

Summary Final Judgment of Foreclosure

1. Filing of the Motion at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. Rule 1.510 a , Fla. R. Civ. P. The motion for summary judgment, supporting affidavits and notice of hearing must be served on a defendant at least 20 days before the summary judgment hearing. Rule 1.510 c , Fla. R. Civ. P.

a Other discovery materials and evidence used in support of or in opposition to a motion for summary judgment are subject to the same notice requirements. *opt. of Reenue v. L Concepts, Inc.*, 12 So. 2d 20, 22 Fla. 5th Cir. , Court declined to consider depositions in opposition to summary judgment that were untimely filed in the day of the hearing. *Sanuea v. Atl. Found. Life Ins. Co.*, 545 So. 2d 21 Fla. 4th Cir. , nonmoving party's answers to interrogatories filed at time of summary judgment hearing could be considered when they were served within the time required by Fla. Rule of Procedure 1.510 c and received at least one day before hearing.

b Filing of cross motions is subject to the 20 day notice period. *Wiko sji v. Hillsborough County*, 51 So. 2d 122 Fla. 2d Cir. 15 .

2. Requirement for motion for summary judgment due notice and a hearing. Proof of mailing of notice of the final summary judgment hearing created presumption that notice of hearing was received. *lanco v. Kinas*, So. 2d 1, 2 Fla. 4th Cir. 200 .

. Affidavits in support of Summary Judgment

a affidavit of indebtedness Must be signed by a custodian of business record with knowledge. In general, the plaintiff's affidavit itemizes:

- 1 property address,
- 2 principal balance,
- interest calculated from default up until the entry of judgment,
- when the mortgage provides for automatic acceleration upon

default, *T F Realty Co. v. Kirkman Conroy, Ltd.*, 54 So. 2d 115 Fla. 5th C 1 . ,

4 late charges pre acceleration only , *Fowler v. First Fed. Sav. Loan Ass'n.*, 4 So. 2d 0, Fla. 1st C 1 4 . ,

5 property inspections appraisals,
hard insurance premiums and taxes.

b. Affidavit of Costs This affidavit details:

- 1 the filing fee,
- 2 service of process,
and abstracting costs.

c. Affidavit of attorney's time references the actual time the attorney expended on the foreclosure file and references the actual hourly billable rate or the flat fee rate which the client has agreed to pay. The Fla. Supreme Court endorsed the lodestar method. *Well v. S. Acquisition Co.*, 4 So. 2d 40 , 40 Fla. 1 . The hours may be reduced or enhanced in the discretion of the court, depending on the novelty and difficulty of questions involved. *Fla. Patient's Compensation Fund v. Rowe*, 42 So. 2d 1145, 1150 Fla. 1 5 . With regard to uncontested time, plaintiff is not required to keep contemporaneous time records since the lender is contractually obligated to pay a flat fee for that time. *d.*

1 Affidavit of attorney's fee must be signed by a practicing attorney not affiliated with the plaintiff's firm, attesting to the rate as reasonable and customary in the circuit. Affiant should reference and evaluate the attorney fee claim based on the eight factors set forth in Rule 4.1.5(b)(1) Rules Regulating the Fla. Bar.

4. Burden of Proof

The plaintiff bears the burden of proof to establish the nonexistence of disputed issues of material fact. *Delandro v. m.s. Mortgage Servicing, Inc.*, 4 So. 2d 14, 1 Fla. 4 C 1 *Coll v. Talcott*, 11 So. 2d 40, 4 Fla.

1 .

Affirmative Defenses

1. Genuine existence of material fact precludes entry of summary judgment. *Manassas Investments Inc. v. Anrahan*, 1 So. 2d 100 Fla. 2d C 2002 .
2. Legal sufficiency of defenses certainty is required when pleading affirmative defenses conclusions of law unsupported by allegations of ultimate fact are legally insufficient. *Liss v. Carmona*, 41 So. 2d 101 , 101 Fla. d C 1 2 . Affirmative defenses do not simply deny the facts of the opposing party's claim they raise some new matter which defeats an otherwise apparently valid claim. *Wiggins v. Protmy*, 40 So. 2d 541, 542 Fla. 1 st C 1 .

