

| Done | Checklist   | Notes |
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|      | <b>I. LIS PENDENS</b>   |       |
|      | <p>A. <i>Prior to July 1, 2009</i>, Must contain...</p> <p>F.S.§48.23(1)(a)</p> <ol style="list-style-type: none"> <li>1. Names of the parties,</li> <li>2. <i>Time</i> of institution of the action</li> <li>3. Name of the court in which it is pending</li> <li>4. Description of the property involved or to be affected, (consistent with deed, mortgage)</li> <li>5. Statement of the relief sought as to the property, (sufficient if in underlying complaint)</li> </ol> <p>-Must be recorded in the public records where deeds, encumbrances are recorded, not just in the pleading file in the Circuit Civil section of the Clerk of Court (Note, however, that in Broward County, it must be recorded in the Official Records division, and in Orange County, with the Comptroller)</p>  |       |
|      | <ol style="list-style-type: none"> <li>6. Effect / Duration</li> </ol> <p>F.S. §48.23(1)(b)</p> <ol style="list-style-type: none"> <li>a. “shall constitute a bar to the enforcement against the property described in said notice of lis pendens of all interests and liens including but not limited to federal tax liens and levies, unrecorded at the time of filing for record such notice of lis pendens unless the holder of any such unrecorded interest or lien shall intervene in such proceedings <u>within 20 days</u> after the filing and recording of said notice of lis pendens.”</li> <li>b. Certain “super” interests not wiped out, survive foreclosure, exception needs to be made for them in policy after issuance of certificate of title, e.g., interest of un-named spouse in homestead, service members on active duty; Code Enforcement Board Liens; Condo &amp; HOA assessments. (<i>See below</i>)</li> <li>c. Expires in one year if no action filed thereon</li> </ol> |       |
|      | <p>B. <i>On and after July 1, 2009</i>, Must contain...</p> <p>F.S. §48.23(1)(c) [See #2009-39]</p> <ol style="list-style-type: none"> <li>1. Names of the parties.</li> <li>2. Date of the institution of the action, the date of the clerk’s electronic receipt, or the case number of the action.</li> <li>3. Name of the court in which it is pending.</li> <li>4. Description of the property involved or to be affected.</li> <li>5. Statement of the relief sought as to the property.</li> </ol>  |       |

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|      | <p>6. Effect / Duration</p> <ul style="list-style-type: none"> <li>a. “constitutes a bar to the enforcement against the property described in the notice of all interests and liens including but not limited to federal tax liens and levies, unrecorded at the time of the recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings <u>within 30 days</u> after the recording of said notice....”</li> <li>b. Certain “super” interests not wiped out, survive foreclosure, exception needs to be made for them in policy after issuance of certificate of title, e.g., interest of un-named spouse in homestead, service members on active duty; Code Enforcement Board Liens; Condo &amp; HOA assessments. (<i>See below</i>)</li> <li>c. Expires in one year if no action filed thereon</li> </ul> |       |
|      | <p><b>II. COMPLAINT - Substance</b></p>  |       |
|      | <p>A. Must state type of action it is<br/> Fla. R. Civ. P. 1.944<br/> (e.g. Action to foreclose mortgage; Action on Note; Action to Establish Lost or Destroyed Note)</p>  |       |
|      | <p>B. Must allege details regarding execution and delivery of note and mortgage, and recording of mortgage<br/> (copies of note, mortgage, assignments to be attached to complaint).</p>   |       |
|      | <p>C. Note &amp; Mortgage:</p> <ul style="list-style-type: none"> <li>1. If Plaintiff possesses, ... <ul style="list-style-type: none"> <li>a. Plaintiff must allege present ownership;</li> <li>b. Must be filed in the foreclosure;</li> <li>c. Must be surrendered at or by time of final judgment;</li> <li>d. Failure to file or surrender is grounds for vacating foreclosure judgment <i>Pastore-Borroto Dev. Inc. v. Marevista Apartments</i>, 596 So.2d 526 (Fla. 3rd DCA 1992).</li> </ul> </li> </ul>   |       |
|      | <ul style="list-style-type: none"> <li>2. Lost Note or Mortgage <ul style="list-style-type: none"> <li>a. Must assert separate count to establish lost or destroyed note [See F.S. §673.3091, and F.S. §71.011. See, also, “Dealing with Lost Mortgage Notes,” 37 <i>Fund Concept</i> 23 (Mar. 2005)</li> <li>b. Payor/Mortgage has right to seek “adequate protection” from court against claim by another person to enforce the same instrument. F.S. §673.3091(2)</li> </ul> </li> </ul>  |       |

