

**IN THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA**

**ADMINISTRATIVE ORDER S-2015-022
(Supersedes Administrative Order S-2015-015)**

FORECLOSURE PROCEDURES

In light of this circuit's Judicial Automated Workflow System (JAWS)'s ability to process proposed orders and the organizational changes to the case management sections in mortgage foreclosure cases, it is necessary for the proper and efficient administration of justice to update the administrative procedures in the foreclosure divisions. By the power vested in the chief judge under article V, section 2(d), Florida Constitution; section 43.26, Florida Statutes; and Florida Rule of Judicial Administration 2.215(b)(2), it is therefore **ORDERED**:

1. Transfer of Cases

A. General Civil Division "M"

Any closed residential mortgage foreclosure case that was initiated on or before December 31, 2010 and is reopened after the effective date of this administrative order will be transferred to General Civil Division "M."

B. General Civil Division "N"

All residential mortgage foreclosure cases that have been initiated on or after January 1, 2011 will remain pending in General Civil Division "N." Any closed residential mortgage foreclosure case that was initiated on or after January 1, 2011 and is reopened after the effective date of this administrative order will be transferred to General Civil Division "N."

2. New Cases

All residential mortgage foreclosure cases filed after the effective date of this administrative order will be assigned to General Civil Division "N."

3. Judicial Assignments

Judges, including senior judges, will be assigned to General Civil Divisions "M" and "N" by the chief judge in consultation with the administrative judge of the General Civil Division and the Administrative Office of the Courts. If an emergency matter arises in Division "M" or "N" and there are no presiding judges of Divisions "M" or "N" present in the courthouse, including senior judges, the emergency matter will be referred to the administrative judge of the General Civil Division for review.

4. Service

A. Constructive Service – Affidavit of Diligent Search and Inquiry

To obtain constructive service in a case, plaintiff's counsel must complete and file an affidavit of diligent search and inquiry as provided in Form 1.924, Florida Rules of Civil Procedure. A uniform Affidavit of Search and Inquiry may be accessed at <http://www.fljud13.org/Forms.aspx>.

B. Military Service – Memorandum for Certificate of Military Service

If plaintiff's counsel does not know whether a defendant is on active duty in a branch of the United States military service, plaintiff's counsel must complete a certificate of military service substantially similar to the memorandum for certificate of military service designated as Florida Family Law Rule of Procedure Form 12.912(a). A uniform Memorandum for Certificate of Military Service may be accessed at <http://www.fljud13.org/Forms.aspx>.

C. Default Judgment – Affidavit of Military Service

If plaintiff's counsel seeks a default judgment and the defendant has been properly served and has not responded to the mortgage foreclosure complaint, plaintiff's counsel must complete and file an Affidavit of Military Service substantially similar to the affidavit designated as Florida Family Law Rule of Procedure Form 12.912(b). A uniform Affidavit of Military Service may be accessed at <http://www.fljud13.org/Forms.aspx>.

5. Motions

A. Disposition of Non-Evidentiary Motions

Unless the presiding judge directs otherwise, a copy of all non-evidentiary motions must be served on the presiding judge when the original motion is filed with the clerk. The presiding judge may decide to rule on a non-evidentiary motion without a hearing unless a hearing is required under section 702.10, Florida Statutes. If a judge decides to rule on a non-evidentiary motion without a hearing, the judge will enter an order disposing of the motion within 30 days from the date of service of a copy of the motion on the presiding judge. Unless the presiding judge directs otherwise, a party may not set a non-evidentiary motion for hearing until at least 30 days have elapsed from the date of service of a copy of the motion on the presiding judge.

B. Calendaring

Attorneys must schedule all summary judgment motion hearings and any non-evidentiary motions authorized to be set for hearing above in the respective foreclosure sections through the Judicial Automated Workflow System (JAWS).

The JAWS may be accessed at the following link:

<http://www.fljud13.org/JAWS.aspx>. A signed copy of any motion scheduled and the notice of hearing must be uploaded at the time the hearing is scheduled. The court may unilaterally cancel without notice any hearing set on the JAWS if the court has already entered an order on a non-evidentiary motion.