• **Affirmative defenses commonly raised:**

a Payment Where defendants alleged advance payments and plaintiff failed to refute this defense, plaintiff not entitled to summary judgment. *Morrone v. Household Fin. Corp.* , 0 So. 2d 11, 12 Fla. 2d C 2005 . However, summary judgment will be defeated if payment was attempted, but due to misunderstanding or excusable neglect coupled with lender's conduct, contributed to the failure to pay. *Campbell v. Werner*, 22 So. 2d 252, 25 Fla. d C 1 0 *Lieberbaum v. Surfcomber Motel Corp.*, 122 So. 2d 2 , 2 Fla. d C 1 0 , Court dismissed foreclosure complaint here plaintiffs knew that some excusable oversight was the cause for non payment, said payment having been refused and subsequently deposited by defendants into the court registry .

b Failure to comply with conditions precedent such as Plaintiff's failure to send the notice of default letter.

c Estoppel elements include: a representation as to a material fact that is contrary to a later asserted position reliance on that representation and a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon. *arris v. Atl. Recovery Agency*, 1 So. 2d 50, 54 Fla. 4th C 2002 *Jones v. City of Winter Haven*, 0 So. 2d 52, 55 Fla. 2d C 200 , defendant defeated city's foreclosure based on evidence

presented which indicated that the city had agreed to stop fines for noncompliance with property code if homeowner hired a licensed contractor to make repairs.

and waiver of the knowing and intentional relinquishment of an existing right. *Taylor v. Kenco Chem. Mfg. Co.*, 45 So. 2d 51, 5 Fla. 1st C 15. When properly pled, affirmative defenses that sound in waiver and estoppel present genuine issues of material fact which are inappropriate for summary judgment. *Schiebe v. Bank of Am.*, 22 So. 2d 55 Fla. 5th C 2002.

1. Acceptance of late payments – common defense asserting waiver is the lender's acceptance of late payments. However, the lender has the right to elect to accelerate or not to accelerate after default. *Scarfo v. Peer*, 405 So. 2d 104, 10 Fla. 5th C 11. Default predicated on defendant's failure to pay real estate taxes, could not be overcome by defendant's claim of estoppel due to misapplication of non-escrow payments. *Lunn Woods v. Loney*, 5 So. 2d 05, 0 Fla. 2d C 11.

e. Fraud in the inducement – defined as situation where parties to a contract appear to negotiate freely, but where in fact the ability of one party to negotiate fair terms and make an informed decision is undermined by the other party's fraudulent behavior. *TP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 5 So. 2d 12, 12 Fla. 1.

affirmative defense of fraud in the inducement based on allegation that vendors failed to disclose extensive termite damage resulted in reversal of foreclosure judgment. *Inton v. Brooks*, 20 So. 2d 25 Fla. 5th C 2001.

Note that purchasers had first filed fraud in the inducement case and vendor retaliated with foreclosure suit. Further, the appellate court opined in the *Inton* case that fraud in the inducement was not barred by the economic loss rule. *d.*

f usury defined by § 200.01, Fla. Stat., as a contract for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation hereafter, at a higher rate of interest than the equivalent of 1 percent per annum simple interest. If the loan exceeds \$500,000 in amount or value, then the applicable statutory section is § 200.01, Fla. Stat.

