

THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

ADMINISTRATIVE MEMORANDUM
No. 15-A 24 CA 01
(Court Administration)

IN RE: ESTABLISHMENT OF CASE
MANAGEMENT PLAN FOR
FORECLOSURE CASES;
TERMINATION OF ADMINISTRATIVE
MEMORANDUM 13-C

WHEREAS, in 2013, due to the foreclosure crisis that negatively impacted the judicial branch, the Florida Legislature enacted Chapter 2013-106, Section 3, Laws of Florida, to appropriate additional non-renewable funding from the General Revenue Fund to the state courts system, to provide supplemental resources, including additional senior judge days and temporary case management staff ("Supplemental Resources") in the trial courts "to reduce the backlog of pending foreclosure cases" (referred to hereinafter as the "Foreclosure Project"); and

WHEREAS, the Foreclosure Project was implemented under the auspices of the Circuit Civil Division ("Division") of the Eleventh Judicial Circuit ("Circuit"); and

WHEREAS, as a result of the Foreclosure Project, through the hard work and tireless efforts of the Circuit's Division Judges, Senior Judges, and the staff of the Administrative Office of the Courts, the backlog of foreclosure cases has largely been resolved; and

WHEREAS, effective June 30, 2015, the Supplemental Resources will be no longer be available and the Foreclosure Project will cease operations; and

WHEREAS, accordingly, foreclosure trials will no longer be heard before presiding Senior Judges in the Foreclosure Project's formerly dedicated courtrooms, including Courtrooms 3-1 and 3-3 in the Dade County Courthouse at 73 W. Flagler Street, Miami, Florida 33130, and Courtroom 22A in the Lawson E. Thomas Courthouse at 175 NW 1st Avenue, Miami, Florida 33128; and

WHEREAS, additionally, as of the effective date of this Administrative Memorandum, certain procedures that were established for the Foreclosure Project will be terminated; specifically (a) the current procedure for obtaining a foreclosure trial date, (b) the required submission of service lists to the Foreclosure Project, and (c) the Circuit's group/bulk trial scheduling procedure shall no longer be available; and

WHEREAS, effective July 1, 2015, Residential Mortgage Foreclosure summary judgment motions shall no longer be heard on the Foreclosure Master Calendar; and

WHEREAS, notwithstanding the termination of the Foreclosure Project and the significant reduction in the number of foreclosure filings in the Circuit, as prescribed in Rule 2.545, Florida Rules of Judicial Administration, trial judges "shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter;" and

WHEREAS, under Rule 2.250, Florida Rules of Judicial Administration, the time guidelines for resolution of such cases suggest that contested foreclosure (non-jury) cases should be resolved within twelve (12) months ("Time Guidelines); and

WHEREAS, in view of Rule 2.545 and the Rule 2.250 Time Guidelines, to ensure the efficient and proper administration of justice, it has been determined that a case management plan for foreclosure cases would be capable of effecting the prompt disposition of such cases;

NOW THEREFORE, pursuant to the authority vested in me by the Chief Judge as Administrative Judge of the Civil Division of the Eleventh Judicial Circuit, the Circuit Civil Division's Foreclosure Case Management Plan is hereby established and shall be effectuated as follows:

1. Effective July 1, 2015, all foreclosure cases, including summary judgments and trials, **except** sale cancellation motions, shall be heard by the respective Division Judge assigned to the case.
2. All foreclosure and summary judgment motions, including motions for Residential Mortgage Foreclosures, Condominium and Homeowner Association lien foreclosures, Construction and Mechanic's lien foreclosures and Commercial foreclosures, and all Rules to Show Cause under Fla. Stat. §702.10 shall be heard on the assigned Division Judge's foreclosure calendar. For each judge's procedure, please consult the Circuit's website at: <http://www.jud11.flcourts.org>
3. Upon filing motions, parties are required to timely set and notice such motions for a timely hearing. Failure to timely prosecute motions may result in resolution of same without a hearing.
4. The Sales Cancellation Calendar shall continue to be heard for all divisions in Courtroom 3-3, Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130, commencing at 8:15 a.m. The Sales Cancellation Calendar procedures are set forth in Exhibit A to this Administrative Memorandum.
5. Any and all orders which were entered by Senior Judges during the Foreclosure Project for which rehearing or motions to vacate are filed, shall be presented to the presiding Division Judge for resolution beginning July 1, 2015.