C. Summary Judgment Motions

i. Prerequisites to Scheduling Hearing

Prior to selecting a mortgage foreclosure summary judgment hearing date on the JAWS, attorneys of record for plaintiffs must file with the clerk the motion for summary judgment and a uniform affidavit titled “Affidavit of Compliance with Foreclosure Procedures.” The uniform affidavit form may be found at <http://www.fljud13.org/Forms.aspx>. The affidavit swears or affirms that certain requisite actions have been completed and the dates on which they have occurred. Hearings scheduled on the JAWS prior to the filing of the summary judgment motion and the affidavit may be cancelled by the court without notice.

ii. Original Note or Lost Instrument Affidavit Required

Section 4 of the above-referenced Affidavit of Compliance with Foreclosure Procedures requires the attorney of record for the plaintiff to swear that the note and mortgage were filed with the clerk on a specific date or that an affidavit of lost instrument was filed with the clerk on a specific date. If an affidavit of lost instrument is filed with the clerk, the affidavit must contain an agreement to indemnify the maker(s) or other adequate consideration. See § 673.3091(2), Fla. Stat. (“The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected.”); see also § 702.11, Fla. Stat. (establishing reasonable means of adequate protection). These requirements are in addition to the pleading procedures set forth in section 702.015, Florida Statutes.

iii. Notice of Hearing

Within three days of obtaining a summary judgment hearing date, attorneys of record for plaintiffs must serve a notice of hearing for the summary judgment hearing on defendant(s).

iv. Cancellations

Cancellations less than 20 days before the hearing date require a notice of cancellation with an explanation of the reason for cancellation.

6. Orders

The following procedures apply to orders prepared after a hearing except when a Uniform Final Judgment of Foreclosure (as referenced in section 10 of this administrative order) is entered by the court:

A. Consultation with Opposing Counsel or Self-Represented Party

Unless the presiding judge directs otherwise, prior to submitting a proposed order for the court's consideration after a hearing, the counsel or self-represented party directed to submit the proposed order must consult with opposing counsel or the opposing self-represented party within three business days after the court's decision and make a genuine effort to agree on the language of the proposed order.

B. Cover Letter Objection

If, after consultation with opposing counsel or the opposing self-represented party, the parties cannot agree on the language in the proposed order to be submitted to the court, then the attorney or self-represented party submitting the proposed order must document in a cover letter that the opposing party or counsel has registered an objection and specifically state what the objection is. At the time the cover letter and proposed order is submitted to the court, a copy must simultaneously be sent to all parties or their attorneys. A cover letter is only required if the opposing counsel or party has registered an objection. A cover letter should not be sent or uploaded to the JAWS unless there is an objection. If an objection is registered, the court will determine if a hearing is necessary to resolve the dispute.

C. Timely Submission

Unless the presiding judge directs otherwise, proposed orders must be submitted to the judge by the attorney or self-represented party directed to prepare the order within 10 business days after the judge's ruling. If the attorney or self-represented party designated to prepare the order fails to timely submit a proposed order, the attorney for the opposing party or the opposing self-represented party may submit a proposed order within five business days after the initial time period.

D. Submission of Proposed Orders and Judgments

i. JAWS – All Parties Represented by Counsel

Unless the presiding judge directs otherwise, if all parties are represented by attorneys, none of whom have been excused from e-mail service under Florida Rule of Judicial Administration 2.516, an attorney who is requested to submit a proposed order must do so through the JAWS. Prior to submitting a proposed order, the attorney must review and comply with the internal division procedures

posted on the presiding judge's webpage to determine that judge's format preference (searchable PDF v. Microsoft Word). If the presiding judge or senior judge does not have internal division procedures posted, then the attorney should submit the proposed order in searchable PDF. The JAWS is capable of linking a cover letter with a proposed order so all cover letters must document any objections of the opposing party to the proposed order. Competing proposed orders must not be submitted through the JAWS.

ii. Hard Copies and Envelopes – Self-Represented Party, Party's Attorney Excused from E-Service or Presiding Judge Direction

If any party is self-represented or represented by an attorney who has been excused from e-mail service by the court under Rule 2.516 or if the presiding judge directs, the self-represented party or attorney who is requested to submit a proposed order must do so by submitting to the presiding judge sufficient hard copies of the proposed order along with stamped, addressed envelopes.

E. Title

The title of every proposed order submitted must contain the subject matter of the pleading or motion upon which the ruling is made and must fairly apprise the reader of the action being ordered. Phrasing such as "order granting..." or "order denying..." is preferred over "order on..."

F. Form

The first paragraph of all proposed orders must state the date or dates on which the hearing or trial took place. In all proposed orders, the page containing the court's signature must also contain substantive language of the proposed order so that a proposed order does not contain a signature page consisting only of the court's signature. Each page, except for the first page, must contain a page number.