1 usurious contract is unenforceable according to the provisions of Section 200.01, Fla. Stat.

g Forbearance agreement Appellate court upheld summary judgment based on defendant's failure to present any evidence as to the alleged forbearance agreement of prior servicer to delay foreclosure until the settlement of his personal injury case. *Walker v. Midland Mortgage Co.*, 5 So. 2d 51, 520 Fla. d C 200.

h Statute of limitations Property owner successfully asserted that foreclosure filed five years after mortgage maturity date was barred by statute of limitations mortgage lien was no longer valid and enforceable under Section 5.211a, Fla. Stat. 2002 *American Bankers Life Insurance Co. of Fla. v. 225 West Corp.*, 05 So. 2d 1, 11 Fla. d C 2005.

i Failure to pay documentary stamps Section 201.01, Fla. Stat. 200 precludes enforcement of notes and mortgages absent the payment of documentary stamps. *WRJ v. nc. v. North Ring Limited*, So. 2d 104, 104 Fla. d C 200 *Conifiglio v. Bankers Trust Co. of Calif.*, 44 So. 2d 10, 10 Fla. 4th C 200.

1 This is a limitation on judicial authority not a genuine affirmative defense.

j Truth in Lending T L violations Technical violations of T L do not impose liability on lender or defeat foreclosure. *Kasket v. Chase Manhattan Mortgage Corp.*, 5 So. 2d 2 Fla. 4th C 2000 15. S. C. § 100. Eception to T L one year statute of limitations applies to defenses raised in

foreclosure. *Ailey v. Leshin*, 2 So. 2d 52, 52 Fla. 4th C 2001 15 . S. C. . 1 40 e .

Res judicata Foreclosure and acceleration based on the same default bars a subsequent action unless predicated upon separate, different defaults. *Singleton v. Reymar Assoc.*, 2 So. 2d 1004, 100 Fla. 2004 .

Additional cases: *Limehouse v. Smith*, So. 2d 15 Fla. 4th C 2001 , mistake *rien v. Fed. Trust Bank, F. S.* , 2 So. 2d 2 Fla. 5th C 1 , fraud, R C and duress *iondo v. Powers*, 4 So. 2d 1 1 Fla. 4th C 1 , usury *eimmermann v. First Union Mortgage Corp.*, 05 F. 2 d 125 11th Circ. 2002 , Real Estate Settlement Procedures Act RESP violations.

Summary Judgment Hearing

1. Plaintiff must file the original note and mortgage at or before the summary judgment hearing. Since the promissory note is negotiable, it must be surrendered in the foreclosure proceeding so that it does not remain in the stream of commerce. *Perry v. Fairbanks Capital Corp.*, So. 2d 25, 2 Fla. 5th C 2001 . Copies are sufficient with the exception that the note must be reestablished. *d.* Best practice is for judge to cancel the signed note upon entry of summary judgment.

a Failure to produce note can preclude entry of summary judgment. *at l. Loan Investors, L. P. v. Joymar Assoc.*, So. 2d 54 , 550 Fla. 4th C 2000 .

Final Judgment

1. Section 45.0 1, Fla. Stat. 200 governs the contents of the final judgment.

2. 0 incorporates statutory requirement and requires the use of the adopted form for final summary judgment of foreclosure. Supplemental language must be submitted for review by separate order in the Eleventh Judicial Circuit.

. amounts due Plaintiff's recovery limited to items pled in complaint or affidavit or based on a mortgage provision.

4. Court may award costs agreed at inception of contractual relationship costs must be reasonable. *emours Found. v. Auldin*, 01 So. 2d 54, 5 Fla. 5th C 12, assessed costs consistent with mortgage provision rather than prevailing party statute *Martin v. Binales*, 4 So. 2d 1245, 124 Fla. 2d C 15, award of costs governed by mortgage provision.

5. Checklist

a Final Judgment:

1 amounts due and costs should match affidavits filed. If interest has increased due to resets a daily interest rate should be indicated so you can verify it.

2 Check principal, rate calculation of interest through date of judgment.

Late fees pre acceleration is recoverable post acceleration is not. *Fowler v. First Fed. Sav. Loan Assoc. of defuniak Springs*, 4 So. 2d 0, Fla. 1st C 14.

4 All expenses and costs, such as service of process should be reasonable, market rates. Items related to protection of security interest, such as fencing and boarding up property are recoverable if reasonable.

