

Brevard County Mortgage Foreclosure Division

The Moore Justice Center
2825 Judge Fran Jamieson Way
3rd Floor
Viera, FL 32940
321-637-5470 – main number
321-637-5642 – fax

THIRD REVISED **POLICIES and PROCEDURES**

Residential Mortgage Foreclosures Homestead and Non-Homestead

Pursuant to a grant, a Mortgage Foreclosure Division has been created in Brevard County to handle all **residential** Foreclosure of Mortgage cases filed in the County.

Senior Circuit Judge Charles M. Holcomb presides over Division A and Senior Circuit Judge Lawrence V. Johnston presides over Division B.

We have conferred and agreed on a few practice procedures which may lessen the stress and save time and money and will accommodate all persons with more convenience.

*Effective 9/23/10
Revised 11/10/10
Revised 1/7/11
Revised 2/10/11*

POLICIES AND PROCEDURES

MORTGAGE FORECLOSURE DIVISION – BREVARD COUNTY

Introduction.....	Page 3
Service/Default Affidavit.....	Page 4
Procedures for Setting Motion for Summary Judgment Hearings/Other Hearings.....	Page 5
Notice of Hearing.....	Page 6
Attending Hearing in Person.....	Page 7
Cross Notice of Hearings.....	Page 7
Canceling Hearings.....	Page 7
Matters Not Requiring a Hearing.....	Page 7
Telephone Conference Hearings.....	Page 8
Affidavits/Acknowledgements.....	Page 9
Lost Documents.....	Page 11
Affidavit of Indebtedness.....	Page 12
Proof of Standing.....	Page 13
Attachment of Note and Mortgage to Complaint.....	Page 13
Allonges.....	Page 14
Verification of Complaints for Foreclosure Residential Property.....	Page 15
Assignment of Bids/Motion to Vacate.....	Page 16
Additional Information.....	Page 17
Exhibit "A" – Certification/Hearing Request.....	Page 18

**Brevard County Mortgage Foreclosure Division
The Moore Justice Center
2825 Judge Fran Jamieson Way
3rd Floor
Viera, FL 32940
321-637-5470 – main number
321-637-5642 – fax**

Introduction:

First, below is a form which should be completed by your staff in each case when Summary Judgment is scheduled to assist the court in reviewing the file in advance and minimize the time required to track service of process and defaults. Please distribute the form to all your attorneys and staff and require them to be completed and filed.

Second, if you have a Motion for Summary Judgment scheduled, include in your cover letter sent with the packet a statement that you will be available for one hour after the hearing time scheduled and provide a valid number where you may be reached by telephone. You are **NOT** required to call in if you provide the necessary information in your cover letter and provide the form that is attached on the next page. If no defendant appears and there is no problem in the file, we will enter the Summary Judgment and get it out to the Clerk and a copy to you and all parties. If a defendant does appear or if there is a problem with the file, we will telephone you for a hearing on the motion or the problem found in the file. **PLEASE BE AWARE THAT THIS PROCEDURE ONLY APPLIES TO MOTIONS FOR SUMMARY JUDGMENT**, you will need to call in for all other hearings that have been set in accordance with the procedures as outlined herein. Please inform the attorneys, paralegals and secretaries in your firm of this new procedure.

IN THE CIRCUIT COURT IN AND FOR
BREVARD COUNTY, FLORIDA

CASE # 05-20__-CA-_____-XXXX-XX

Plaintiff,

v

Defendant.

_____ /

I HEREBY CERTIFY THE FOLLOWING:

Plaintiff's Status:

NAMED DEFENDANTS	DATE OF SERVICE	TYPE OF SERVICE	DATE DEFAULTED	DATE ANSWERED

Submitted on _____, 2011.

Attorney/Name-Firm

PLEASE NOTE: See instructions for use of this form – **DO NOT FAX** to Mortgage Foreclosure Division to set a hearing. This form is for use for the actual MSJ hearing and should be submitted with your MSJ Final Package as per instructions on Page 3.