6. **Plaintiff shall not file the Original Note** with the complaint or otherwise per Administrative Order 14-10. Due to e-filing, there is no longer a paper file into which a physical note is maintained. A full and complete copy of the note, including all endorsements, more specifically those on back pages and allonges, should be attached to the complaint and e-filed. If any law firm representing Plaintiff submits the original note to the Clerk of the Court in violation of this Administrative Memorandum, it will be responsible to its client and to the borrower for any subsequent loss or inability to locate the note. **The Original Note must be surrendered for cancellation at the hearing/trial unless it is a lost note case. Do not send or file the Original Note prior to the final hearing.** All parties which seek return of original loan documents shall follow Administrative Order 14-10 and the Clerk's procedures set forth in Exhibit B to this Administrative Memorandum. No court order is required for return of loan documents.
7. **Civil Cover Sheet/Related Case.** Each filing of a new complaint requires completion of a civil cover sheet signed by the filing attorney. Fla. R. Civ. P. Form 1.997 (2012). If a foreclosure case was previously filed and dismissed, the existence of the prior case must be noted under "related case." See Paragraph VI on the Civil Cover Sheet. Counsel shall list the full prior case number. If the Clerk fails to do so, the parties shall promptly move to transfer the new case back to the prior Division. The newly-filed case will be assigned to the Division which was assigned the previous case. This information should be evident through pre-judgment title work, and the fact that a different law firm may have been involved does not relieve Plaintiff from the obligation of completing the civil cover sheet accurately.
8. **Final Judgment of Foreclosure Form** The approved Final Judgment of Foreclosure Form, attached hereto as Exhibit C, must be utilized in all residential mortgage foreclosures and specifically reference the name(s) of defendant(s) against whom judgment is executed. This Form is readily identifiable by the bold type docketing code "**FJUD**," referenced on the front page of the judgment. The following are exceptions to usage of the approved Final Summary Judgment of Foreclosure Form: commercial, condominium and homeowner's association fee foreclosures and construction/mechanics lien foreclosures. Additionally,
 - a. All foreclosure judgments and orders of dismissal must be submitted together with an accurately executed Form 1.998, the Final Disposition Form.
 - b. **Reformation:** If reformation was properly pled in the Complaint and proven in the Motion for Summary Judgment, the Final Summary Judgment must address this issue. Reformation language should be included in the proposed Final Summary Judgment to correct the items which require reformation.
 - c. **Lost Notes.** With regard to lost notes, the language to be included in the proposed Final Judgment must be prominently referenced in bold type and stated as follows:

"The Court finds that the Plaintiff has re-established the terms of the lost note and its right to enforce the instrument as required by Section

673.3091, Florida Statutes. Plaintiff shall hold the Defendant maker of the note harmless and shall indemnify them from any loss they may incur by reason of a claim by any other person to enforce the lost note. Since adequate protection is provided as required by Section 673.3091, Florida Statutes, by the following means: *(Identify means of security per statute §702.11; specifically (i) a written indemnification agreement by a person reasonably believed sufficiently solvent to honor such an obligation, (ii) a surety bond, (iii) a letter of credit issued by a financial institution, (iv) a deposit of cash collateral with the clerk of court or (v) such other specifically identified security)* judgment is hereby entered in favor of the Plaintiff as to its request to enforce the lost note."

If the lost note has been found while the case is pending, Plaintiff must address the lost note count by disposing of that count prior to or at summary judgment and surrender the Original Note for cancellation.

