance has not been filed under Title IV D, Social Security Act.~~

~~(E) UIFSA—IV D—all matters relating to Chapter 88, Florida Statutes in which an application for assistance has been filed under Title IV D, Social Security Act.~~

~~(F) UIFSA—Non IV D—all matters relating to Chapter 88, Florida Statutes, in which an application for assistance has not been filed under Title IV D, Social Security Act.~~

~~(G) Domestic Violence—all matters relating to injunctions for protection against domestic violence pursuant to section 741.30, Florida Statutes.~~

- (H) Domestic Relations—all matters involving adoption, paternity, change of name, child custody, separate maintenance, annulment, or other matters not included in categories (A) through (G).
- (I) Auto Negligence—all matters arising out of a party's allegedly negligent operation of a motor vehicle.
- (J) Professional Malpractice—all professional malpractice lawsuits.
- (K) Products Liability—all matters involving injury to person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.
- (L) Other Negligence—all actions sounding in negligence, including statutory claims for relief on account of death or injury, not included in categories (I), (J), and (K).
- (M) Condominium—all civil lawsuits pursuant to Chapter 718, Florida Statutes, where a condominium association is a party in the lawsuit.
- (N) Eminent Domain—all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, and public service corporations.
- (O) Real Property/Mortgage Foreclosure—all matters relating to the possession, title, and boundaries of real property. All matters involving foreclosures and sales, including foreclosures associated with condominium associations and condominium units.
- (P) Contract and indebtedness—all contract actions relating to promissory notes and other debts, including those arising from the sale of goods. Excludes contract disputes involving condominium associations.
- (Q) Challenge to proposed constitutional amendment—a challenge to a legislatively initiated proposed constitutional amendment. Excludes challenges to citizen initiated proposed constitutional amendments, because the Florida Supreme Court has direct jurisdiction of such challenges.
- (R) Other Civil—all civil matters not included in categories (A) through (Q).

III. Is Jury Trial Demanded In Complaint? Check the appropriate box to indicate whether a jury is being demanded in the complaint.

DATE AND ATTORNEY SIGNATURE. Date and sign the civil cover sheet.

Condominium - all civil lawsuits pursuant to Chapter 718, Florida Statutes, in which a condominium association is a party.

Contracts and indebtedness - all contract actions relating to promissory notes and other debts, including those arising from the sale of goods, but excluding contract disputes involving condominium associations.

Eminent domain - all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, or public service corporations.

Auto negligence - all matters arising out of a party's allegedly negligent operation of a motor vehicle.

Negligence—other - all actions sounding in negligence, including statutory claims for relief on account of death or injury, that are not included in other main categories.

Business governance - all matters relating to the management, administration, or control of a company.

Business torts - all matters relating to liability for economic loss allegedly caused by interference with economic or business relationships.

Environmental/Toxic tort - all matters relating to claims that violations of environmental regulatory provisions or exposure to a chemical caused injury or disease.

Third party indemnification - all matters relating to liability transferred to a third party in a financial relationship.

Construction defect - all civil lawsuits pursuant to Chapter 558, Florida Statutes, in which damage or injury was allegedly caused by a failure to follow acceptable construction trade standards.

Mass tort - all matters relating to a civil action involving numerous plaintiffs against one or more defendants.

Negligent security - all matters involving injury to a person or property allegedly resulting from insufficient security.

Nursing home negligence - all matters involving injury to a nursing home resident resulting from negligence of nursing home staff or facilities.

Premises liability—commercial - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a commercial property.

Premises liability—residential - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a residential property.

Products liability - all matters involving injury to a person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.

Real property/Mortgage foreclosure - all matters relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property, including foreclosures associated with condominium associations or condominium units.

Commercial foreclosure - all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property.

Homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption.

Nonhomestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption.

Other real property actions - all matters relating to land, land improvements, or property rights.

Professional malpractice - all professional malpractice lawsuits.

Malpractice—business - all matters relating to a business's or business person's failure to exercise the degree of care and skill that someone in the same line of work would use under similar circumstances.

Malpractice—medical - all matters relating to a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.

Malpractice—other professional - all matters relating to negligence of those other than medical or business professionals.

Other - all civil matters not included in other categories.

Antitrust/Trade regulation - all matters relating to unfair methods of competition or unfair or deceptive business acts or practices.

Business transactions - all matters relating to actions that affect financial or economic interests.

Constitutional challenge—statute or ordinance – a challenge to a statute or ordinance, citing a violation of the Florida Constitution.