PROCEDURES FOR SETTING MOTION FOR SUMMARY JUDGMENT HEARINGS/OTHER HEARINGS:

Summary judgment motions are being scheduled for hearing with the Court prior to the attorney handling the file fully preparing the case for hearing. As a result, the Court spends time examining the file and discovering that a party has not been defaulted, a motion to dismiss is pending, no notice of hearing is in the file, no note has been filed and no summary judgment packet has been received, among other problems with the file.

To remedy this practice, **PRIOR** to scheduling hearings on motions for summary judgment, an attorney who has prepared or reviewed the file must fax a certification to the Court at **(321)-637-5642** that the file has been examined, that the packet containing the final judgment, note and mortgage, if not already filed, and sale documents will be transmitted to the Court at least five (5) days prior to the hearing and that the case is ready for summary judgment. A Certification is attached to these instructions as *Exhibit "A"* for your use.

Please fax the Certification along with the contact information (e-mail address/phone number) of the person who the Court can communicate with to schedule the hearing. Once the Certification has been received by the Court, you may then contact the Court at (321)-637-5470 after 3:00 pm to coordinate a hearing time.

No hearings on motions for summary judgment will be scheduled until the procedure outlined above is satisfied.

Any scheduled hearing on motions for summary judgment, if cancelled, must be cancelled by a written notice of cancellation, sent at least five (5) days before the hearing date and must include the reason the hearing is being cancelled.

Please cooperate in order to move your cases along expeditiously to a conclusion. It will be greatly appreciated by the Court. Working together, we can accomplish resolution of cases in a smooth and timely fashion.

To set other hearing requests you may either:

- a) call the Court after 3:00pm at (321) 637-5470 and have all information ready;
- b) e-mail your request to trish.matarazzo@flcourts18.org with the information as requested below; or
- c) fax a Hearing Request (a copy is attached as an exhibit for your use) to (321)-637-5642.

Please have the following information available when you are requesting and/or e-mailing for a hearing:

- **Subject Line**(if e-mailing in a request): please state the type of hearing that you are requesting and DO NOT request MSJ hearings with requests for Motions to Dismiss or other types of hearings as your response will be delayed
- **Time Needed for Hearing:** All MSJ hearings are set for 5 minutes unless otherwise specified. If you do not specify the amount of time needed for your hearing you will be given FIVE (5) minutes. Your requests will be answered sooner if you group all your requests together in one e-mail/call/fax vs. one at a time. You may request blocks of time and/or a full day for hearings.
- **Case Number**
- **Style**
- **Judge** the case was assigned to originally
- **Time Frame** your hearing is needed – i.e. – immediately; first available; 30-60-90 days. If this information is not included, the Court will give you a date.
- **Attorney/Opposing Counsel**
- **Contact Information** for all parties
- If you need to coordinate the hearing with opposing counsel, please state this, otherwise you will be given ONE date.

Below is an example you can use for reference to e-mail your request:

Example: Motion to Dismiss
5 minutes
05-2010-CA-100000
Judge John Smith
Wells Fargo v Jackson, Jim
90 days
Attorneys: Sue Jones 321-555-5555 ext 1234
sjones@lawfirm.com
Jane Doe 321-666-6666 ext 1234 opposing
counsel jdoe@opposinglawfirm.com

NOTICE OF HEARING:

When preparing the Notice of Hearing, all hearings are heard before the Presiding Judge – Mortgage Foreclosure Division, The Moore Justice Center 3rd Floor, 2825 Judge Fran Jamieson Way, Viera, FL 32940 321-637-5470. Please include in your notice if you are appearing telephonically and follow the procedures outlined herein. Please provide this office a courtesy copy of the Notice of Hearing only, it is not necessary to provide copies of any motions as long as they have been filed with the Clerk.

ATTENDING HEARING IN PERSON:

If you are attending the hearing in person, please check in with the Court Information Specialist on the 3rd Floor and/or proceed to the end of the hall past the Court Information Specialist and have a seat and wait for the Court Deputy to call you. All hearings are on the 3rd Floor – Mortgage Foreclosure Division at The Moore Justice Center in Viera.

CROSS NOTICING OF HEARINGS:

There will be **NO** cross noticing or “piggybacking” of motions unless counsel first has gotten approval from the Court.