5 There are hidden charges fees for default letters, correspondence related to workout efforts. Court's discretion to deny recovery.

Attorney fees must not exceed contract rate with client and be supported by an affidavit as to reasonableness. Attorney fee cannot exceed of principal owed. 02.052, Fla. Stat. 2001.

Bankruptcy fees not recoverable Correct forum is bankruptcy court. *Martinez v. Jacobbe*, 51 So. 2d 02, 04 Fla. d C

200 *orak . First Family ank,* So. 2d 10 , 10 Fla. 5th C 1 4 . ankruptcy costs incurred to obtain stay relief reco erable. *emours,* 01 So. 2d at 5 5.

Sale date may not be set in less than 20 days or more than 5 days, unless parties agree. 45.0 1 1 a , Fla. Stat. 200 , *JR L e ., nc. . Maiello,* 2 So. 2d 2, Fla. 2d C 2004 .

. f summary judgment denied, foreclosure action proceeds to trial on contested issues.

a Trial is before the court ithout a jury. 02.01, Fla. Stat. 200 .

Right of Redemption

1. Mortgagor may e ercise his right of redemption at any time prior to the issuance of the certificate of sale. 45.0 15, Fla. Stat. 200 .

a Court appro al is not needed to redeem. *ndian Ri er Farms . F Partners,* So. 2d 10 , 1100 Fla. 4th C 2001 *Saidi . Wasko,* So. 2d 10, 1 Fla. 5th C 1 .

b Court of e uity may e tend time to redeem. *Pere . Kosso ,* 02 So. 2d 1 2 Fla. d C 1 2 .

2. To redeem, mortgagor must pay the entire mortgage debt, including costs of foreclosure and attorney fees. *CS Realty, nc. . Eurobuilding Corp.,* 25 So. 2d 12 5, 12 Fla. d C 1 45.0 15, Fla. Stat. 200 .

. Right to redeem is incident to e ery mortgage and can be assigned by anyone claiming under him. *SR ndus., nc. . Martin Properties, nc.,* 1 So. 2d 554, 55 Fla. 4th C 200 . There is no statutory prohibition against the assignment, including the assignment of bid at sale.

a Right of redemption e tends to holders of subordinate interests. Junior mortgage has an absolute right to redeem from senior mortgage. *Marina Funding roup, nc. . Peninsula Prop. oldings, nc.,* 50 So. 2d 42 , 42 Fla. 4th C 200 *uinn Plumbing Co. . e Miami Shores Corp.,* 12 So. 0, 4 Fla. 1 0 .

4. Fed. right of redemption United States has 120 days following the foreclosure sale to redeem the property if its interest is based on an RS tax lien. For any other interest, the Fed. government has one year to redeem the property. 11 U.S.C. 541, 2 U.S.C. 5 .

Judicial Sale

Notice of sale

1. Notice of sale must be published once a week, for 2 consecutive weeks in a publication of general circulation. 45.0 1 1 , Fla. Stat. 200 . The second publication shall be at least five days before the sale. 45.0 1 2 , Fla. Stat. 200 .

a Notice must include: property description time and place of sale case style clerk's name and a statement that sale will be conducted in accordance with final judgment.

b Effective notice can constitute grounds to set aside sale. *Richardson v. Chase Manhattan Bank*, 41 So. 2d 4 5, 4 Fla. d C 200 *Angor aia v.orton*, 1 So. 2d 125 Fla. 2d C 2002 .

Judicial sale procedure

1. Judicial sale is public, anyone can bid. *eilman v. Suburban Coastal Corp.*, 50 So. 2d 10 Fla. 4th C 1 . Property is sold to the highest bidder.

2. Plaintiff is entitled to a credit bid in the amount due under final judgment, plus interest and costs through the date of sale. *Robinson v. Phillips*, 1 1 So. 2d 1 , 1 Fla. d C 1 5 .

. Amount bid is conclusively presumed sufficient consideration. 45.0 1 , Fla. Stat. 200 .