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|      | <p>D. Must contain a good legal description; Otherwise, foreclosure may be defective, need to be filed anew.<br/> See, e.g., <i>Lucas v. Barnett Bank of Lee County</i>, 705 So.2d 115 (Fla. 2nd DCA 1998); "<i>Defective Legal Descriptions in Foreclosures</i>", 23 Fund Concept 25 (March, 1991). See TN 12.07.07</p>  |       |
|      | <p>E. Must allege details of default; plead ultimate facts showing entitlement to relief</p>  |       |
|      | <p>F. Must state that amounts due have been accelerated, either prior to initiation of action, or by filing the action</p>  |       |
|      | <p>G. Must allege what is due, and from what date</p> <ol style="list-style-type: none"> <li>1. Before June 1, 2009: <ol style="list-style-type: none"> <li>a. Include principal, interest, costs, and fees, including attorneys fees, (if entitled to them under note or mortgage) taxes, insurance premiums, etc.</li> </ol> </li> <li>2. On and after June 1, 2009: <ol style="list-style-type: none"> <li>a. Must include statement valuing the amount of the claim. Claim to include principal due on the note; interest; funds advanced for property taxes, insurance, and other advances secured by the mortgage; and value of any tax certificates. F.S.§28.241(1)(a)2b, c. [Session Law #2009-61]</li> </ol> </li> </ol> |       |
|      | <p>H. Must be verified as follows (as of February 11, 2010):<br/> <i>“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.”</i><br/> [See Fla. R. Civ. P. 1.110(b) , and <i>In re Amendments</i>, 44 So.3d 555 (Fla 2010)</p>   |       |
|      | <p><b>III. COMPLAINT - Parties</b></p>  |       |
|      | <p>A. Complaint must accurately name and join parties to the note and mortgage (and guarantors, if any); fee simple owner of the property; holders of legal and equitable title/interests in the property. (<i>The following is a non-exclusive list</i>)</p>   |       |

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|      | <p>1. Maker/Payor of the Note, and assignees of the Note [See, e.g., “lien follows note” rule TN22.01.02; <i>Foster v. Foster</i>, 703 So.2d 1107 (Fla. 2d DCA 1997)]</p>  |       |
|      | <p>2. Defendant/Owner/Payor/Mortgagor, and state that Defendant has possession of the property</p>   |       |
|      | <p>3. Mortgagor’s Spouse</p> <ul style="list-style-type: none"> <li>a. A mortgage signed by a single person can be foreclosed against such person alone without joinder of a <i>subsequent</i> spouse.</li> <li>b. A mortgage signed by a married person alone owning the real property alone or with a spouse must be foreclosed with joinder of the spouse and allegations of non-homestead and/or spousal consent made. See <i>Pitts v. Pastore</i> 561 So. 2d 297 (Fla. 2ndDCA 1989).</li> <li>c. If spouse named on mortgage, then name personally in complaint, serve personally<br/>See, e.g. <i>Sudhoff v. Federal Nat. Mortg. Ass’n</i>, 942 So.2d 425, (Fla. 5<sup>th</sup> DCA 2006)</li> </ul> |       |
|      | <p>4. Assignees of the mortgagee/collateral assignee [See TN 22.02.03]</p>   |       |
|      | <p>5. Other parties who are in possession of the property, by through or under the Defendant/Mortgagor<br/>[Otherwise, may have to bring eviction action after obtaining certificate of title if there are occupants other than the persons named in the complaint on the property]<br/>[Note: Some clerks of courts (e.g. Alachua County) have interpreted the statutes, or have local administrative rules prohibiting the use of “John Doe”, or “unknown occupants in possession”, as placeholders for occupants in actions. In such case, the identity of the occupants must be determined, and they are to be named.]</p>   |       |
|      | <p>6. Tenants:</p> <ul style="list-style-type: none"> <li>a. federally related mortgage loan on property, then “immediate successor” in interest must give 90 days notice to tenant to vacate;</li> <li>b. After foreclosure, tenant may stay until end of lease, except “immediate successor” may terminate lease/tenancy as of date of sale to third party who will occupy unit as primary residence, provided 90 days notice given. <i>“Protecting Tenants At Foreclosure Act of 2009”</i>, effective May 20, 2009 (U.S. Public Law #111-22)</li> </ul>   |       |