- d. **Supplemental Orders.** The approved Final Summary Judgment of Foreclosure includes form language retention by the court of jurisdiction to enter further orders for additional relief that are proper, including, without limitation, writs of possession and deficiency judgments. Any additional relief outside the approved form sought as part of the Final Summary Judgment of Foreclosure may be allowed if said relief has been properly pled and if it is within the court's jurisdiction. If the Court grants the relief requested, the relief must be entered as a Supplemental Order to the Final Summary Judgment of Foreclosure, not submitted as a change to the approved form final judgment other than reformation and lost note as specified above. However, the presiding judge may add such additional language as he/she deems appropriate to ensure justice, such as requiring bond, etc.
9. No Writ of Possession shall issue ex-parte. To secure such Writ, there must be a motion, a properly noticed hearing and an order secured from the Division Judge.
10. The Circuit may revise this Case Management Plan and the procedures set forth in the Exhibits, attached hereto, from time to time, as dictated by resources, efficiencies, and existing circumstances. The Circuit reserves the right to revise those changes to the Exhibits without the necessity of the reissuance of this Administrative Memorandum.
11. This Administrative Memorandum terminates Administrative Memorandum 13-C.

This Administrative Memorandum shall take effect on July 1, 2015 and shall remain in effect until further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this 20th day of June, 2015.

**JENNIFER D. BAILEY, ADMINISTRATIVE JUDGE
CIRCUIT CIVIL DIVISION**

EXHIBIT B

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 14-1
(Court Administration)**

**ADMINISTRATIVE ORDER
NO. 14-10**

**IN RE: ESTABLISHING PROCEDURES
FOR FILING AND RETRIEVING
ORIGINAL NOTES IN CONNECTION
WITH FORECLOSURE CASES**

WHEREAS, the Eleventh Judicial Circuit is in the process of transitioning to digital court filing; and

WHEREAS, many foreclosure cases wherein plaintiffs elected to voluntarily dismiss such cases have been re-filed; and

WHEREAS, consequently, in order to assure the availability of the original paper promissory notes ("Original Notes"), it has been deemed necessary to establish the procedures for filing and retrieving Original Notes;

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida, under Rule 2.215, Florida Rules of Judicial Administration, it is hereby **ORDERED** that parties in foreclosure cases shall comply with the following procedures:

1. In any currently pending foreclosure case, Plaintiff's counsel must immediately locate the Original Note. If the Original Note was filed in a court file, in either the current proceeding or in a previously filed and dismissed proceeding, Plaintiff's counsel shall execute the attached form and request the return of the Original Note by the Clerk of Courts. This obligation shall continue to operate prospectively for all future foreclosure cases.
2. Counsel shall not file Original Notes through the Clerk of the Courts. Original Notes must be tendered to the Court at trial or at summary judgment hearings.

3. The Clerk of the Courts shall return Original Notes pursuant to the requesting form in the following manner:
 - a. The requesting law firm must provide a correct copy of the Original Note to be substituted for the Original Note with the requesting form.
 - b. An individual lawyer must sign for receipt of the Original Note from the Clerk of the Courts and bar numbers shall be listed on the receipt.
 - c. A copy of the request and the signed receipt shall be scanned and filed into the court file by the Clerk of the Courts.
 - d. No court order shall be required to secure the return of the Original Note under this procedure. Plaintiff's counsel should not submit Orders Directing Return of the Original Note to division judges.
4. The requirement to retrieve Original Notes shall not apply to cases upon which a Final Judgment has been entered and sale has occurred.
5. If a Final Judgment is vacated by subsequent court order, Plaintiff's counsel shall take immediate steps to request the return of the Original Note pursuant to this procedure.
6. Plaintiffs and their attorneys are cautioned to attend to the well-established and long standing policies codified in Rule 2.430, Florida Rules of Judicial Administration, which provide for a five (5) year record retention period from the date of the original Final Order.
7. There is no procedure to screen or remove any documents from files that are subject to disposal under these procedures. It is the responsibility of parties and their lawyers to secure their documents, most importantly, Original Notes which may be the subject of re-filed litigation, pursuant to this Administrative Order prior to the scheduled disposition of the file.

This Administrative Order shall take effect on May 14, 2014 and shall remain in effect until further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this 14th day of May, 2014.

