



Supreme Court of Florida

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February 16, 2010

Ms. Cheryle Dodd, Editor
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: In Re: Amendments to the Florida Rules of Civil Procedure
Case No. SC09-1460
In Re: Amendments to the Florida Rules of Civil Procedure -- Form
1.996 (Final Judgment of Foreclosure)
Case No. SC09-1579

Dear Ms. Dodd:

I have provided you with a copy of the proposed Rules in the above case. Please publish said Rules in the March 15, 2010, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location:
<http://www.floridasupremecourt.org/decisions/proposed.shtml>.

Any comments should be filed with the Supreme Court on or before April 12, 2010. The committee must file a response on or before May 3, 2010, to all comments filed. All comments must be filed in paper format and an electronic copy provided to the Court in accordance with AOSC04-84. An original and nine copies must be filed.

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Thank you for your cooperation in this matter.

Most cordially,

By: 
Deputy Clerk

Thomas D. Hall

TDH/vm
Enclosure

cc: Mark A. Romance, Chair, Civil Procedure Rules Committee
Honorable James E. C. Perry, Supreme Court Justice Liaison
Honorable Jesse H. Diner, President, The Florida Bar
Honorable Mayanne Downs, President-elect, The Florida Bar
John F. Harkness, Jr., Executive Director, The Florida Bar
Madelon Horwich, Bar Staff Liaison
Chief Judges of the District Court of Appeal
Clerks of the District Court of Appeal
Chief Judges of the Judicial Circuits
Clerks of the Judicial Circuits
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Joshua A. Glickman, Esquire
Kent R. Spuhler, Esquire
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Edward J. Grunewald, Esquire
Henry P. Trawick, Jr., Esquire
Janice M. Fleischer, Esquire
Honorable Jennifer D. Bailey
B. Elaine New, Esquire
Marc A. Ben-Ezra, Esquire
Lynn Drysdale, Esquire
Jeffrey Hearne, Esquire
Alice M. Vickers, Esquire
James R. Carr, Esquire
Ronald R. Wolfe, Esquire
Scott Manion, Esquire
Mr. Alejandro M. Sanchez
Janet E. Ferris, Esquire
Ms. Lisa Epstein
Virginia B. Townes, Esquire
Laura Rush, Esquire
Alan B. Bookman, Esquire

The Florida Supreme Court has adopted amendments to Florida Rule of Civil Procedure Form 1.996 (Final Judgment of Foreclosure). The amendments were proposed by the Civil Procedure Rules Committee in order to bring the form into conformity with current statutory provisions and requirements.

The Court invites all interested persons to comment on the amendments, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. An original and nine paper copies of all comments must be filed with the Court on or before April 12, 2010, with a certificate of service verifying that a copy has been served on the Committee Chair, Mark A. Romance, 201 S. Biscayne Blvd, Suite 1000, Miami, FL 33131-4327, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until May 3, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE, SC09-1460 & IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE – FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE), SC09-1579

FORM 1.996(a). FINAL JUDGMENT OF FORECLOSURE

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff,(name and address)....., is due as principal, \$..... as interest to date of this judgment, \$..... for title search expense, \$..... for taxes, \$..... for insurance premiums, \$..... for attorneys' fees, with \$..... for court costs now taxed, less \$..... for undisbursed escrow funds and less \$..... for unearned insurance premiums, under the note and mortgage sued on in this action, making a total sum of \$....., that shall bear interest at the rate of% a year.

Principal	\$.....
Interest to date of this judgment	.....
Title search expense	.....
Taxes	.....
Attorneys' fees	
Finding as to reasonable number of hours:	.....
Finding as to reasonable hourly rate:	.....
Attorneys' fees total	.....
Court costs, now taxed	.....
Other: .....	.....
Subtotal	\$.....
LESS: Escrow balance	.....
LESS: Other .....	.....
TOTAL	\$.....

that shall bear interest at the rate of% a year.

2. Plaintiff holds a lien for the total sum superior to ~~any~~ all claims or estates of defendant(s), ~~.....(name and address, and social security number if known).....~~, on the following described property in County, Florida:

(describe property)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on(date)....., ~~between 11:00 a.m. and 2:00 p.m.~~ to the highest bidder for cash, except as prescribed in paragraph 45, at the ~~..... door of the courthouse~~ in located at(street address of courthouse)..... in County in ~~.....(name of city).....~~, Florida, in accordance with section 45.031, Florida Statutes, using the following method (CHECK ONE):

At(location of sale at courthouse; e.g., north door)....., beginning at(time of sale)..... on the prescribed date.

By electronic sale beginning at(time of sale)..... on the prescribed date at(website).....

4. 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 the documentary stamps payable on 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.

5. 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 plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

6. On filing the certificate of ~~title~~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 ~~and the purchaser at the sale~~, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

7. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, ~~writs of possession and a~~ deficiency judgment.

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 LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 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, (INSERT INFORMATION FOR APPLICABLE COURT) 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 (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) 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 (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at, Florida, on(date).....

Judge

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Florida Statutes; *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla. 4th DCA 1998). ~~The address and social security number (if known) of each person against whom the judgment is rendered must be included in the judgment, pursuant to section 55.01(2), Florida Statutes.~~

Committee Notes

1980 Amendment. The reference to writs of assistance in paragraph 7 is changed to writs of possession to comply with the consolidation of the 2 writs.

2010 Amendment. Mandatory statements of the mortgagee/property owner's rights are included as required by the 2006 amendment to section 45.031, Florida Statutes. Changes are also made based on 2008 amendments to section 45.031, Florida Statutes, permitting courts to order sale by electronic means.

Additional changes were made to bring the form into compliance with chapters 718 and 720 and section 45.0315, Florida Statutes, and to better align the form with existing practices of clerks and practitioners. The breakdown of the amounts due is now set out in column format to simplify calculations. The requirement that the form include the address and social security number of all defendants was eliminated to protect the privacy interests of those defendants and

in recognition of the fact that this form of judgment does not create a personal final money judgment against the defendant borrower, but rather an in rem judgment against the property. The address and social security number of the defendant borrower should be included in any deficiency judgment later obtained against the defendant borrower.