7. Mediation

A. Hillsborough County Bar Foundation Designated Mediation Provider

The Hillsborough County Bar Foundation is designated as the mediation provider for the Thirteenth Judicial Circuit to provide and manage the mediation of residential mortgage foreclosure cases on a case-by-case basis. Mediation services provided by the Hillsborough County Bar Foundation will include maintaining a web-enabled information platform, the coordination of the collection and exchange of financial documents, coordinating and scheduling the mediation conference, providing mediation facilities, assignment of a mediator and other related administrative tasks associated with the mediation conference.

B. Mediation Referral Procedures

The following procedures will be followed for the mediation of residential mortgage foreclosure cases in the Thirteenth Judicial Circuit.

- i. After service of the complaint, either party may request in writing to the presiding judge that such case be referred to mediation. Upon receipt of a request for mediation, the presiding judge will evaluate and determine, on a case by case basis, whether the case should be referred to mediation in accordance with section 44.102, Florida Statutes and Florida Rule of Civil Procedure 1.700(a).
- ii. The presiding judge may *sua sponte* evaluate and determine, on a case-by-case basis, whether a case should be referred to mediation in accordance with section 44.102, Florida Statutes and Florida Rule of Civil Procedure 1.700(a).
- iii. If the presiding judge determines that a case should be referred to mediation, the judge will enter a “Uniform Order of Referral to Foreclosure Mediation.” A copy of the Uniform Order of Referral to Foreclosure Mediation may be found on the Thirteenth Judicial Circuit’s webpage at www.fljud13.org/forms.aspx. Parties wishing to utilize mediation services other than those provided through the Hillsborough County Bar Foundation must follow the procedures set out in the Uniform Order of Referral to Foreclosure Mediation. Only Supreme Court certified circuit civil mediators who are specially trained in mortgage foreclosure cases may be designated to provide mediation services in the Thirteenth Judicial Circuit.

C. Statistical Information

On a quarterly basis, the Hillsborough County Bar Foundation will provide the Court Administrator with statistical information relating to cases referred to the Hillsborough County Bar Foundation for mediation. The statistical information will include:

- i. The number of cases referred to mediation;
- ii. The number of cases in which a mediation conference

was held;

iii. The number of cases in which a mediation agreement was reached;

iv. The number of cases pending resolution;

v. The number of cases returned to the court due to plaintiff non-participation;

vi. The number of cases returned to the court due to defendant non-participation;

vii. The number of cases in which the parties chose a mediator other than the Hillsborough County Bar Foundation;

viii. The number of cases pending resolution by the court after referral to mediation and the mediation report or the notice of non-participation has been filed; and

ix. The number of cases disposed by the court after referral to mediation and the mediation report or notice of non-participation has been filed.

This statistical information will be reported in a format approved by the Court Administrator.

8. Case Management

A. Division “M”

Foreclosure Sections I¹ and II² continue in existence for the purpose of managing residential foreclosure cases in Division “M.” Attorneys must set hearings for Division “M” cases in the respective sections on the JAWS. Self-represented parties may schedule hearings by contacting the appropriate secretary or case manager in Section I at sectionIrmf@fljud13.org or Section II at

¹ Section I consists of all residential mortgage foreclosure cases that were initiated on or before December 31, 2010 and were originally filed in General Civil Divisions A, B, C, D, F & East Division R.

² Section II consists of all residential mortgage foreclosure cases that were initiated on or before December 31, 2010 and were originally filed in General Civil Divisions G, H, I, J, K & East Division T.

sectionIIrmf@fljud13.org. If a self-represented party does not have access to electronic mail, the party may schedule hearings by contacting the appropriate secretary or case manager at (813) 272-8584.

B. Division “N”

Foreclosure Sections III³ and IV⁴ are created for the purpose of managing residential foreclosure cases in Division “N.” Attorneys must set hearings for Division “N” cases in Section III on the JAWS. Self-represented parties may schedule hearings by contacting the appropriate secretary or case manager in Section III at sectionIIIrmf@fljud13.org. If a self-represented party does not have access to electronic mail, the party may schedule hearings by contacting the appropriate secretary or case manager at (813) 272-8584. Cases may be transferred from Section III to Section IV for trials, case management conferences, orders to show cause, and other adversarial proceedings.

9. Telephonic Hearings

For any multi-party telephonic hearings, all parties must be conferenced into the call prior to the call being placed to the presiding judge’s office. Attorneys must use COURT CALL (<http://www.courtcall.com/ccallp/info?c=CCGENERAL>) or another comparable telephonic court appearance program for all telephonic appearances for summary judgment motions and other motion hearings in Divisions “M” and “N.” Telephonic appearances are not permitted for foreclosure non-jury trials; attorneys and a client representative must be present at trial.