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|      | <p>7. Known defendants without known addresses, and unknown defendants claiming under them.<br/> [See TN 12.06.01; 12.07.04; 12.07.10; 12.08.01]</p> <p>a. Use procedure in F.S. § 49.021, 49.071, 49.08(1) for actions against named defendants, if living, and if dead, their unknown heirs, devisees and other claimants.</p> <p>b. May need to appoint..<br/> (1) guardian ad litem for incompetents, unknown defendants' interests;<br/> (2) administrator ad litem for decedents;<br/> (3) attorney ad litem for those in military service<br/> [See TN 12.08.01]</p> |       |
|      | <p>8. Unknown defendants with unknown addresses, and any unknown claimants under them.<br/> [See TN 12.06.02; 12.06.04]</p>   |       |
|      | <p>9. MERS: Name MERS, and the party for which MERS is the nominee</p>  |       |
|      | <p>10. Guarantors (if any)</p>  |       |
|      | <p>11. Interests of the State of Florida, if any, are to be listed and plead specifically [F.S.§69.041]</p>   |       |
|      | <p>12. Interests of the federal government, if any, are to be listed and plead specifically<br/> [28 U.S.C. 2410 (b); TN 12.06.03 as to U.S. as a defendant]</p>  |       |
|      | <p>13. Un-Natural Persons (who may be parties to the note and mortgage)</p>   |       |
|      | <p>a. Corporations:<br/> (1) If current, name corporation, serve pursuant to F.S.§48.081<br/> (2) If dissolved prior to July, 1990, name the last Board of Directors as Trustees of the dissolved corporation. See TN 12.07.02; F.S. §48.101<br/> (3) If dissolved on or after July 1, 1990, name the dissolved corporation directly and serve as if corporation is still active. [See TN 12.07.02; F.S. §48.101; F.S. §48.081]</p>   |       |

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|      | <p>b. General Partnership:</p> <p>(1) Join partnership in own name, serve any general partner [F.S. §620.8307(1)]</p> <p>(2) If title is in the partnership, and judgment is against a partner, then join the partnership in its own, name all general partners, and serve any general partner.</p>  |       |
|      | <p>c. Limited Partnership:</p> <p>(1) If current, join partnership in own name; serve any general partner [See, generally, F.S. §620.1404-1405]</p> <p>(2) If dissolved, join partnership in own name, service upon agent listed in its certificate.</p>   |       |
|      | <p>d. Limited Liability Company (LLC)</p> <p>(1) Name LLC; serve agent</p>   |       |
|      | <p>e. Trusts</p> <p>(1) Land Trusts under F.S. §689.071; Name trustee</p> <p>(2) Named Trusts: Name trustee and beneficiaries [See TN 22.02.16]</p>  |       |
|      | <p><b>B. Subordinate Interests:</b> All parties holding subordinate interests must be joined. The following is a nonexclusive list of subordinate interests which may be encountered:</p> <p>[In the pleading, identify or name the interest, give its date, and state the particulars of recordation, and state the interest is junior, subordinate, and inferior, if that be the case.</p> <p>Example: <i>“Sub-Prime lender Big Bank may claim some interest in the property being foreclosed by virtue of that mortgage recorded on _____, at Official Records Book _____, pages _____ in the public records of _____, Florida, (herein “Mortgage #2), but such Mortgage #2 and interest is junior, subordinate, and inferior to the interest of the Plaintiff being foreclosed”. ]</i></p> |       |
|      | <p>1. Junior Mortgage</p>  |       |
|      | <p>2. State Court Judgments Recorded Before lis pendens:</p> <p>a. Uncertified Judgments: Not a lien, can omit, if more than one year old, and under \$3 million.</p> <p>[See <i>Fund Concept</i>, April 2008]</p>   |       |

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|      | <ul style="list-style-type: none"> <li>b. Certified judgments, with creditors' address, conforming to F.S. §55.10,<br/>Lien on property, must name, join</li> <li>c. Entirety Property, and Judgment Against One Spouse<br/>-continuous marriage presumed, judgment may be omitted, <i>provided</i> nothing puts one on notice that dissolution may have occurred. [See TN 20.01.01]; (Fla. Stat. §689.15; <i>General Properties Corp. v. Gore</i>, 14 So.2d 411, (Fla. 1943); 25 FLA. JUR. 2d, Family Law, sec. 46; and Title Standard 6.6<br/><i>See, work through Knox's Judgment Lien paradigm for individual liens</i></li> </ul>   |       |
|      | <ul style="list-style-type: none"> <li>3. Federal Tax Lien before lis pendens: <ul style="list-style-type: none"> <li>a. attaches to homestead property; must name, join in foreclosure<br/>See TN 30.02.01</li> <li>b. subordinate to purchase money mortgage<br/>See TN 30.02.06<br/>Name, join such interest in the foreclosure</li> <li>c. Federal Tax Lien against <i>one</i> spouse's interest in entirety property attaches to that interest; Name, join such interest in the foreclosure. See <i>United States v. Craft</i>, 122 S. Ct. 1414 (2002). See TN 30.02.07</li> </ul> </li> </ul>  |       |
|      | <ul style="list-style-type: none"> <li>4. Judgment Lien by U.S.: <ul style="list-style-type: none"> <li>a. Has priority over any other liens, including purchase money mortgage liens, or an encumbrance which is perfected later in time.<br/>See 28 U.S.C., Sec. 3201 (b). See TN 18.04.01</li> <li>b. May not be enforced against real property co-owned by a debtor and any other person to the extent allowed by the laws of the state where the property is located. See 28 U.S.C., Sec. 3010(a) and TN 18.03.04.</li> <li>c. Acquired by U.S. <i>after</i> the filing and recording of the lis pendens and <i>before</i> the certificate of sale, may not be eliminated by a previously filed and recorded lis pendens. See <i>United States v. Dansby</i>, 509 F. Supp 188 (1981)</li> <li>d. Automatically a lien for 20 years; may be renewed for an additional 20 years upon filing notice of a renewal; Commences from date of filing. [See 28 U.S.C., 3201 (c); TN 18.03.04]<br/>Recovery governed by The Federal Debt Collection Procedures Act of 1991, 28 U.S.C., Ch. 176, Secs. 3001 et seq.</li> </ul> </li> </ul> |       |
|      | <ul style="list-style-type: none"> <li>5. Condominium Assessments/Liens <ul style="list-style-type: none"> <li>a. General Rule: Assessments survive foreclosure, are to be paid</li> <li>b. Exceptions:</li> </ul> </li> </ul>   |       |