**BERTILA SOTO, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**

REQUEST FOR ORIGINAL NOTE:

Current Case No. _____

The Original Note was previously filed in: _____

___ **Prior Case No.** _____

___ **Current File:** _____

___ **Date of previous filing:** _____

The Note is requested:

___ to be in Court at _____ (location) on _____ (date set/time).

___ to be released to Plaintiff's firm.

Requesting law firm: _____

Requesting attorney: _____ **Bar No.** _____

Contact info: Email address: _____

Telephone No.: _____

Receipt upon delivery of note:

***This form may be hand-delivered to the court clerk, or clerk supervisor
Dorian Mathis in the clerk's office, (305)349-7413***

EXHIBIT A

Motions to Cancel/Reset Foreclosure Sale in Courtroom 3-3:

Contested motions to cancel sale shall be heard before the Foreclosure Master Calendar where the sale is imminent. If a sale is cancelled due to resolution of the case, the necessary motion should be brought to the division judge where possible before the sale date and should include the specific sale date for cancellation and dismissal of the case. If the sale is imminent or contested, the parties should seek cancellation by timely motion in Courtroom 3-3.

1. Motions to cancel must be filed with the Clerk of Courts and all parties/opposing counsel notified in writing of the intended hearing date, time and location. The Movant must bring a copy of the filed motion and the notice of hearing to the calendar. Parties who appear at the calendar without giving reasonable notice to all opposing parties will not be heard, and the Court will not undertake to contact counsel for Plaintiff or Defendants. A minimum of forty-eight (48) hours' notice by e-mail or fax is presumed reasonable notice for emergency hearings.
2. For purposes of this cancellation calendar, a genuine emergency is defined as a court ordered sale scheduled within the next five (5) days. Parties must show reasonable notice to all opposing parties including borrowers, condominium and homeowner's associations. There is no cap on the number of emergency motions which will be heard if they are properly before the court by meeting the above conditions including documentation requirements discussed herein.
3. Non-emergency motions to cancel sale will only be heard if the prerequisites discussed herein are met.
4. The motion for cancellation of sale must be supported by meritorious reasons which fully apprise the Court of the circumstances; and documentary evidence in support of the grounds must be provided. The 11th Circuit encourages the use of factual detail and precise language in the Motions to Cancel Sale presented to its judges. Motions lacking grounds/specificity will not be entitled to oral argument and will be ruled upon based upon the written motion. For example, motions to cancel sale due to short sale must attach copies of all short sale documentation which would be contracts, not listing agreements. Motions to cancel for loss mitigation must attach documentary proof that the case is in loss mitigation. Motions which require documentary evidence will not be heard if there is no documentary evidence attached to the written motion and sent to the opposing parties. Successive motions to cancel sale should address a new basis for cancellation which warrants another cancellation. Cases which have been cancelled before and which have been motions noted with "No Further Cancellation" language must demonstrate extraordinary good cause for cancellation.

5. All motions for cancellation of sale requiring a hearing will be handled on a walk-in basis if the above requirements are met. These hearings will be conducted in Courtroom 3-3 at 8:15 A.M. only. Registration for the walk-in calendar ends at 8:30 a.m. and no additional cases will be added to the calendar after that time.
6. All Orders on Motion to Cancel Sale shall utilize the form provided by the Court's website at www.jud11.flcourts.org unless otherwise determined by the Presiding Judge.
7. For voluntary dismissals, a packet including the motion, order to dismiss, vacate and cancel sale, together with the required final disposition form should be dropped off for later pick-up. The orders will be signed at conclusion of the calendar. If the sale is for the day of submission, please advise the case manager/bailiff and he/she will expedite same with the judge. No hearings are necessary on voluntary dismissals.

EXHIBIT C

FJUD

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI
DADE COUNTY, FLORIDA

Plaintiff

CIRCUIT CIVIL DIVISION

v.