CANCELING HEARINGS:

The last minute cancellation of reserved hearing time wastes the courts time and there are multitudes of attorneys and pro se litigants requiring hearing time. If you need to cancel reserved time, you must notify this office at least **FIVE (5) BUSINESS DAYS** prior to the date of the hearing so the time can be utilized by others. The Court will not allow any cancellations, other than in extraordinary circumstances and after a hearing on the issue, except for matters which are resolved, which were the issues for which the time was reserved. Any hearing time cancelled will require the moving attorney or pro se to file a written Notice of Cancellation including resolution of the issue. Failure to cancel prior to five business days, except in circumstances approved by the Court or settlement of the issues addressed, will result in the hearing remaining on the docket and, if counsel does not appear, denial of the relief requested. You may fax the Notice of Cancellation to this office at 321-637-5642 – no cover letter is needed. Only the person who scheduled the hearing may cancel it.

MATTERS NOT REQUIRING A HEARING:

- a. Appointment of Special Process Server
- b. Stipulated Modifications
- c. Stipulated Temporary Orders
- d. Motions to Substitute Party
- e. Plaintiff’s Motion for Cancellation and rescheduling a foreclosure sale; Plaintiff’s Motions to cancel or set sale dates in mortgage foreclosures. In Motions to Reset Sale date after previous cancellation, the Clerk requires that the reason causing cancellation of the previous sale be set forth in the Order as well as the Motion and that the circumstance has been resolved.

- f. Motion to Dismiss based upon failure to state a cause of action **ONLY**
- g. Motions for judgment on the pleadings
- h. Motions for a more definite statement
- i. Motions for leave to file a counterclaim or cross claim
- j. Motions to amend pleadings
- k. Motions to compel answers to interrogatories or to compel response to request for production
- l. Objections to Production or Interrogatories
- m. Motions for a new trial, reconsideration or rehearing or amendments of judgments pursuant to Rule 1.530, Fla. R. Civ. P.
- n. Motions for relief from judgment due to clerical mistakes pursuant to Rule 1.540(a), Fla. R. Civ. P.
- o. Plaintiff's Motions to require Clerk to return original documents because of dismissal of the case. Please attach a copy of Notice of Voluntary Dismissal to Motion.
- p. Plaintiff's Motions for Writs of Possession. Please attach a copy of the Certificate of Title, **not** all the other documents such as Final Judgment, etc.
- q. Motions to Withdraw/Substitute counsel **ONLY** if written consent of the client is obtained, otherwise you will need to schedule a hearing pursuant to Florida Rules of Court; Judicial Administration Rules 2.505 (e) & (f).

Please note that if you want your correspondence/orders to be signed in a timely manner please submit them to the Mortgage Foreclosure Division as sending correspondence to the original assigned Judge will delay its receipt in the Mortgage Foreclosure Division.

TELEPHONE CONFERENCE HEARINGS:

Some motion hearings, motions for summary judgment, etc. may be handled by telephone conference. However, the Notice of Hearing **MUST** set the hearing up as a telephonic hearing and contain the correct information. Otherwise, the privilege of appearing by telephone will not be granted.

Opposing counsel must be apprised of your intent to appear by telephone to decide whether or not they will appear by telephone also. ***The moving attorney has the obligation to place the telephone conference call and conference in the opposing counsel or pro se.*** The Judicial Assistant does not have the time to place these calls and/or to conference in any parties. Testimony will not be allowed to be taken by telephone unless all affected parties stipulate and agree to such testimony or the Court finds it

is reasonable and necessary to take the testimony by telephone. Telephonic hearings are allowed as they tend to decrease the expense and needless expenditure of time in litigation.

It is the responsibility of each attorney involved to notify the moving attorney and any other attorney involved of the intent to appear by telephone. It is the sole responsibility of the moving attorney to place a conference call including all other attorneys or pro se defendants who will appear by telephone and get them on the conference line prior to the time set for hearing. If all parties are not on the call at the time of the hearing, the call will not be placed into the hearing room. Abuse of this procedure may result in revocation of the privilege to attend hearings by telephone.

AFFIDAVITS/ACKNOWLEDGEMENTS:

The Court continues to see hybrid jurats on affidavits and some affidavits which conclude with "to the best of my knowledge and belief." To be an affidavit, the Notary Public or other officer taking the oath must state in the jurat that the party was sworn and that the matters in the affidavit are true.