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|      | <p>(1) On and after July 1, 2010, foreclosure is by 1<sup>st</sup> mortgagee, or assignee, and association is named in the action, <i>then...</i></p> <p>(a) 1<sup>st</sup> mortgagee or assignee only pays 12 months of association dues accrued immediately preceding acquisition of title <i>OR</i> 1% original mortgage debt, whichever is less. Assignee of the mortgage <i>judgment</i> does <i>not</i> receive the benefit of the limitation.<br/>See F.S. §718.116(1)(b), and TN 8.05.02 and 22.02.15.</p> <p>(b) Prior owner to the foreclosing 1<sup>st</sup> mortgagee, and subsequent purchaser from foreclosing 1<sup>st</sup> mortgagee, jointly and severally liable for amounts not paid by 1<sup>st</sup> mortgagee, accruing prior to foreclosure.<br/>See F.S. §718.116(1)(a)</p> <p>(2) Prior to July 1, 2010, Foreclosure is by 1<sup>st</sup> mortgagee, or assignee, and association is named in the action, <i>then...</i></p> <p>(a) 1<sup>st</sup> mortgage or assignee only pays 6 months of association dues accrued immediately preceding acquisition of title <i>OR</i> 1% original mortgage debt, whichever is less. Assignee of the mortgage <i>judgment</i> does <i>not</i> receive the benefit of the limitation.<br/>See F.S. §718.116(1)(b), and TN 8.05.02 and 22.02.15.</p> <p>(b) Prior owner to the foreclosing 1<sup>st</sup> mortgagee, and subsequent purchaser from foreclosing 1<sup>st</sup> mortgagee, jointly and severally liable for amounts not paid by 1<sup>st</sup> mortgagee, accruing prior to foreclosure.<br/>See F.S. §718.116(1)(a)</p> <p>(3) 1st mortgage recorded prior to April 1, 1992 and condominium declaration did <i>not</i> incorporate by reference future amendments to Ch 718, then mortgagee is presumably not liable for assessments which accrued prior to its acquisition of title.<br/>See F.S. §718.116(1) (e).</p> <p>c. <i>Estoppel Letters - CAUTION:</i><br/>Condominium associations often believe they may collect the balance of the pre-foreclosure, delinquent assessments (which exceeds the 12 months for which the qualified first mortgagee is liable) from the subsequent purchaser from such mortgagee. (See, for example, TN 8.05.02 and.03 and TN 22.02.15) Care must be taken that accurate estoppel letters are obtained from the association, and that the terms thereof are complied with.</p> |       |
|      | <p>6. Homeowners association assessment lien</p> <p>a. General Rule: Assessments survive foreclosure, are to be paid</p> <p>b. Exceptions:</p> <p>(1) Foreclosure is by 1<sup>st</sup> mortgagee, or assignee, and association that is owed the assessments is named in the action, <i>then...</i></p> <p>(a) 1<sup>st</sup> mortgage or assignee only pays 1 year of association dues accrued immediately preceding acquisition of title <i>OR</i> 1%</p>  |       |