Constitutional challenge—proposed amendment – a challenge to a legislatively initiated proposed constitutional amendment, but excluding challenges to a citizen-initiated proposed constitutional amendment because the Florida Supreme Court has direct jurisdiction of such challenges.

Corporate trusts - all matters relating to the business activities of financial services companies or banks acting in a fiduciary capacity for investors.

Discrimination—employment or other - all matters relating to discrimination, including employment, sex, race, age, handicap, harassment, retaliation, or wages

Insurance claims - all matters relating to claims filed with an insurance company.

Intellectual property - all matters relating to intangible rights protecting commercially valuable products of the human intellect.

Libel/Slander - all matters relating to written, visual, oral, or aural defamation of character.

Shareholder derivative action - all matters relating to actions by a corporation's shareholders to protect and benefit all shareholders against corporate management for improper management.

Securities litigation - all matters relating to the financial interest or instruments of a company or corporation.

Trade secrets - all matters relating to a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.

---

**III. Remedies Sought.** Place an "X" in the appropriate box. If more than one remedy is sought in the complaint or petition, check all that apply.

**IV. Number of Causes of Action.** If the complaint or petition alleges more than one cause of action, note the number and the name of the cause of action.

**V. Class Action.** Place an "X" in the appropriate box.

**VI. Related Cases.** Place an "X" in the appropriate box.

**VII. Is Jury Trial Demanded In Complaint?** Check the appropriate box to indicate whether a jury trial is being demanded in the complaint

**ATTORNEY OR PARTY SIGNATURE.** Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that the filer has provided accurate information on the civil cover sheet.

ATTACHMENT D

AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, (*full legal name*) \_\_\_\_\_ (individually or an Employee of \_\_\_\_\_), being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the current residence of \_\_\_\_\_ . **Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[ all that apply]

- Inquiry of Social Security Information
- Telephone listings in the last known locations of defendant's residence
- Statewide directory assistance search
- Internet people finder search {specify sites searched}
- Voter Registration in the area where defendant was last known to reside.
- Nationwide Masterfile Death Search
- Tax Collector's records in area where defendant was last known to reside.
- Tax Assessor's records in area where defendant was last known to reside
- Department of Motor vehicle records in the state of defendant's last known address
- Driver's License records search in the state of defendant's last known address.
- Department of Corrections records in the state of defendant's last known address.
- Federal Prison records search.
- Regulatory agencies for professional or occupational licensing.



\_\_\_\_\_ Inquiry to determine if defendant is in military service.

\_\_\_\_\_ Last known employment of defendant.

{List all additional efforts made to locate defendant}

---

---

---

Attempts to Serve Process and Results

---

---

---

2. \_\_\_\_\_ current residence

[√ one only]

\_\_\_\_\_ a. \_\_\_\_\_'s current residence is unknown to me

\_\_\_\_\_ b. \_\_\_\_\_'s current residence is in some state or country  
other than Florida and \_\_\_\_\_'s last known address is:

---

---

\_\_\_\_\_ c. The \_\_\_\_\_, having residence in Florida, has been absent  
from Florida for more than 60 days prior to the date of this affidavit, or conceals  
him (her) self so that process cannot be served personally upon him or her, and I  
believe there is no person in the state upon whom service of process would bind  
this absent or concealed \_\_\_\_\_.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: \_\_\_\_\_

Signature of plaintiff \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Telefacsimile: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to or affirmed and signed before me on this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF \_\_\_\_\_

\_\_\_\_\_  
(Print, Type or Stamp Commissioned Name of Notary Public)

\_\_\_\_\_ Personally known  
\_\_\_\_\_ Produced identification  
\_\_\_\_\_ Type of identification produced \_\_\_\_\_

**NOTE:** This form is used to obtain constructive service on the defendant.

ATTACHMENT E

MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE

Comes now \_\_\_\_\_, Plaintiff, by and through undersigned counsel, and respectfully moves this Court to cancel and reschedule a mortgage foreclosure sale and as grounds therefore states as follows:

1. On \_\_\_\_\_ this Court entered a Summary Final Judgment of Foreclosure pursuant to which a foreclosure sale was scheduled for \_\_\_\_\_, 20 \_\_\_\_\_.