Certificate of sale

1. Upon sale completion certificate of sale must be served on all parties not defaulted. The right of redemption for all parties is extinguished upon issuance of certificate of sale. 45.0 15, Fla. Stat. 200 .

2. Documentary stamps must be paid on the sale. 201.02, Fla. Stat. 200. The amount of tax is based on the highest and best bid at the foreclosure sale. *d.*

a. Assignment of successful bid at foreclosure sale is a transfer of an interest in realty subject to the documentary stamp tax. Fla. Admin. Code Rule 12 4.01 25. Rule 12 4.01 provides that the tax is also applicable to the certificate of title issued by the clerk of court to the holder of the successful foreclosure bid, resulting in a double stamp tax if the bid is assigned and the assignee receives the certificate of title.

b. Assignment prior to foreclosure sale holder of a mortgage foreclosure judgment that needs to transfer title to a different entity and anticipates that the new entity would be the highest bidder, should assign prior to the foreclosure sale to avoid double tax.

c. Documentary stamps are due only if consideration or an exchange of value takes place. *Crescent Miami Center, LLC*. Fla. *apt. of Revenue*, 10 So. 2d 1, 1 Fla. 2005, Transfer of unencumbered realty between a grantor and wholly owned grantee, absent consideration and a purchaser, not subject to documentary stamp tax. *apt. of Revenue*. *Mesmer*, 45 So. 2d 4, Fla. 1st C 1, based on assignment of interest and tender of payment, documentary stamps should have been paid.

d. Exempt governmental agencies, which do not pay documentary stamps include: Fannie Mae, Freddie Mac, Federal Home Administration and the Veterans Administration. Fla. Admin. Code Rules 12 4.014 11 1 1 p. tty. en. 0 1 1, Sept. 1, 1 1.

Objection to sale

1. Any party may file a verified objection to the amount of bid within 10 days. 45.01, Fla. Stat. 200. The court may hold a hearing within judicial discretion.

2. Court has broad discretion to set aside sale. *Long Beach Mortgage Corp. v. Ebbel*, 5 So. 2d 11, 14 Fla. 4th C 200, appellate court reversed

sale unilateral mistake resulted in outrageous indfall to buyer who made *de minimis* bid .

. **Test:** sale may be set aside if:

1 bid as grossly or startlingly inadequate and 2 inadequacy of bid resulted from some mistake, fraud, or other irregularity of sale. *Blue Star Ins. Co. v. Johnson*, 101 So. 2d 21 Fla. 4th D.C. 2001 *Mody v. Calif. Fed. Bank*, 4 So. 2d 101, 101 Fla. d.C. 1 . Burden on party seeking to vacate sale.

a Plaintiff's delay in providing payoff information cannot be sole basis for setting aside sale. *Action Realty Ins. Co. v. Randison*, 10 So. 2d 4, Fla. 4th D.C. 200 .

b Stranger to foreclosure action does not have standing to complain of defects in the absence of fraud. *RE Properties Corp. v. Under*, 4 So. 2d 52, 54 Fla. 2d C 200 .

c Sale may be set aside if plaintiff misses sale, based on appropriate showing. *Wells Fargo Fin. System Fla., Inc. v. RP Fin. Services Corp.*, 10 So. 2d Fla. 2d C 2004 .

Sale vacated

1. If sale vacated mortgage and lien relieved with all effects from foreclosure and returned to their original status. 02.0, Fla. Stat. 200 .

a Upon readvertisement and resale, a mortgagor's lost redemption rights temporarily re-est. *EMC Const. v. Elopment, Inc., v. Inter Ser, v. S., Inc.*, 4 So. 2d 44, 44 Fla. d.C. 2004 .