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|      | <p>original mortgage debt, whichever is less.<br/> Third party purchaser, assignee of the mortgage <i>judgment</i>, do <i>not</i> receive the benefit of the limitation. See F.S. § 720.3085 (2) (c), and TN 8.05.02 and 22.02.15.</p> <p>(b) Prior owner to the foreclosing 1<sup>st</sup> mortgagee, and subsequent purchaser from foreclosing 1<sup>st</sup> mortgagee, jointly and severally liable for amounts not paid by 1<sup>st</sup> mortgagee, accruing prior to foreclosure See F.S. §720.3085 (2) (b).</p> <p>c. <i>Estoppel Letters - CAUTION:</i><br/> Homeowner associations often believe they may collect the balance of the pre-foreclosure, delinquent assessments (which exceeds the 12 months for which the qualified first mortgagee is liable) from the subsequent purchaser from such mortgagee. (See, for example, TN 8.05.02 and.03 and TN 22.02.15) Care must be taken that accurate estoppel letters are obtained from the association, and that the terms thereof are complied with.</p> |       |
|      | <p>7. Code Enforcement Board Liens</p> <p>a. Code Enforcement Board Lien attaches to all property the offending party owns in the county, even if violation involved other property</p> <p>b. If local Code Enforcement Board has passed local ordinance to give its liens super priority,<br/> <i>Then</i>, CEB lien has status like ad valorem taxes; not wiped out in foreclosure;<br/> it must be released by secretary of respective board upon compliance, irrespective of whether it is filed before or after lis pendens</p>   |       |

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|  | <p>c. If Code Enforcement Board Lien does <i>not</i> have super priority, <i>and...</i></p> <p>(1). is recorded <i>before</i> lis pendens, then it <i>may</i> be wiped out, <i>provided that...</i></p> <p style="padding-left: 40px;">(a) the Code Enforcement Board was named in the foreclosure;</p> <p style="padding-left: 40px;">(b) Court makes finding that the CEB lien is subordinate to the lien of the foreclosing plaintiff;</p> <p style="padding-left: 40px;">(c) Exception still must be made for ongoing accrual of fine, if violation or non-compliance which led to the CEB lien has not been eliminated or rectified. See TN 18.06.02</p> <p>(2) is recorded <i>after</i> lis pendens, then...</p> <p style="padding-left: 40px;">(a) CEB does not attach, property may be insured, but</p> <p style="padding-left: 40px;">(b) Exception still must be made for ongoing accrual of fine, if violation or non-compliance which led to the CEB lien has not been eliminated or rectified. See TN 18.06.02"</p> |       |
|  | <p>8. Construction Lien:</p> <p>a. Notice of Commencement and Lien filed and recorded after Lis Pendens: Foreclosure wipes out, no need to join, unless the construction lienor intervenes within <u>20</u> days after recordation of the lis pendens for matters filed prior to July 1, 2009; <u>30</u> days for matters filed on and after July 1, 2009.<br/>See TN 12.05.04</p> <p>b. Construction lien not more than one year old and recorded before the lis pendens, then lien is effective, lienor needs to be joined;</p>  |       |
| <p><b>IV. Fair Debt Collection Practices Act (FDCPA)</b></p> |  |       |
|  | <p>A. If “initial communication” with debtor is <i>before</i> suit filed and no FDCPA notice had been furnished, then need to furnish debtor’s 30 day debt notice prescribed by 15 USC Ch. 41, §1692g, with the suit, and summons longer than 30 days.</p> <p>B. If there was no “initial communication” with debtor before suit is filed, and the initial complaint is the “initial communication”, then no separate 30 day notice is necessary with the complaint [15 USC Ch. 41, §1692g(d)], and summons may be 20 days.</p>  |       |

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|      | <b>V. Process</b>  |       |
|      | <p>A. <u>Summons:</u><br/>           See, generally, F.S. ch 48; Fla. R. Civ. P. 1.901, 1.902 (forms); TN 12.07</p> <p>1. 20 days for natural person. Fla. R. Civ. P. 1.140(a)<br/>           May, but do not have to obtain summons for more than 30 days under FDCPA, if Complaint is the “initial communication” with the mortgagor/debtor</p>  |       |
|      | <p>2. 40 days for State of Florida<br/>           Affidavit of compliance with return/receipt must be in court file<br/>           F.S. §48.121</p>  |       |
|      | <p>3. 60 days for U.S.<br/>           Affidavit of compliance with return/receipt must be in court file<br/>           28 U.S.C. §2410(b) See TN 22.02.08</p>  |       |
|      | <b>VI. Personal Service of Process</b>   |       |
|      | <p>A. Personal Service required if:<br/>           1. Mortgagors are named, are in state, and their residence is known;</p>  |       |
|      | <p>2. Husband and Wife are both named in mortgage<br/>           See <i>FNMA v. Sudhoff</i>, 94 So.2d 425, (Fla. 5th DCA 2006 )</p>  |       |
|      | <p>3. Mortgagors are out of state, with known residence (other than foreign mortgagors)<br/>           a. Serve personally in compliance with F.S. §48.194 (1) TN 12.07.10<br/>           b. <i>If</i> action is “in rem” or “quasi in rem” <i>only</i>, and jurisdiction is sought for foreclosure <i>only</i>, may serve with registered mail, pursuant to F.S. §48.194(2) TN 12.07.10<br/>           c.</p> |       |
|      | <p>4. Out of State Junior Lienors:<br/>           Service by registered mail for jurisdiction for in rem, foreclosure <i>only</i>, pursuant to F.S. §48.194; Subject to Florida jurisdiction under F.S. §48.193.</p>   |       |