2. Said sale needs to be canceled for the following reason(s):

a. \_\_\_\_\_ Plaintiff and Defendant are continuing to be involved in loss mitigation;

b. \_\_\_\_\_ Defendant is negotiating for the sale of the property which is the subject of this matter and Plaintiff is desirous of allowing the Defendant an opportunity to sell same and pay off the debt which is due and owing to Plaintiff.

c. \_\_\_\_\_ Defendant has entered into a contract to sell the property which is the subject of this matter and Plaintiff is desirous of allowing the Defendant an opportunity to consummate the sale and pay off the debt which is due and owing to Plaintiff.

d. \_\_\_\_\_ Defendant has filed a Chapter \_\_\_\_\_ Petition under the Federal Bankruptcy Code;

e. \_\_\_\_\_ Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f. \_\_\_\_\_ Plaintiff and Defendant have entered into a Forbearance Agreement;

g. \_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Should this Court cancel the foreclosure sale Plaintiff respectfully requests that the Court re-schedule same.

WHEREFORE PREMISES CONSIDERED Plaintiff requests that this Court cancel the foreclosure sale previously scheduled for \_\_\_\_\_ and to re-schedule same.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**NOTE.** This form is used to move the court to cancel and reschedule a foreclosure sale.

### **3. Best Practices Forms**

Plaintiff

Vs.

Defendant

IN THE CIRCUIT COURT OF THE  
JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_,  
FLORIDA

GENERAL JURISDICTION  
CASE NO.:

\_\_\_\_\_ /

**Notice of Hearing Form – Residential Foreclosure**

El tribunal no proveé intérpretes judiciales para los casos de reposición hipotecaria (foreclosure). Si usted no habla inglés, por favor traiga su propio intérprete calificado para traducirle a usted en esta audiencia. Alguien que tenga más de 18 años.

Tribunal la pa bay entèprèt nan ka lè yo menase pou sezi kay ou. Tanpri, vini ak you moun ki gen plis ke 18 an pou tradui pou ou nan odyans sa a, si ou pa pale Angle.

TO: (name of party being noticed, should include service list)  
You are notified that the undersigned lawyer will bring the following Motion:

before the Honorable \_\_\_\_\_  
For hearing: \_\_\_\_\_

Address: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_

This hearing may be confirmed the business day before by calling \_\_\_\_\_.  
Movant's failure to contact opposing side to confirm/cancel hearings may result in sanctions.

By: \_\_\_\_\_  
(attorney)  
Bar No. \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
Email address: \_\_\_\_\_

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMIDATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADA COORDINATOR NO LATER THAN 7 DAYS PRIOR TO THE PROCEEDING AT (XXX) XXX-XXXX (VOICE) OR (XXX) XXX-XXXX (TDD) AND (XXX) XXX-XXXX FOR FAX, WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-955-8771, FOR THE FLORIDA RELAY SERVICE.



IN THE CIRCUIT COURT OF THE  
\_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_,  
FLORIDA

GENERAL JURISDICTION  
CASE NO.:

Plaintiff

vs.

Defendant.

\_\_\_\_\_ /

**Notice of hearing on motion to dismiss and order of dismissal**  
**Fla. R. Civ. P. 1.070(j)**

YOU ARE HEAREBY NOTIFIED that upon the Court's motion the above styled cause has been set for hearing in that is does not affirmatively appear that a summons has (have) been served on the defendant(s) within 120 days pursuant to Fla. R. Civ. P. 1.070(j).

Therefore, it is ADJUDGED as follows:

1. Plaintiff shall show good cause why service has not been perfected within 120 days of the date of the filing of the complaint. Said showing shall be in writing and filed with the Clerk of Court at least (5) days before the hearing date referenced in paragraph 2. A courtesy copy also must be delivered to: Service Calendar, \_\_\_\_\_ at least (5) days before the hearing date referenced in paragraph 2.
2. If a showing of good cause is timely filed, you must appear at the hearing which shall be held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ a.m. The hearing shall take place at \_\_\_\_\_, \_\_\_\_\_ in Room No. \_\_\_\_\_ before the Honorable \_\_\_\_\_
3. Failure to timely file a showing of good cause will result in this action being dismissed without further Order on the date specified in paragraph 2. Said dismissal shall be without prejudice.
4. The Clerk of Court will record this Order of Dismissal after the hearing date in paragraph 2.

DONE AND ORDERED in chamber at \_\_\_\_\_ County, Florida this \_\_\_\_ day of  
April, 2008.

---

CIRCUIT COURT JUDGE

cc:

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMIDATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADA COORDINATOR NO LATER THAN 7 DAYS PRIOR TO THE PROCEEDING AT (\_\_\_\_\_) (VOICE) OR \_\_\_\_\_ (TDD) AND (\_\_\_\_\_) FOR FAX, WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-955-8771, FOR THE FLORIDA RELAY SERVICE.