There also appears to be a misconception as to the meaning of a verified pleading when allowed by a statute or rule of procedure. There also appears to be a misconception of the meaning of language necessary for an oath or affirmation versus an acknowledgement. The question arises frequently in certain actions under the prejudgment writ of replevin statute and prejudgment writ of garnishment statutes.

An oath or verification requires a swearing or affirmation which would subject the person signing the pleading to a prosecution for perjury if the facts sworn to be true are false and the person knew they were false when sworn to or affirmed.

An acknowledgement is a statement by a person qualified to take oaths and acknowledgements that the person purporting to sign the document (such as a deed) produced identification or was known personally and stated that he or she was the person who signed the document, not that the content of the document is true.

An oath or verification which is qualified by "to the best of my knowledge and belief" does not fulfill the requirements of verification or oath or affirmation unless specifically permitted by the applicable rule or statute such as a personal representative of an estate who cannot have personal knowledge of all the facts but must rely on others. See Rule 5.020(e), Fla. Prob.R. and Section 731.104, Florida Statutes 2009 as examples.

A recent change in Rule 1.10, Fla.R.Civ.P. adds the following language:

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."

This is allowed because the affiant could not have personal knowledge of all the facts but must rely upon others.

The standard form for an oath or affirmation is substantially as follows:

Long form (preferred):

"Before me, an officer duly qualified to take oaths, personally appeared _____, (known by me personally) (who produced identification), and after being placed under oath, swears or affirms that the facts stated above are true and correct."

Short form:

"Sworn to and subscribed before me"

An acknowledgement is totally different. A representative form is as follows:

"Before me, an officer duly qualified to take oaths and acknowledgements, personally appeared _____, (known by me personally) (who produced identification) and acknowledged before me that he/she was the person who signed the foregoing instrument."

Section 92.525, Florida Statutes 2009, defines verified pleadings or documents as the word is used in statutes, rules, etc. It includes an oath or affirmation before an officer qualified pursuant to Section 92.50, Florida Statutes, OR a written declaration stating "under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration. The operative language is "under penalties of perjury" because this takes the place of an oath or affirmation before an official and allows a verification which is untrue to be prosecuted as perjury. See Section 92.525(3) Florida Statutes, 2009. To only state that the facts are true and correct is insufficient and does not constitute a verified pleading. The

statement must be under oath or affirmation before an authorized officer OR be verified by the words, "UNDER PENALTIES OF PERJURY."

Various hybrid forms of purported jurats are in use and do not meet the requirements. One seen often is as follows:

"Before me appeared _____ who acknowledged before me that he/she signed the above [document] and did take an oath."

The missing part is that the person did not say that the statements alleged were true or what oath the person took. Could it be an oath that the person is who he/she said he/she is?

Please make sure your clients and employees utilize a proper oath or affirmation when signing affidavits. Otherwise your case may be delayed as defective affidavits create additional work and time on the part of all concerned.

LOST DOCUMENTS:

The Court is experiencing cases in which the promissory note secured by the mortgage is alleged to have been lost, stolen or destroyed. The practice is to attach to the complaint a "ledger sheet" purporting to list origination date, amount of the loan, a payment amount and due date. These exhibits are not even sworn to.

The Court requires what the statute, §673.3091(2), Florida Statutes (2009), requires. That is a person seeking to reestablish and enforce such note must PROVE the terms of the instrument and the person's right to enforce it.

The Court will require an affidavit or live testimony of a person who was personally familiar with the terms of the note by virtue of preparing it or reading it or other reliable evidence of knowledge of its terms in order to "prove" the terms. This is an evidentiary issue and, unless proved, will neither be reestablished nor enforced. Below is a list of the minimum areas of proof required.