CASE NO. _____

Defendant(s). _____

FINAL JUDGMENT OF FORECLOSURE

THIS ACTION was heard before the Court on Plaintiff's Motion for Summary Final Judgment on _____, 201_. On the evidence presented, **IT IS ORDERED AND ADJUDGED** that Plaintiff's Motion for Summary Judgment is **GRANTED** against all Defendants listed by name: _____.

1. Amounts Due and Owing. Plaintiff is due:

Principal due on the note secured by the mortgage foreclosed:	\$ _____
Interest on the note and mortgage from _____ to _____	\$ _____
Interest to date of this judgment	\$ _____
Title search expenses	\$ _____
Taxes for the year(s) of _____	\$ _____
Insurance premiums for the year(s) of _____	\$ _____
Attorneys' Fees Total	\$ _____
Court Costs, Now Taxed:	
Filing fee	\$ _____
Service of Process at \$ _____ per defendant(s)	\$ _____
Publication for _____	\$ _____
SUBTOTAL	\$ _____
Additional Costs:	\$ _____
SUBTOTAL	\$ _____
Less: Escrow Balance	\$ _____

Less: Other

\$ _____

GRAND TOTAL

\$ _____

2. **Interest.** The grand total amount referenced in Paragraph 1 shall bear interest from this date forward at the prevailing legal rate of interest, _____% a year.

3. **Lien on Property.** Plaintiff, whose address is _____, holds a lien for the grand total sum superior to all claims or estates of the defendant(s), on the following described property in Miami Dade County, Florida:

(LEGAL DESCRIPTION)

Property address: _____

4. **Sale of property.** If the grand total amount with interest at the rate described in Paragraph 2 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Courts shall sell the subject property at public sale. Pursuant to Administrative Order 09-18, the Clerk of the Courts for the Eleventh Judicial Circuit is authorized to conduct on-line public auctions of real property in lieu of on-site auctions. The Clerk of the Courts shall conduct the sale online at www.miamidade.realforeclose.com commencing at 9:00 A.M. on _____, 201__, to the highest bidder for cash.

5. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for documentary stamps affixed to the certificate of title. If plaintiff is the purchaser, the Clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

6. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiff's costs; second, documentary stamps affixed to the Certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.

7. **Right of Redemption/Right of Possession.** Upon filing of the Certificate of Sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Section 45.01315, Florida Statutes (2013) shall be terminated, except as to claims or rights under Chapter 718 or Chapter 720, Fla. Stat., if any. Upon filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property, subject to tenant protections in compliance with the provisions of Section 83.561, Fla. Stat. (2015).

8. **Attorneys' Fees.** If a default judgment has been entered against the mortgagor:

Because a default judgment has been entered against the mortgagor and because the fees requested do not exceed 3% of the principal amount owed at the time the complaint was filed, it is not necessary for the court to hold a hearing or adjudge the requested attorneys' fees to be reasonable.

If no default has been entered against the mortgagor:

The court finds, based upon the affidavits/testimony presented and upon reasonable inquiry of counsel for the plaintiff that _____ hours were reasonably expended by that plaintiff's counsel and that an hourly rate of \$ _____ is appropriate. Plaintiff's counsel represents that the attorneys' fee awarded does not exceed its contract fee with the plaintiff. The court finds that there is/are no reduction or enhancement factors for consideration by the court pursuant to *Florida Patients Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985). (If the court has found that there are reduction or enhancement factors to be applied, then reduction or enhancement factors must be identified and explained herein).

If the fees to be awarded are a flat fee:

The requested attorneys' fees are a flat rate fee that the firm's client has agreed to pay in this matter. Given the amount of the fee requested and the labor expended, the court finds that a lodestar analysis is not necessary and the at the flat fee is reasonable.

9. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, writs of possession and deficiency judgments.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

(If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type.)

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU

ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI , FLORIDA (TELEPHONE: (305) 375-5943), WITHIN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. FIRST AVENUE, SUITE 214, MIAMI, FLORIDA, (TELEPHONE: (305) 579-5733), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED in Chambers in Miami Dade County, Florida, this _____ day of _____, 201_.

Circuit Judge

Plaintiff shall serve all parties named on the service list
and "occupant" at property address

Revised 6/17/15