Copies mailed and certified to:

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
 STATE OF FLORIDA, IN AND FOR \_\_\_\_\_ COUNTY  
 CIRCUIT CIVIL DIVISION \_\_\_\_\_  
 DISMISSAL DOCKET & CASE MANAGEMENT SCHEDULING ORDER

STYLE	CASE NUMBER	ATTORNEY/PRO SE PARTY

**ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED FOR  
 FAILURE TO SERVE WITHIN 120 DAYS  
 AND SCHEDULING CASE MANAGEMENT CONFERENCE**

*NOTE: HEARING MAY BE CANCELLED IF COURT RECEIVES COPY OF VOLUNTARY DISMISSAL,  
 SUGGESTION OF BANKRUPTCY OR RETURN OF SERVICE PRIOR TO ABOVE DATE*

PLEASE BE ADVISED that, pursuant to Florida Rules of Civil Procedure Rule 1.070 and Rule 1.200(a), the cases above listed will be called up for Case Management Conference at \_\_\_\_\_

\_\_\_\_\_, Florida, before the Honorable \_\_\_\_\_ Rule 1.070 provides when service of the initial process and initial pleading is not made upon a defendant with 120 days after the filing of the initial pleading directed to that defendant, the court shall direct that service be effected within a specified time or shall dismiss the action without prejudice or drop that defendant as a party. The court may extend the time for service for an appropriate period if the plaintiff shows good cause or excusable neglect for the failure. Wherefore, Plaintiff, individually or through counsel if represented is hereby ordered to appear and show cause on the date listed below as to why the case, as listed above, should not be dismissed.

**HEARING DATE:**

Attorneys must be present in person before the Court at this hearing. Incarcerated parties without legal counsel may contact the court at \_\_\_\_\_ no later than 48 hours prior to the hearing to arrange a telephonic appearance. Inmates will not be transported.

**ON FAILURE OF THE PARTIES OR COUNSEL TO ATTEND THE CONFERENCE, THE COURT MAY  
 DISMISS THE ACTION WITHOUT PREJUDICE AS PROVIDED IN RULE 1.070 (i).**

**THIS CASE MANAGEMENT CONFERENCE MAY ONLY BE CANCELLED  
 WITH THE COURT'S PRIOR WRITTEN PERMISSION.**

DONE AND ORDERED in \_\_\_\_\_, \_\_\_\_\_ County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 CIRCUIT JUDGE

Copies Provided to Counsel

*If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator,*

*FL \_\_\_\_\_, phone number \_\_\_\_\_ within 2 working days of your receipt of this Order Scheduling Case Management conference; if you are hearing impaired, call \_\_\_\_\_; if you are voice impaired, call \_\_\_\_\_.*

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
 STATE OF FLORIDA, IN AND FOR \_\_\_\_\_ COUNTY  
 CIRCUIT CIVIL DIVISION  
 NOTICE OF LACK OF PROSECUTION AND  
 CASE MANAGEMENT SCHEDULING ORDER

STYLE	CASE NUMBER	DATE AND TIME

**NOTICE OF LACK OF PROSECUTION**

PLEASE TAKE NOTICE that it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of 10 months immediately preceding service of this notice, and no stay has been issued or approved by the court. Pursuant to rule 1.420(e), if no such record activity occurs within 60 days following the service of this notice, and if no stay is issued or approved during such 60 day period, this action may be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing scheduled below on the motion why the action should remain pending.

**ORDER SCHEDULING CASE MANAGEMENT CONFERENCE**

*NOTE: HEARING MAY BE CANCELLED IF COURT RECEIVES COPY OF VOLUNTARY DISMISSAL, SUGGESTION OF BANKRUPTCY OR UNIFORM ORDER SCHEDULING TRIAL PRIOR TO ABOVE DATE*

PLEASE BE ADVISED that, pursuant to Rule 1.200(a), Fla. R. Civ. Proc., the cases above listed will be called up for Case Management Conference at the \_\_\_\_\_, Florida, before the Honorable \_\_\_\_\_. Rule 2.250 of the Florida Rules of Judicial Administration prove time standards which are presumptively reasonable for the completion of cases. In civil cases, jury cases are to be disposed within 18 months of filing and non-jury cases are to be disposed within 12 months of filing. The Court records reveal either that the above-styled cause has exceeded these standards or there are other compelling reasons for case management.