BASIC STATEMENTS TO PROVE LOST OR DESTROYED PROMISSORY NOTE

- Name and address of original lender
- Names of initial borrowers
- Loan number and property address
- Original loan amount
- Date of Note (origination date)
- Fixed rate or adjustable rate loan
- If fixed rate, what the rate is

- If adjustable rate, beginning interest rate, rate at time of default, and maximum rate in note
- Amount and frequency of payments
- Maturity date of note (when required to be paid in full)
- Right to prepay with or without penalty, in full or in part, and if penalty, what it is
- If note provides notice upon default and right to cure default, how many days after written notice. (if notice given by U.S. Mail, add 5 additional days)
- Right to cure default after complaint filed

AFFIDAVIT OF INDEBTEDNESS:

The Court has observed that many law firms submit an affidavit of indebtedness in a summary judgment motion in which the affiant is described as an “agent” of the Plaintiff/Service; attorney in fact for servicer; limited signing agent, etc. The affidavit of indebtedness must be accurate and must clearly identify who the signing affiant is employed by and affiant’s position with his employer and that the affiant has personal knowledge of the account. An officer of the Plaintiff is always preferred. One prevalent affidavit states that the affiant is an employee of the servicer but never identifies who the servicer is.

Counsel should review Rule 1.510, Florida Rules of Civil Procedure periodically to make sure the affidavits filed will comply with summary judgment requirements. Rule 1.510(c) requires that you file your motion and shall also send copies of all summary judgment evidence relied upon and not already filed with the Court, at least twenty (20) days prior to the hearing. This includes affidavits of indebtedness, attorney fee affidavits, corroborating attorney fee affidavits and unless being reestablished when actually lost, destroyed or stolen, the note and mortgage.

If you schedule the motion before discovery is closed, the motion may be premature. The following cases hold that summary judgment should not be entered while discovery is pending because it is premature. *Sanchez v. Sears, Roebuck and Co.*, 807 So.2d 196 (Fla. 3rd DCA 2002); *Kimball v. Publix Supermarkets, Inc.*, 901 So.2d 293 (Fla. 2nd DCA 2005), *Henderson v. Reyes*, 702 So.2d 616 (Fla. 3rd DCA 2008); and *Payne v. Cudjoe Gardens Property Owners Association, Inc.*, 837 So.2d 458 (Fla. 3rd DCA 2002).

Any affirmative defenses raised must be factually refuted or disproved or you must establish that the defenses are insufficient as a matter of law. This may be done prior to the motion and is encouraged rather than trying to do it in a Motion for Summary Judgment. However, it can be a part of the Motion for Summary Judgment.

Rule 1.510(e) requires that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. If the affidavit would not be admissible at trial, the Court cannot consider it.

In the future, such affidavits **MUST** identify the employer, and if not the Plaintiff, the name of the entity with whom the affiant is employed and the relationship to the plaintiff. They must be made by a custodian of the records or one with personal knowledge of the records and business practices relating to the business records, and must delineate how the affiant has the knowledge to be competent to sign the affidavit as proof of the amounts due. Otherwise it will not suffice to support a Motion for Summary Judgment. An affidavit by an "attorney-in-fact" will not support a Summary Judgment.

PROOF OF STANDING:

Many notes are filed without a proper endorsement to Plaintiff. Those notes do not self prove standing even if there is an assignment of mortgage filed which pre-dates the filing of the complaint. In those cases, the Court requires an Affidavit or other satisfactory proof that the note and mortgage was actually delivered to Plaintiff or that Plaintiff was given the right to enforce the note and mortgage, specifying the date of receipt if delivered or the name and address of the party giving Plaintiff the right to enforce it along with the date of the acquisition of the right and a general statement that the person providing the information has personal knowledge and is an officer of Plaintiff, specifying the office. If the note is endorsed to Plaintiff or if Plaintiff is the original mortgagee or if endorsed in blank (a "bearer" endorsement), the Affidavit or other proof is not required, unless challenged by a Defendant. If the Plaintiff is Plaintiff due to a merger of the entity holding the note, evidence of the merger must be filed. It should be noted that lack of standing is an affirmative defense that should be filed with the answer. See *Glynn v. First Union Nat'l Bank*, 912 So.2d 357 (Fla. 4th DCA 2005); and *Kissman v Panizzi*, 891 So. 2d 1147 (Fla. 4th DCA 2005).

