



Summary of Florida's Residential Mortgage Foreclosure Process

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This article provides a brief overview of residential foreclosure procedure in Florida. It is a complicated judicial process that requires technical compliance with statutory law, procedural rules and administrative orders. Care must be taken to protect and preserve legal rights. For this reason, homeowners facing foreclosure should not delay in seeking the advice of an attorney.

Before filing a foreclosure action, the mortgage holder (often a bank) will likely send the borrower a demand letter. The demand letter informs the borrower that sums are owed, payment is delinquent, and the debt is accelerated. This is a signal that legal proceedings are about to begin.

The next step in the process is the filing of the lawsuit. It will be filed in the county where the property lies. The bank files a document, called a Complaint, with the Clerk of Court and simultaneously records a notice of *Lis Pendens* in the public records. The Complaint sets forth all of the facts that give the bank the right to foreclosure. A copy of the Complaint, together with a Summons, which commands a response from the recipient, will be served on the homeowner and any other person or entity that has a legal interest in the property. If the bank does not know the whereabouts of the homeowner, it may perfect service constructively utilizing another means (*e.g.*, newspaper publication).

Those served with a Complaint have 20 days to file a written response. The response is usually in the form of an Answer wherein the responding party admits or denies every allegation in the complaint and lists all legal defenses to the action. But if additional time is needed or if there is a technical problem with the Complaint, a response can be in the form of a motion. Simply stated, a motion is a formal request for court action. In every event, the response must be filed with the Clerk of Court within 20 days from the date of service.

Any party filing a motion must schedule a hearing with the judge. At the hearing, the judge will listen to arguments in support of and in opposition to the motion before granting or denying the request. The decision of the court will be set forth in an order. If the motion to dismiss is denied or a request for extension of time is granted, the order will instruct the homeowner to file an Answer by a specified date. Note that a motion for extension of time does not extend the 20 day deadline unless it is granted.

When a homeowner files a timely response the matter is contested and will be referred to mediation. (Foreclosure mediation will be discussed in a separate article.) Conversely, a homeowner who fails to respond in a timely manner will be in default. When a default is entered, the bank proceeds without further involvement of the defaulted party. It must still however establish its right to foreclose through presentation of evidence. If the judge finds that the evidence presented by the bank establishes its right to foreclose, he/she will enter a final judgment of foreclosure. A copy of the judgment will be sent to the homeowner.

The final judgment identifies all amounts owed, including attorney's fees and court costs, and sets the date for judicial sale. After the sale, the clerk issues a certificate of sale, and subsequently, a certificate of title. When that occurs, the purchaser (often the bank) has the legal right of possession and may obtain assistance from the sheriff to remove any occupants from the premises.

Historically, foreclosures were mostly uncontested matters that took about nine months to complete from the date of filing through judicial sale. But in today's reality of overburdened courts, limited judicial resources, allegations of falsified documentation and overwhelming demand, the process may take much longer. In every event, homeowners should understand that the process is fluid and ever changing. Things can and do happen in foreclosure matters that alter the course of the proceedings; and a judicial sale can be set aside when the lender has failed to comply with the requirements of law.

This article is one of a series authored by members of the Collier County Foreclosure Task Force, a grass roots pro bono initiative launched in 2008 by Legal Aid Service of Collier County and the Collier County Bar Association. The Foreclosure Task Force (FTF) was formed to promote foreclosure prevention through education and intervention. The FTF has assisted local homeowners through free public workshops and legal clinics, and via a website it created - www.collierFTF.com.