<b>HEARING DATE:</b>
----------------------

Matters to be considered at the Case Management Conference include matters that may aid in the disposition of the action including, but not limited to:

1. Schedule or reschedule trial or additional case management conference;
2. Schedule or reschedule the service of motions, pleadings and other papers;
3. Coordinate the progress of the action if complex litigation factors are present;
4. Limit, schedule, order or expedite discovery;
5. Schedule disclosure of expert witnesses are discovery of facts known and opinions held by such experts;
6. Schedule time to hear motions in limine;
7. Require filing of preliminary stipulations if issues can be narrowed;
8. Possibilities of settlement;
9. Dismissal without prejudice.

Attorneys must be present in person before the Court at this hearing. Incarcerated parties without legal counsel may contact the court at \_\_\_\_\_ no later than 48 hours prior to the hearing to arrange a telephonic appearance. Inmates will not be transported.

**ON FAILURE OF THE PARTIES OR COUNSEL TO ATTEND THE CONFERENCE, THE COURT MAY DISMISS THE ACTION, STRIKE PLEADINGS, LIMIT PROOF OR WITNESSES OR TAKE ANY OTHER APPROPRIATE ACTION AS PROVIDED IN RULE 1.200 (c).**  
**THIS CASE MANAGEMENT CONFERENCE MAY BE CANCELLED**  
**WITH THE COURT'S WRITTEN PERMISSION.**  
**STIPULATIONS TO CONTINUE WILL BE GRANTED ONLY UPON A SHOWING OF GOOD CAUSE**

DONE AND ORDERED in \_\_\_\_\_, \_\_\_\_\_ County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CIRCUIT JUDGE

Copies Provided to Counsel and Pro Se Parties

*If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, \_\_\_\_\_, FL \_\_\_\_\_, phone number \_\_\_\_\_ within 2 working days of your receipt of this Order Scheduling Case Management conference; if you are hearing impaired, call*

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
 STATE OF FLORIDA, IN AND FOR \_\_\_\_\_ COUNTY  
 CIRCUIT CIVIL DIVISION \_\_\_\_\_

**ORDER FOLLOWING COURT SCHEDULED CASE MANAGEMENT**

STYLE	CASE NUMBER	ATTORNEY/PRO SE PARTY

**ORDER OF DISMISSAL WITHOUT PREJUDICE**

**THIS CAUSE** came before the court for purpose of Case Management, pursuant to the Florida Rules of Civil Procedure as provided in Rule 1.200 either due to failure to serve on a timely basis as provided by Rule 1.070 or lack of prosecution as provided by Rule 1.420 (e). Reasonable notice and opportunity to be heard was provided to plaintiff and all served parties at the address(es) listed on pleadings. The order scheduling case management provided notice that when a party or its counsel fails to attend a court scheduled case management conference, the court may dismiss the action without prejudice. The Court finds that:

\_\_\_\_\_ 1 (a) **FAILURE TO SERVE:** No response was filed to demonstrate good cause or excusable neglect for the failure to serve on a timely basis and a return of service has not been filed. Cf. Fla.R.Civ.P. 1.070. **OR**

\_\_\_\_\_ 1. (b) **LACK OF PROSECUTION:** No written response was filed to demonstrate good cause why the action should remain pending. Cf. Fla.R.Civ.P. 1.420 (e).

\_\_\_\_\_ 2. **FAILURE TO APPEAR:** No one appeared at the hearing. Cf. Fla.R.Civ.P. 1.200 (c).

It is therefore, **ORDERED AND ADJUDGED** this matter is dismissed without prejudice.

**DONE AND ORDERED** in \_\_\_\_\_, \_\_\_\_\_ County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**CIRCUIT JUDGE**

Copies Provided:

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
 STATE OF FLORIDA, IN AND FOR \_\_\_\_\_ COUNTY  
 CIRCUIT CIVIL DIVISION \_\_\_\_\_

STYLE	CASE NUMBER	ATTORNEY/PRO SE PARTY

**CASE MANAGEMENT CONFERENCE ORDER**

THIS CAUSE came before the court for a case management, pursuant to the Florida Rules of Civil Procedure as provided in Rule 1.200. The order scheduling case management provided notice that when a party or its counsel fails to attend a court scheduled case management conference, the court may dismiss the action without prejudice. It is therefore, **ORDERED AND ADJUDGED:**

\_\_\_\_\_ 1 (a) **FAILURE TO SERVE:** This case is dismissed without prejudice. No response was filed to demonstrate good cause or excusable neglect for the failure to serve on a timely basis and a return of service has not been filed. Cf. Fla.R.Civ.P. 1.070. **OR**

\_\_\_\_\_ 1. (b) **LACK OF PROSECUTION:** This case is dismissed without prejudice. No written response was filed to demonstrate good cause why the action should remain pending. Cf. Fla.R.Civ.P. 1.420 (e).