10. Foreclosure Judgment Packet

Foreclosure judgment packets must be received by the presiding judge’s office at least five business days prior to the scheduled hearing date for the motion for summary judgment only if the moving party’s counsel is attending the hearing telephonically. If the moving party’s counsel is attending the hearing in person, the foreclosure judgment packet must be brought to the hearing and should not be sent to the judge’s office prior to the hearing. The foreclosure judgment packet must include the following documents:

³ Section III consists of all residential mortgage foreclosure cases that have been initiated on or after January 1, 2011.

⁴ Section IV consists of all residential mortgage foreclosure cases that have been initiated on or after January 1, 2011 and which have been transferred from Section III for trials, case management conferences, orders to show cause, and other adversarial proceedings.

- Proposed Uniform Final Judgment of Foreclosure (sale date will be inserted by the court at the time of the hearing) with sufficient copies. The uniform final judgment form must be used. The most current Uniform Final Judgment form may be accessed at <http://www.fljud13.org/Forms.aspx>;
- Certificate of Sale;
- Certificate of Disbursements;
- Certificate of Title; and
- Three copies of stamped addressed envelopes.

Proposed final judgments prepared by counsel must be delivered to the presiding judge, not to the clerk. If the clerk receives any proposed final judgment intended for signature by a judge, the clerk is not responsible for delivery of the proposed final judgment to the presiding judge. If the clerk receives a proposed final judgment intended for signature by a judge, the clerk may return the proposed judgment to the sender or destroy it without notice. See Administrative Order S-2012-031 (*Delivery of Proposed Orders*).

If the plaintiff's counsel has failed to timely submit a complete foreclosure packet to the presiding judge's office, the scheduled hearing will be cancelled.

11. Notice of Sale and Proof of Publication

The plaintiff or the plaintiff's attorney is responsible for preparing, under section 45.031(2), Florida Statutes, and submitting the Notice of Sale to a legal publication. The original Notice of Sale and Proof of Publication must be filed with the clerk at least 24 hours prior to the scheduled sale date.

12. Judicial Sales

A. Dates

Judicial sales will be held daily (excluding weekends and holidays), under sections 45.031(10) and 45.035(1) and (3), Florida Statutes, by electronic means only. All judgments or orders scheduling or rescheduling judicial sales will indicate that the sale will be conducted electronically online at <http://www.hillsborough.realforeclose.com>. All electronic sales will begin at 10:00 a.m. and continue until all scheduled sales have been completed.

B. Bidding Increments

The deputy clerk conducting the sale will require all tendered bids to be in increments of at least \$100.00. Any attempt to tender a bid to the deputy clerk conducting the judicial sale that is less than the minimum \$100.00 will not be

recognized by the deputy clerk conducting the judicial sale. Minimum bidding increments for online sales will be \$100.00.

C. Debarment for Failure to Pay Any Part of the Bid Price

Any successful bidder who cannot pay the required deposit at the time of the judicial sale or who fails to pay the balance of the bid or other required costs of the judicial sale within the time required by the clerk will be reported to the judge who ordered the judicial sale. The court may enter an order debarring that bidder from participating in future judicial sales for a period of time, up to one month, or longer if such conduct is found to have been repetitive within the past 12 months.

D. Cancellation of Foreclosure Sale

i. Deadline

The deadline for cancellation of a judicial sale and for payment of the clerk's sale fee is the day of the scheduled sale, no later than 8:00 a.m.

ii. Upon Plaintiff's Notice of Cancellation

The clerk will cancel any scheduled foreclosure sale upon receipt by the above-referenced deadline of a Notice of Cancellation of Foreclosure Sale filed electronically by plaintiff's counsel. If the Notice of Cancellation of Foreclosure Sale is filed less than 24 hours before the scheduled date and time of the foreclosure sale, the clerk must receive a facsimile of the Notice of Cancellation of Foreclosure Sale at the number designated on the clerk's website at www.hillsclerk.com (Foreclosure Sales) and the Thirteenth Judicial Circuit website at www.fljud13.org (General Civil Division) at least two hours before the scheduled foreclosure sale date and time. The uniform Notice of Cancellation of Foreclosure Sale form may be accessed at <http://www.fljud13.org/Forms.aspx>. The clerk will notify the online vendor of all cancellations of judicial sales.