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|      | <p>5. <u>Time of service</u> must be noted on the Return of Service of Process; otherwise service is defective.<br/>           See <i>Kwong v. Countrywide</i>, ___ So.3d ____, 2011 WL 309581 (Fla. 4<sup>th</sup> DCA 2011).</p>   |       |
|      | <p><b>VII. Constructive Service of Process (Chapter 49)</b></p>  |       |
|      | <p>A. Constructive Service F.S. ch.49<br/>           1. Allowed...<br/>               a. in cases itemized in F.S. §49.011, and<br/>               b. “where personal service of process or, if appropriate, service of process under s. 48.194 <i>cannot be had</i>” F.S. §49,021</p>   |       |
|      | <p>2. “Sworn Statement” /Affidavit of Diligent Search<br/>           TN 12.07.09<br/>               a. Must be filed as condition precedent to obtaining constructive service<br/>               F.S. §49.031<br/>               b. Contents of “Sworn Affidavit” F.S. §49.041, 051, and .061; See<br/>               Fla. R. Civ P. form #1.924, (Effective February 11, 2010.)<br/>               c. If parties are unknown, must comply with F.S. §49.071<br/>               d.</p>   |       |
|      | <p>3. Notice of Action:<br/>               a. Contents: F.S. §49.08<br/>                   (1) properly name parties; if “unknown defendants who claim by, through, under or against a known party”, must be described as set forth in statute.<br/>                   (2) nature of action;<br/>                   (3) name of court;<br/>                   (4) proper legal description TN. 12.07.07<br/>               b. issued by Clerk or Judge within 60 days of filing of “Sworn Statement”<br/>               c. published once during each week for 2 consecutive weeks Fla. Stat. §49.10(1)(c).<br/>               d. Proof of Publication (affidavit) must be filed TN 12.07.05<br/>               e. Date of mailing Notice of Action must be noted on the docket.<br/>               F.S. §49.12<br/>               f. “Return Date”/Defendant’s time to respond: 30 days after the first publication F.S. §49.09</p> |       |
|      | <p>4. Unknown Parties, or Unknown Residences of Known Parties, then...<br/>               a. guardian ad litem for incompetents, unknown defendants’ interests;<br/>               b. administrator ad litem for decedents;<br/>               c. attorney ad litem for those in military service. TN 12.08.01</p>   |       |

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|      | <b>VIII. Final Judgment</b>   |       |
|      | A. Parties properly named.  |       |
|      | B. Contains proper legal description.   |       |
|      | C. Directs that property be sold not less than 20 days nor more than 35 days after the date of the judgment, unless longer time consented to by plaintiff. F.S. §45.031(1)(a).                              |       |
|      | D. Finds plaintiff's lien superior to other interests named.  |       |
|      | E. Finds that on filing certificate of title, defendant and all persons claiming under or against defendant are foreclosed.   |       |
|      | F. On and after July 1, 2006, contains notice to homeowner and subordinate lienholder of right to claim surplus, if any, from registry of court, post sale. F.S. §45.031.                                   |       |
|      | G. On and after June 1, 2009, the court shall identify the actual value of the claim in the final judgment  |       |
|      | H. Must await the appeal period of 30 days from date of final judgment before foreclosure is final.   |       |
|      | <b>IX. Judicial Sales Procedure F.S. §45.031</b>  |       |
|      | A. Notice of sale published once a week for two consecutive weeks and second publication must be at least five days before sale. F.S. 45.031(2).  |       |
|      | B. Electronic On-Line Sales<br>If foreclosure sale is to be "on-line", final judgment must specify that the sale will be "on line"<br>(See Fla. R. Civ. P. form #1.996(a), "Final Judgment of Foreclosure") |       |
|      | C. Certificate of Sale to be filed "promptly" by the Clerk, and served on each party, after the sale. See F.S. 45.031(4) for form.  |       |