\_\_\_\_\_ 2. **FAILURE TO APPEAR:** This case is dismissed without prejudice. No one appeared at the hearing. Cf. Fla.R.Civ.P. 1.200 (c).

\_\_\_\_\_ 3. **RESCHEDULED:** The case management conference is continued and reset for \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_ A.M./P.M. All provisions in the order scheduling case management conference remain in force and effect.

\_\_\_\_\_ 4. **PENDING MOTIONS SCHEDULED FOR HEARING:** (All pending) (The following motions: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 are scheduled for hearing on \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_ A.M./P.M.

\_\_\_\_\_ 5. **MEDIATION:** The parties shall schedule mediation and complete on or before \_\_\_\_\_, 20 \_\_\_\_.



\_\_\_\_ 6. **TRIAL:** Counsel for \_\_\_\_\_ (select party) shall submit a uniform order scheduling trial and pretrial conference within \_\_\_\_\_ days.

\_\_\_\_ 7. **OTHER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is therefore, **ORDERED AND ADJUDGED** this matter is (dismissed without prejudice) (continued as provided above).

**DONE AND ORDERED** in \_\_\_\_\_, \_\_\_\_\_ County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**CIRCUIT JUDGE**

Copies Provided:

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA  
CIVIL DIVISION

Plaintiff(s)

CASE NO.:

VS.

DIVISION:

Defendant(s)

-----/

**ORDER REMOVING CASE FROM PENDING STATUS**

This cause came before the court ex parte as part of the Court's ongoing responsibilities concerning case management and, based on a review of the pleadings, it appears to the Court that this case is not currently "pending." It is therefore,

**ORDERED and ADJUDGED**

\_\_\_\_\_ A dismissal has been filed and this case is concluded.

\_\_\_\_\_ The Defendant has filed **BANKRUPTCY**. Therefore the Clerk of the Circuit shall **REMOVE THIS CAUSE FROM ACTIVE PENDING**.

\_\_\_\_\_ The Parties have agreed to a **SETTLEMENT**. Therefore the Clerk of the Circuit Court shall **REMOVE THIS CAUSE FROM ACTIVE PENDING**. If this cause goes into Default, the Plaintiff may reinstate the matter and move forward with their case.

\_\_\_\_\_ Other.

**DONE and ORDERED** in Chambers, \_\_\_\_\_, \_\_\_\_\_ County, Florida  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CIRCUIT JUDGE

Copies Furnished To:

IN THE CIRCUIT COURT  
STATE OF FLORIDA  
COURT OF GENERAL CIVIL JURISDICTION

\_\_\_\_\_

Plaintiff,

CASE NO.:

vs.

DIVISION

\_\_\_\_\_

Defendant.

\_\_\_\_\_ /

**CASE MANAGEMENT ADMINISTRATIVE ORDER**  
**RESIDENTIAL MORTGAGE FORECLOSURE**

THIS CAUSE came before the Court on the Court's own motion for purpose of entry of a case management order to govern the conduct of this case. Compliance with the provisions of this order is mandatory unless waived in writing by the court after a hearing with notice to all parties of an appropriate motion.

**TIME STANDARDS**

Counsel for the plaintiff will be responsible for compliance with the time standards set forth below. A failure to comply with any portion of this order which is found attributable to deliberate delay on the part of any party will be grounds for dismissal or other sanctions as deemed appropriate by the court.

**IF UNOPPOSED** and after compliance with the Administrative Order No. \_\_\_\_\_ (which provides for case management of residential foreclosure cases and mandatory referral of mortgage foreclosure cases involving borrower-occupied residence to mediation), the presumptive date to complete this cause is no later than \_\_\_\_\_ days from the date that all defendants have been served as required by law and the case is at issue.

**IF OPPOSED** and any defendant files a good faith intent (defined herein) to participate in voluntary dispute resolution/mediation, then the presumptive date for completion of voluntary dispute resolution/mediation is \_\_\_\_\_ days from the date of the filing of the good faith compliance with an additional \_\_\_\_\_ days to complete a contested proceeding following mediation if the case is not settled.