Post Sale Issues

Certificate of title

1. No objections to sale Sale is confirmed by the Clerk's issuance of the certificate of title to purchaser. Title passes to the purchaser subject to parties whose interests were not extinguished by foreclosure, such as omitted parties.

a Plaintiff may reforeclose or sue to compel an omitted junior lienholder to redeem within a reasonable time. *Winn*, 12 So. 2d at 4.

b Foreclosure is void if titleholder omitted. *England v. Bankers Trust Co. of Calif.*, 5 So. 2d 1120, 1121 Fla. 4th C 2005 .

Right of possession

1. Purchaser has a right to possess the property upon the issuance of the certificate of title, provided the interest holder was properly joined in the foreclosure.

2. Right of possession enforced through writ of possession. Rule 1.50, Fla. R. Civ. P.

Summary of writ of possession procedure:

a Purchaser of property moves for writ of possession

b The writ can be issued against any party who had actual or constructive knowledge of the foreclosure proceedings and adjudication *Redding v. Stockton, Whatley, & Co.*, 4 So. 2d 54, 54 Fla. 5th C 1

c Best practice is to require notice and a hearing before issuance of a writ.

d At hearing, judge orders immediate issuance of writ of possession unless a person in possession raises defenses which warrant the issuance of a writ of possession for a date certain

e The order for writ of possession is executed by the sheriff and personal property removed to the property line.

Disbursement of Sale Proceeds

Surplus

1. Surplus the remaining funds after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements. 45.021 c, Fla. Stat. 200 . Disbursement of surplus funds is governed by Section 45.01, Fla. Stat. 200 .

2. Entitlement to surplus is determined by priority in order of time in which they became liens. *Household Fin. Services, Inc. v. Bank of Am.*, 5 So.

2d 4 , 4 Fla. 4th C 2004 . It is the duty of the court to prioritize the interests of the competing junior lien holders and the amounts due each. *Citibank v. P C Mortgage Corp. of America*, 1 So. 2d 00, 01 Fla. 2d C 1 .

a. Default does not abrogate lienholder's rights to surplus funds. *Polindano v. Wells Fargo Bank*, 1 So. 2d 14 Fla. d C 2005 . Junior lienholder has priority over the property holder for surplus funds. *Id.*, 15.

b. Senior lienholder is not entitled to share in surplus funds. *Archie v. Stearns*, 0 So. 2d 111 , 1121 Fla. 4th C 2005 , senior lienholder liens unaffected improper party to junior lienholder foreclosure .

Deficiency Judgment

1. Deficiency is the difference between the fair market value of the security received and the amount of the debt. *Mandell v. Fortenberry*, 20 So. 2d , Fla. 1 4 *Trace v. Hendricks*, 140 So. 0 Fla. 1 2 .

2. Trial court has discretion to enter deficiency decree. 02.0 , Fla. Stat. 200 *Thomas v. Premier Capital, Inc.*, 0 So. 2d 11 , 1140 Fla. d C 2005 .

a. Deficiency judgment not allowable if based on constructive service of process.

. Cause of action for deficiency cannot accrue until after entry of final judgment and a sale of the assets to be applied to the satisfaction of the judgment. *Chrestensen v. Eurogest, Inc.*, 0 So. 2d 4 , 45 Fla. 4th C 2005 .

4. Denial of deficiency decree in foreclosure suit for jurisdictional reasons, as distinguished from equitable grounds, is not res judicata so as to bar an action for deficiency. *Frumkes v. Mortgage Guarantee Corp.*, 1 So. 2d , 40 Fla. d C 1 5 *Klondike, Inc. v. Lair*, 211 So. 2d 41, 42 Fla. 4th C 1 .

Bankruptcy

1. The automatic stay provisions of 11 U.S.C. § 362 enjoins proceedings against the debtor and against property of the bankruptcy estate.

a. To apply, the subject real property must be listed in the bankruptcy schedules as part of the estate. 11 U.S.C. § 541.