| Done | Checklist   | Notes |
|------|---|-------|
|      | D. Certificate of Title by to be filed by Clerk 10 days after the filing of the certificate of sale if no objections filed, and then served on all parties. See F.S. 45.031(5) for form.  |       |
|      | E. Certificate of disbursements filed on the filing of the certificate of title and disbursement of funds. See F.S. §45.031(7) for form.  |       |
|      | <b>X. Redemption</b>  |       |
|      | <p>A. Owner / Subordinate Interest:</p> <ol style="list-style-type: none"> <li>1. Prior to October 1, 1993: Mortgagor, but not lienor, can redeem at any time prior to filing of certificate of title.</li> <li>2. On and after October 1, 1993: Mortgagor or the holder of any subordinated interest may cure the indebtedness by making payment prior to filing of certificate of sale, <i>or</i> a time set in the final judgment, <i>whichever is later</i>. F.S. §45.0315. TN 22.02.04</li> </ol>  |       |
|      | <p>B. United States</p> <ol style="list-style-type: none"> <li>1. Tax Lien: U.S. has 120 days from filing of certificate title to redeem. 28 U.S.C. Sec. 2410 (c). TN 22.02.07</li> <li>2. Any other lien: U.S. has one year from filing of certificate of title to redeem. 28 U.S.C. Sec. 2410 (c).</li> </ol>   |       |
|      | C. Effect: Title reverts to status before institution of foreclosure.   |       |
|      | <p>D. Loans under the Farm Credit Act of 1971 - The Agricultural Credit Act of 1987 / Agricultural Credit Association (ACA) loans / 12 U.S.C.A. § 2219a:</p> <ol style="list-style-type: none"> <li>1. Former Owner has right of first refusal to re-purchase or lease the property following a foreclosure and a deed-in-lieu.</li> <li>2. Within 15 days after agricultural credit institution first elects to sell some or all of the acquired real estate, institution shall notify the Former Owner by certified mail of the Former Owner's right to re-purchase or lease the property</li> <li>3. Former Owner has 30 days thereafter to respond, indicating whether will re-purchase or re-lease the property, or to allow property to conveyed to third party.</li> </ol> |       |

| Done | Checklist  | Notes |
|------|--|-------|
|      | <b>XI. Special Concerns</b>  |       |
|      | A. Omitted Lienor: Successful bidder must reforeclose; separate sale may not be necessary. See <i>Quinn Plumbing Co. v. New Miami Shores Corporation</i> , 129 So.690 (Fla. 1930), and 73 A.L.R. 600; TN 22.02.13  |       |
|      | B. Parallel Foreclosure: If any parallel foreclosure is instituted by a junior lienor, purchaser at such parallel foreclosure, whether instituted before or after the filing of the lis pendens in the mortgage foreclosure, takes subject to the interests of the senior lienor.  |       |
|      | C. Owner's Death: If the owner of the property dies during the pendency of the foreclosure and prior to the final judgment, a suitable representative or successor of the owner must be joined in the proceedings, i.e.,<br>1. beneficiaries and personal representative, or<br>2. guardian to represent heirs, devisees, unknown persons, See TN 12.07.04   |       |
|      | D. Purchase by co-tenant: If the co-tenant of the mortgagor buys at the foreclosure sale, the other co-tenant not named in the certificate of title also acquires an interest in the property. The purchase by the mortgagor revives all junior encumbrances and liens. TN 22.02.01, 02, and 05  |       |
|      | E. Service Members / Service Members Relief Act<br>1. Foreclosure may not be valid "if made during, or within 9 months after the period of the servicemember's military service...";<br>2. Motion to Set Aside Foreclosure:<br>a. Prior to and on December 31, 2010, returning servicemember has 9 months after discharge to move to set aside foreclosure; 50 USC app § 533<br>b. After December 31, 2010, returning servicemember has 90 day after discharge to move to set aside foreclosure; 50 USC app § 533<br>3. Applies to Mortgage originated before the period of the servicemember's military service and for which the servicemember is still obligated; 'Servicemembers Civil Relief Act'. [50 USC app. 501. §303; amended by "Housing and Economic Recovery Act of 2008", §2203(a)(1)] |       |

| Done   | Checklist   | Notes |
|--|---|-------|
|  | <p>F. File Destroyed. If the court file has been destroyed by the Clerk of the Court, then check the following:</p> <ol style="list-style-type: none"> <li>1. The docket sheet for documents filed.</li> <li>2. The list of the standard documents destroyed in a foreclosure file. The destroyed documents can be assumed to be proper unless examiner has actual knowledge otherwise.</li> <li>3. The documents saved in the court file, for irregularities.</li> </ol>   |       |
|  | <p>G. Maintenance during foreclosure; Need for New Certificate of Use.</p> <ol style="list-style-type: none"> <li>1. Check local ordinances for mortgagee’s responsibility for maintenance during the foreclosure, and possible need to obtain new certificate of use upon acquiring title. Municipalities such as Dade County have passed ordinances to this effect.</li> </ol>  |       |
| <p><b>XII. Bankruptcy</b></p>  |   |       |
|  | <p>A. Upon filing, “automatic stay” imposed by 11 U.S.C. §362; “commencement or continuation” of actions against the debtor must cease. TN 5.06.04</p> <p>B. If filed after issuance of a Certificate of Sale, and issuance of a Certificate of Title, debtor’s equity of redemption may survive. See <i>Saidi v. Wasko</i>, 687 So.2d 10 (Fla. 5th DCA 1996). Therefore. . .</p> <ol style="list-style-type: none"> <li>1. determine whether the debtor has any interest in the property which requires stay relief or the bankruptcy action should otherwise be terminated through dismissal or discharge and lapse of applicable appeal periods;</li> <li>2. Record with local clerk of court order allowing relief from stay, or that stay dissolved as to the foreclosing lender.</li> </ol> |       |
| <p><b>XIII. Condominium/Homeowner Association / “Small Lien”-Windfall Foreclosures</b></p> |   |       |
|  | <p>A. Defined: Small lien or “windfall foreclosures” are foreclosures of properties for a fraction of their fair market value. They include condominium association assessment liens, homeowner association liens, municipal liens, construction liens, and even judgment liens. See TN 22.02.12</p>  |       |