**PROCEDURE**

1. **HOME OCCUPIED BY BORROWER:** the case shall proceed as provided in Administrative Order \_\_\_\_\_.

2. **HOME VACANT OR OCCUPIED BY TENANTS:** Upon a return of service indicating that the home is vacant or is being occupied by tenants, the Plaintiff shall set the cause for a motion for final summary judgment within \_\_\_\_\_ days of the cause being at issue.

**RESPONSIVE PLEADINGS:**

1. **MOTION TO DISMISS:** A motion to dismiss must be set for hearing within \_\_\_\_\_ days of filing. If a defendant fails to set the cause for hearing, then the Plaintiff must do so. The hearing may not be continued or cancelled without prior consent of the Court.
2. **ANSWER:** Upon the filing of an answer, the Plaintiff shall immediately submit an order referring the parties to mediation within \_\_\_\_\_ days.

**MOTIONS TO WITHDRAW:** Special appearances by defense counsel are not permitted. No motion to withdraw will be granted, absent good cause shown and a hearing held on said motion, when there is a motion filed by such attorney pending in the cause.

**MOTIONS TO AMEND PLEADINGS/VOLUNTARY DISMISSAL:** When Plaintiff has filed a count to reestablish a lost note and thereafter discovers that the note is in its possession, counsel for the plaintiff must immediately notify in writing all parties who have filed responsive pleadings of the discovery of the original note and file a copy of such correspondence with the court.

**VOLUNTARY DISPUTE RESOLUTION:** Plaintiff will engage in voluntary dispute resolution as provided in Administrative Order \_\_\_\_\_. In all other cases, parties must attend mediation prior to non-jury trial unless otherwise ordered by the court.

**HEARINGS:**

1. **SCHEDULING:** Counsel for plaintiff may not schedule a hearing on a motion for summary judgment unless the motion with the supporting affidavits has been filed.
2. **CERTIFICATE OF COMPLIANCE WITH FORECLOSURE PROCEDURES:** (form available on circuit website) must be filed contemporaneously with the notice of hearing.
3. **CONTINUANCES:** Motions for continuance must be filed in writing supported by good cause. If parties jointly stipulate to a continuance, a copy of the joint stipulation accompanied by an order must be submitted to the court \_\_\_\_\_ days prior to the scheduled hearing.

**FINAL JUDGMENTS:** The Final Judgment or Final Summary Judgment of Foreclosure shall be in the model form provided and shall not include any costs not actually incurred and must be supported by sworn testimony or affidavit (if summary judgment).

**SALES:** The Clerk's sale shall be conducted as provided by law and may include such other method of sale employing electronic media as determined by the Clerk of Court and permitted by law.

**DONE AND ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, in  
\_\_\_\_\_, \_\_\_\_\_ County, Florida.

\_\_\_\_\_  
Chief Judge

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 3.306-5/09

IN RE: CASE MANAGEMENT STATUS CONFERENCES  
IN HOMBSTEAD FORECLOSURE ACTIONS  
BY INSTITUTIONAL LENDERS

---

During the summer of 2009, the Fifteenth Judicial Circuit will have staff attorneys and law school and college interns that can assist the court with the increasing foreclosure actions.

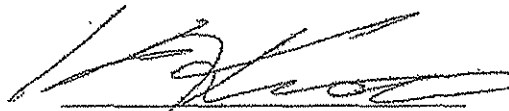
As set forth in Administrative Order 3.305, Notices of Compliance may be filed up to 14 days after the filing of a response by a defendant/homeowner.

NOW, THEREFORE, pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215, it is **ORDERED** as follows:

1. All new foreclosure actions filed between May 20, 2009 and June 30, 2009 to which the Plaintiff has attached exhibits in accordance with Administrative Order 3.305, will have attached to the summons a Notice of Case Management Conference which Notice will be provided to the Clerk and Comptroller by Court Administration.
2. The Notice of Case Management Status Conference will be on a color of paper other than white or blue (yellow, goldenrod, pink, etc.). A copy of the Notice of Case Management Conference is attached hereto as Exhibit "A". The Clerk and Comptroller will note the case number on the Case Management Conference Form.
3. The Notice of Case Management Conference will notice the parties to appear at a case management conference no later than 34 days after the date of the issuance of the summons ("34<sup>th</sup> Day"). A listing of filing dates and the corresponding Case Management Conference Dates is attached hereto as Exhibit "B".
4. Case Management conferences will occur on Tuesdays and Thursdays from 3:00-5:00 in the north end of the cafeteria at the Main Judicial Center. Additional days and/or times may set by order of the Chief Judge or a circuit judge assigned to foreclosure.
5. The case management status conferences are scheduled as follows:
  - a. Up to 300 cases are to be noticed for each case management conference.
  - b. The first 75 cases (cases 1-75) will be set at 3:00.
  - c. The second group of 75 cases (cases 76-150) will be set at 3:30.