iii. Upon Suggestion of Bankruptcy

Unless otherwise directed by the presiding judge or a United States Bankruptcy Judge, the clerk will cancel any scheduled foreclosure sale if any deputy clerk assigned to the foreclosure department of the General Civil Division receives, no later than the above-referenced deadline, a suggestion of bankruptcy on behalf of a named defendant in a pending foreclosure action.

iv. Upon Plaintiff's Failure to Pay Additional Filing Fee

If any difference between the estimated amount in controversy of the claim and the actual value of the claim causes there to be an additional filing fee owed by the plaintiff under section 28.241(1)(a), Florida Statutes, the plaintiff must pay the additional fee prior to the judicial sale. If any additional filing fee owed is not paid prior to the judicial sale, the clerk will cancel the judicial sale.

13. Verified Motion for Writ of Possession

When a plaintiff seeks an order directing the clerk to issue a writ of possession, a verified motion must be filed swearing or affirming that the residence sold at the judicial sale is either: (1) unoccupied; (2) occupied by the debtor; (3) occupied by a tenant; or (4) occupancy status is unknown. A uniform verified motion for writ of possession may be accessed at <http://www.fljud13.org/Forms.aspx>.

14. Case Reporting Requirements

A. Definitions

For the purposes of this section of this administrative order, the following terms have the following meanings:

“Active” means a case in which the court is engaged in activity directly related to the resolution of the specific matters and issues associated with the case.

“Inactive” means a case in which court activity on the case is suspended pending resolution of an issue external to the court or that does not directly involve the court in resolving that issue. A case placed in an inactive status is not closed and does not need to be reopened when the case returns to active status, regardless of the length of time involved.

B. Change of Case Status

i. Active Status to Inactive Status

The following events move a case from active status to inactive status:

- (a) A stay of bankruptcy is in effect;
- (b) The resolution of a foreclosure case requires the resolution of a related case;
- (c) Settlement negotiations are on-going;
- (d) By entry of an agreement of both parties;
- (e) The foreclosure case is on hold pending appeal;
- (f) A hold is placed on the foreclosure case due to review by the Department of Justice or the Attorney General; or
- (g) When directed by the presiding judge consistent with the definition of an inactive case as defined above.

ii. Inactive Status to Active Status

A case transitions from inactive status to active status when any event occurs which enables the court to take further action on the case. Examples of events that move a case from inactive status to active status may include the filing of a motion or the scheduling of a hearing or case conference requesting the court to take

further action unless the requested action must also be on hold until the reason for inactivity under section 13(B)(i) of this administrative order is resolved.

C. Case Status Reporting

i. Party Responsibilities

When a party or their counsel, if any, to a mortgage foreclosure case becomes aware of any event outlined in section 13(B) of this administrative order that effectively changes the status of a mortgage foreclosure case, the party or their counsel, if any, must notify the clerk of the change of status by filing a Party's Notification of Change of Status of Case with the clerk. A Party's Notification of Change of Status of Case form may be assessed at www.fljud13.org/Forms.aspx.

ii. Clerk's Responsibilities

When the clerk has determined or otherwise been made aware of any event outlined in section 13(B) of this administrative order that effectively changes the status of a mortgage foreclosure case, the clerk will immediately adjust the status of the case in the clerk's Odyssey case management system.

iii. Court's Responsibilities

If a presiding judge in a mortgage foreclosure case determines that an event outlined in section 13(B) of this administrative order has effectively changed the status of a mortgage foreclosure case, the judge will enter either an "Order Placing Case on Inactive Status" or "Order Placing Case on Active Status" as the circumstances of the case dictate.

D. Case Age Reporting

For the purpose of case age reporting, a case on inactive status should not be considered pending until it becomes active by order of the presiding judge or action by the clerk of court.

15. Applicability

All sections of this administrative order apply to residential mortgage foreclosure cases. With the exception of sections 7 (Mediation), 8 (Case Management), and 13 (Verified Motion for Writ of Possession), all other sections of this administrative order apply to non-residential mortgage foreclosure cases.

16. Previous Administrative Order Superseded

This administrative order supersedes Administrative Order S-2015-015 (*Foreclosure Procedures*).

17. Effective Date

This administrative order is effective April 1, 2015.

It is ORDERED in Tampa, Hillsborough County, Florida, on this 26th
day of March, 2015.



Ronald N. Ficarrotta, Chief Judge

Original to: Pat Frank, Clerk of the Court

Copy to: All General Civil Division Judges
All Senior Judges presiding over mortgage foreclosure cases
Hillsborough County Bar Association
Hillsborough County Bar Foundation