ATTACHMENT OF NOTE AND MORTGAGE TO COMPLAINT:

Arguments are being made to the Court when Plaintiff fails to attach a copy of the note to the complaint, that later filing the original note in the Court file and giving notice of its filing to the Defendants cures the failure to attach it to the complaint. Cited for this proposition is *Hughes v. Home Savings of America*, 675 So.2d 649 (Fla. 2nd DCA 1996) which distinguishes *Eigen v. Federal Deposit Insurance Corporation*, 492 So.2d 826 (Fla. 2nd DCA 1986).

In *Hughes*, the Plaintiff had attached a copy of the note and mortgage to the *original* complaint. An amended complaint was filed and neither the note nor the mortgage was attached to it. The Court held that the defect could have been cured by filing the *original* note and mortgage in the court file with notice given to Defendants. In *Holmes*, the notice of filing of the original documents was *not* served on defendants. In *Eigen*, the same fact circumstance occurred except that the Defendants were served notice of the filing of the documents which cured the defect. The fact that the note and mortgage were attached to the original complaint does not breathe life into the amended complaint which was void of exhibits.

Both cases cited dealt with amended complaints, not the original complaint. Failure to attach copies of the documents sued upon may fail to state a cause of action. This court questions the logic in the case cited but until the Fifth District rules on this issue, the court is bound by the ruling of the Second District.

ALLONGES:

This division is sometimes called upon to adjudicate the validity of an allonge. At issue is whether the allonge is valid if sufficient room is available on the accompanying promissory note for an endorsement.

The concept comes from Black's Law Dictionary in which an allonge is described as:

"a piece of paper annexed to a negotiable instrument or promissory note, on which to write endorsements for which there is no room on the instrument itself. Such must be so firmly affixed thereto as to become a part thereof."

This definition was used in a footnote, FN2, in *Taylor v. Deutsche Bank National Trust Company*, 44 So.3d 618 (Fla. 5th DCA 2010). The definition was placed in the footnote to describe an allonge and was not instrumental in deciding the case. The Court in *Booker v. Sarasota, Inc.*, 707 So.2d 886 (Fla. 1st DCA 1998), in a footnote, described an allonge as found in Black's Law Dictionary also, but added the observation that §673.2041(1), Florida Statutes (1995), Florida's Uniform Commercial Code, does not specifically mention an allonge, but notes that "for the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is part of the instrument." *Booker* was one of the cases cited by the Court in *Taylor*. The original version of Article 3 provided that an endorsement must

be written on the instrument or on a paper so firmly affixed to it as to become a part of it. However, the comments to revised Article 3 state that an endorsement on an allonge is valid even though there is sufficient space on the instrument for an endorsement. See §3-202.

§673.2041(1) does not require that an endorsement be made on the note itself if there is room for it but allows a paper affixed to the instrument as a part of the instrument. The Court will allow allonges even if there is room for the endorsement on the note. This is in conformity with the Uniform Commercial Code.

VERIFICATION OF COMPLAINTS FOR FORECLOSURE RESIDENTIAL PROPERTY:

A change in Rule 1.110(b), Fla.R.Civ.P., was effective on February 11, 2010. The rule amendments are as follows:

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 penalties 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.”

It should be noted that the rule provides that the “document filed” (the complaint) shall include the oath or affirmation of the required language. In SC 09-1460 and SC 09-1579, The Florida Supreme Court commented on why the amendments were added. The *primary* purpose is to provide incentive for the Plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; to conserve judicial resources that are currently being wasted on inappropriately pleaded “Lost Note” counts and inconsistent allegations; to prevent the wasting of judicial resources and harm to Defendant resulting from suits brought by Plaintiffs not entitled to enforce the note; and to give the trial courts greater authority to sanction Plaintiffs who make false allegations.

It is now the practice by some Plaintiff’s lawyers to file a “Verification” as a separate document. It is not even attached to the complaint. Many do not even make reference to the complaint filed but state merely “I have read the foregoing.” A Plaintiff could produce hundreds of these separate pages and send them to their lawyers to file with each complaint, thereby circumventing the express purposes of the rule change. Some recite “I have read the complaint” but are still on a separate page. The filing of a separate

page lends itself to abuse of the process and the express purpose of verification.