| Done | Checklist  | Notes |
|------|--|-------|
|      | <p>B. Homeowner Association Liens</p> <ol style="list-style-type: none"> <li>1. On and after July 1, 2007: 45 Days Advance Notice for Lien, prior to filing lien [F.S.§720.3085]</li> <li>2. On and after July 1, 2008: 45 Day Notice of Intent to Foreclose [F.S§720.3085(5)]</li> <li>3. If association named, and 1<sup>st</sup> mortgagee and assignee named in suit, then 1st mortgagee/purchaser at sale liable only for assessments that became due before the mortgagee's acquisition of title, up to 12 months assessments, or 1% of original mortgage debt, whatever is less. <ol style="list-style-type: none"> <li>a. [F.S§720.3085(2)(c)]</li> </ol> </li> <li>4. Owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. <ol style="list-style-type: none"> <li>a. [F.S§720.3085(2)(b)]</li> </ol> </li> </ol>  |       |
|      | <ol style="list-style-type: none"> <li>5. <i>ADDITIONALLY</i>, in “small lien” foreclosures... <ol style="list-style-type: none"> <li>a. member must be able to confirm that personal service was obtained on the defendant property owner;</li> <li>b. If there was no personal service, and constructive service by publication was relied upon, the affidavit of diligent search should be reviewed for compliance with requirements of F.S. Sec. 49.041; title may be insured only where the equity in the subject property is less than the amount of the final judgment of foreclosure. See TN. 22.02.12</li> </ol> </li> </ol>  |       |
|      | <p>C. Condominium Liens</p> <ol style="list-style-type: none"> <li>1. 30 day notice of intent to foreclose lien required [F.S§718.116(6)(b)]</li> <li>2. Pre-foreclosure liability: <ol style="list-style-type: none"> <li>a. Prior to July 1, 2010, if association named, and 1<sup>st</sup> mortgagee and assignee named in suit, then 1st mortgagee/purchaser at sale liable only for assessments that became due before the mortgagee's acquisition of title, up to 6 months assessments, or 1% of original mortgage debt, whatever is less. [F.S§718.116(1)(b)]</li> <li>b. On and after July 1, 2010, if association named, and 1<sup>st</sup> mortgagee and assignee named in suit, then 1st mortgagee/purchaser at sale liable only for assessments that became due before the mortgagee's acquisition of title, up to 12 months assessments, or 1% of original mortgage debt, whatever is less. [F.S§718.116(1)(b)]</li> </ol> </li> <li>3. Owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. [F.S§718.116(1)(a)]</li> </ol> |       |

| Done | Checklist   | Notes |
|------|---|-------|
|      | <p>4. <i>ADDITIONALLY</i>, in “small lien” foreclosures...</p> <ul style="list-style-type: none"> <li>a. member must be able to confirm that personal service was obtained on the defendant property owner;</li> <li>b. If there was no personal service, and constructive service by publication was relied upon, the affidavit of diligent search should be reviewed for compliance with requirements of F.S. Sec. 49.041; title may be insured only where the equity in the subject property is less than the amount of the final judgment of foreclosure. See TN. 22.02.12</li> </ul> |       |
|      | <p><b>XIV. Protocol</b></p>   |       |
|      | <p>A. Conduct a full search behind and through the foreclosure.</p>   |       |
|      | <p>B. Venue – Multiple Parcels                      F.S.§702.04</p> <ul style="list-style-type: none"> <li>1. If one mortgage encumbers parcels in multiple counties, <ul style="list-style-type: none"> <li>a. Suit may be filed in any county where any one parcel is located</li> <li>b. Final Judgment, Notice of Sale, and Certificate of Title must be recorded or published in all counties where encumbered land is located.</li> </ul> </li> </ul>   |       |