- d. The third set of 75 cases (cases 151-225) will be set at 4:00 and the last set of 75 (cases 226-300) will be set at 4:30.
6. The case management conference is a request for appearance by the parties and no penalty will be imposed upon a party should the party fail to appear.
  7. If a defendant/homeowner appears at the case management status conference, a trial court law clerk employed by the Fifteenth Judicial Circuit ("judicial law clerk"), or an individual interning with the Fifteenth Judicial Circuit ("judicial intern") under the supervision of the General Counsel, or other individuals employed or interning with the Fifteenth Judicial Circuit, will meet with the defendant/homeowner and explain Administrative Order 3.305 including its purpose, the forms, and the time limitations set forth therein. No legal advice will be given.
  8. Should a defendant/homeowner attend the Case Management Status Conference and wish to avail him/herself of the procedures set forth in Administrative Order 3.305, then the defendant/homeowner shall complete a revised Financial Statement (Exhibit "D" to Administrative Order 3.305) which shall not include any information about the Defendant/Borrower's assets. A copy of the revised Financial Statement is attached as Exhibit "C".
  9. The judicial law clerks and judicial interns can inform the defendant/homeowner that the Florida Bar, the Palm Beach County Bar, Legal Aid, or Florida Rural Legal Services may be able to provide further assistance. The defendant/homeowner may also be directed to the Clerk and Comptroller's self help center to obtain forms or set an appointment with an attorney.
  10. The judicial law clerk or judicial intern will complete a Case Management Status Conference Report indicating whether the defendant/homeowner appeared. The Case Management Status Conference Report shall be placed in the court file.

DONE AND SIGNED in Chambers at West Palm Beach, Palm Beach County, Florida  
this 11 day of May, 2009.



Kathleen J. Kroll, Chief Judge

IN THE CIRCUIT COURT OF THE  
 \_\_\_\_\_ JUDICIAL CIRCUIT IN  
 AND FOR \_\_\_\_\_,  
 FLORIDA

Plaintiff,  
 vs.

GENERAL JURISDICTION DIVISION

Defendant(s).  
 \_\_\_\_\_/

CASE NO.

**Plaintiff's Certification of Residential Mortgage Foreclosure Case Status**

The undersigned attorney hereby certifies that the information provided herein is true and correct:

DEFENDANTS	SERVED	DROPPED	ANSWER	NON-MILITARY AFFIDAVIT	DEFAULT

This property is \_\_\_\_\_ Homestead \_\_\_\_\_ not subject to Homestead  
 If Homestead, \_\_\_\_\_ this property completed the (Managed Mediation) program, compliance attached

**Foreclosure package, Confirm copies were mailed to defendants and indicate dates:**

- \_\_\_\_\_ Motion for Summary Judgment
- \_\_\_\_\_ Original Note, mortgage,
- \_\_\_\_\_ Assignments and/or allonge
- \_\_\_\_\_ Lost Note Affidavit
- \_\_\_\_\_ Notice of Hearing on Summary Judgment for this hearing date
- \_\_\_\_\_ Affidavit of Indebtedness
- \_\_\_\_\_ Affidavit of Costs
- \_\_\_\_\_ Affidavit of Attorney Fees
- \_\_\_\_\_ Affidavit as to Reasonableness of Attorney Fees
- \_\_\_\_\_ (Managed Mediation) Compliance attached

**Confirm compliance and indicate dates:**

- \_\_\_\_\_ Lost Note count pled or withdrawn
- \_\_\_\_\_ All Motions to Dismiss resolved
- \_\_\_\_\_ No discovery outstanding
- \_\_\_\_\_ No suggestion of bankruptcy
- \_\_\_\_\_ Affirmative defenses filed, attached
- \_\_\_\_\_



- a. The Summary Final Judgment of Foreclosure submitted is the court-approved form, without any alterations or additions; and
- b. That the amounts in the final judgment are accurate and correspond with the affidavits filed herein.

**Undersigned counsel further certifies, under penalty of perjury, that in accordance with Administrative Order # \_\_\_\_\_, all of the above is true and correct.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Print Attorney's Name & Florida Bar Number