Section 92.525(2), Florida Statutes, verification of documents recites the way a document may be verified. It then states:

....the written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

This Court will require that the verification be made on the complaint filed, not a separate document. The Court also requires that the verification be signed by an officer of Plaintiff, not an assistant officer, foreclosure specialist or other person whose duties are unclear as to how they would know that the information in the complaint is accurate. Verifications signed by Plaintiff's lawyer are not acceptable.

Complaints filed which require verification are subject to dismissal by the court if not in compliance with the rule and the Supreme Court's stated purposes.

ASSIGNMENT OF BIDS/ MOTIONS TO VACATE:

The Court is encountering cases in which the Plaintiff assigns the bid at the judicial sale to another entity such as the Secretary of Veterans Affairs, Federal National Mortgage Association, etc. and a certificate of title is issued in the assignee's name as a result. Later, the Plaintiff files a Motion to Vacate the Final Judgment, sale, and certificate of title and the motion purports to include the assignee but there is nothing in the record to verify that the attorney is representing the title holder or bid assignee. Due process and property rights may be impacted by entering the order without the assignee's written joinder and consent, especially when title has vested in the assignee by virtue of the certificate of title. The Court has notified counsel of this concern. However, new motions are filed in the name of the Plaintiff and title holder when the record does not show that Plaintiff's attorney represents the title holder and no written consent or joinder in the motion by the titleholder is provided.

If a bid has been assigned by the Plaintiff and Plaintiff wishes to vacate the sale and/or certificate of title if one has been issued, the Plaintiff's law firm must represent the assignee/titleholder in the record or obtain and file the written consent and joinder of the assignee/titleholder along with the motion.

ADDITIONAL INFORMATION:

- The Mortgage Foreclosure Division of Brevard County **DOES NOT** have an ex-parte calendar for emergency hearings.
- The Mortgage Foreclosure Division of Brevard County **DOES NOT** use the JACS Internet system for scheduling.
- Commercial Mortgage Foreclosures are to be heard by the original Judge assigned to the case.
- The Mortgage Foreclosure Division of Brevard County **DOES NOT** hear foreclosure of association liens
- If you have received a LOPS or CMC Hearing Notice from this division, please note that telephonic attendance at these hearings **IS NOT** permitted.

***PLEASE CHECK BACK FREQUENTLY
FOR UPDATED INFORMATION***

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE EIGHTEENTH
JUDICIAL CIRCUIT OF BREVARD COUNTY,
FLORIDA

CASE NO. 05 – 20____-CA - _____

MORTGAGE FORECLOSURE DIVISION

Plaintiff(s)

v.

Defendant(s)

_____ /

CERTIFICATION

The undersigned attorney hereby certifies the following:

1. I am the (Attorney of Record) (Reviewing Attorney) in the above styled case.
2. I have examined the file and certify that all pleadings, defaults, voluntary dismissals, etc. are contained in the file and that the matter is appropriate for summary judgment.
3. I further certify that the Final Judgment, Notice of Sale, etc. will be provided to the court at a minimum of five (5) days prior to the scheduled hearing.

Submitted on _____, 2011.

Examining Attorney
Firm Name/Address/Contact Info

PLEASE NOTE: This form is **REQUIRED** to be faxed in order to set a Motion for Summary Judgment Hearing.

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

05-20____ - CA - _____

Plaintiff

Vs.

Defendant

_____ /

HEARING REQUEST

The undersigned hereby requests that the following motion be scheduled with the Mortgage Foreclosure Division:

- _____ Motion for Summary Final Judgment of Foreclosure
- _____ Motion to Dismiss
- _____ Other: _____
- _____ There is no opposing counsel
- _____ There is opposing counsel – *The undersigned has coordinated hearing with opposing counsel. If hearing is to be attended telephonically, The moving attorney has the obligation to place the telephone conference call and conference in opposing counsel or pro se.*

Opposing counsel:

Attorney Name: _____
Law Firm: _____
Address: _____
Telephone Number: _____
E-mail: _____

Submitted this _____ day of _____, 2011.

Law Firm: _____
Address: _____
Phone: _____
E-Mail: _____
Designated plaintiff liaison: _____

PLEASE NOTE: This form is provided for your use to schedule hearings with the Brevard County Mortgage Foreclosure Division as it assists with all necessary information that will be needed to set a hearing.