2. Foreclosure cannot proceed until the automatic stay is lifted or terminated. If property ceases to be property of the bankruptcy estate, the stay is terminated.

a. The automatic stay in a second case filed within one year of dismissal of a prior Chapter 7, 11 or 13 automatically terminates 30 days after the second filing, unless good faith is demonstrated. 11 U.S.C. § 362 c.

b. The third filing within one year of dismissal of the second bankruptcy case, lacks entitlement to the automatic stay and any party in interest may request an order confirming the inapplicability of the automatic stay.

c. Multiple bankruptcy filings where the bankruptcy court has determined that the debtor has attempted to delay, hinder or defraud a creditor may result in the imposition of an order for relief from stay in subsequent cases over a two year period. 11 U.S.C. § 362 d 4.

3. Debtor's discharge in bankruptcy only protects the subject property to the extent that it is part of the bankruptcy estate.

4. Foreclosure cannot proceed until relief from automatic stay is obtained or otherwise terminated, or upon dismissal of the bankruptcy case.

Florida's Expedited Foreclosure Statute

1. Enacted by 2010, Fla. Stat. 2001.

2. Upon filing of verified complaint, plaintiff moves for immediate relief of foreclosure by an order to show cause. These complaints are easily distinguishable from the usual foreclosure by the order to show cause.

3. Not the standard practice among foreclosure practitioners, due to limitations:

- a Statute does not foreclose junior liens
- b Procedures differ as to residential and commercial properties and
- c Statute only provides for entry of an *in rem* judgment deficiency must be sought in separate action.

Common Procedural Errors

1. Incorrect legal description contained in the:
 - a Original mortgage requires a count to reformation count. An error in the legal description of the deed requires the joinder of the original parties as necessary parties to the reformation proceedings. *Chanrai n ., nc., . Clement,* 5 So. 2d , 40 Fla. 5th C 1 0 .
 - b Complaint and lis pendens requires amendment.
 - c Judgment Rule 1.540 a , Fla. R. Ci . P. governs. For example, an incorrect judgment amount which omitted the undisputed payment of real estate taxes could be amended. *LPP Mortgage Ltd. . ank of merica,* 2 So. 2d 4 2, 4 Fla. d C 2002 .
 - d Notice of Sale requires vacating the sale and subsequent resale of property. *yte e elopment Corp. . eneral Electric Credit Corp.,* 5 So. 2d 1254 Fla. d C 1 .
 - e Certificate of title a genuine scrivener's error in the certificate of title can be amended. However, there is no statutory basis for the court to direct the clerk to amend the certificate of title based on post judgment transfers of title, faulty assignments of bid or errors in vesting title instructions.
 - 1 An error in the certificate of title which originates in the mortgage and is repeated in the deed and notice of sale requires the cancellation of the certificate of title and setting aside of the final judgment. *Lucas . arnett ank of Lee County,* 05 So. 2d 115 Fla. 2d C 1 . For example, plaintiff's omission of a mobile home and its vehicle identification number included in the mortgage legal description, but overlooked throughout the pleadings, judgment and notice of sale, cannot be the

amended in the certificate of title. Due process issues concerning the mobile home require the vacating of the sale and judgment.

Hope for Homeowner's Act of 2008

1. The anti-lending ct, also known as the Hope for Homeowners Act of 2008, became effective on October 1, 2008 and sunsets on September 1, 2011. 12 U.S.C. § 1012001. According to a recent Census report, only 12 homeowners nationwide have been helped.
2. Under the provisions of this new act, eligible homeowners can refinance their primary residence with a FHA guaranteed 30 year fixed rate mortgage. When the homeowner sells the primary residence or refinances the FHA loan, he must share his profit on a sliding scale with the FHA.
 - a. To qualify:
 - a. the homeowner must demonstrate the inability to afford their mortgage payment
 - b. only the homeowner's primary residence is eligible, not investment property
 - c. any existing subordinate liens, such as a home equity loans must be paid off
 - d. the homeowner must spend 1% of gross monthly income on housing as of March 1, 2008 and e. the homeowner must meet the same guidelines as an FHA mortgage, such as credit and income verification.
4. Lender participation in the program is entirely voluntary. The lender must be willing to accept a discounted value on its current mortgage.