

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

IN AND FOR POLK COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 3-15.12

**STANDARD PROCEDURES AND LANGUAGE IN FORECLOSURE PROCEEDINGS;
ELECTRONIC FORECLOSURE SALES IN LIEU OF ON-SITE AUCTIONS;
WRITS OF POSSESSION**

WHEREAS pursuant to section 45.031(10), Florida Statutes, the Clerk of the Circuit Court is statutorily authorized to conduct the sale of real or personal property under an order or judgment by electronic means, and

WHEREAS the Clerk of the Circuit Court of Polk County, Florida, has made electronic judicial sales available through online access, and has established criteria and procedures to sell property for cash at a public sale to the highest and best bidder, and

WHEREAS electronic judicial sales will eliminate the need for security personnel at on-site sales, eliminate impropriety and collusion among bidders and increase accessibility to interested parties to view, research, bid and manage cases, and

WHEREAS the electronic foreclosure sales process will be available commencing Monday, September 20, 2010, at the Clerk's foreclosure auction website at www.polk.realforeclose.com, and

WHEREAS certain final judgments of foreclosure entered heretofore are currently scheduled for live auctions at the Polk County Courthouse after September 20, 2010, upon which the Clerk will provide notice to the parties of a change in location (online) and time (10:00), and

WHEREAS the final judgments of foreclosure entered and scheduled for a live auction before September 20, 2010, will continue to be held as live auctions at the Polk County Courthouse until the last day which is September 17, 2010, and

NOW THEREFORE, pursuant to the authority vested in me as Chief Judge of the Tenth Judicial Circuit of Florida under Rule 2.215, Florida Rules of Judicial Administration, the Court hereby adopts the following procedures and standard language for foreclosure sale proceedings in the Circuit Court in and for Polk County, Florida.

1. Procedures for all Foreclosure Actions

- A. The Clerk, all parties, bidders and the public at large shall become familiar with and follow the laws regarding foreclosures, in particular Chapter 45, Florida Statutes, all **current** statutes, rules, forms, administrative orders and any other laws pertaining to foreclosure issues.

B. Final Judgments

- (1) Plaintiffs shall use Final Judgment of Foreclosure Form 1.996(a), Fla.R.Civ.P.
- (2) All proposed Final Judgments of Foreclosure and all Notices of Sale and Notices of Rescheduled Sale shall refer to this Administrative Order (3-15.12) and shall state “bidding begins at 10 a.m. Eastern Time on www.polk.realforeclose.com.” If the sale is not to be held online, it shall start promptly at 10:00 a.m. Eastern Time and shall be held at the Polk County Courthouse, unless otherwise specified in said Final Judgment.
- (3) All proposed Final Judgments and all Notices of Sales and Notices of Rescheduled Sale shall contain the following language required pursuant to Administrative Order 1-21.5:

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Office of the Court Administrator, 255 North Broadway Avenue, Bartow, FL 33830, (863) 534-4686, at least seven days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven days; if you are hearing or voice impaired, call 711.”

C. Writ of Possession

- (1) In compliance with the Federal Protecting Tenants at Foreclosure Act of 2009 (Public Law 111-22, §§701-704, 123 Stat 1632), (the “Act”) **prior to the Clerk issuing a Writ of Possession** after foreclosure of a federally-related mortgage or on any dwelling or residential real property, the immediate successor-in-interest **shall first certify** to the court that either (a) there are no bona-fide tenants in possession of the property or (b) that any bona-fide tenants in possession have been provided with the ninety (90) day Notice to Vacate required by the “Act”. This certification language should essentially state as follows:

I HEREBY CERTIFY to the best of my knowledge there are no tenants in possession of the subject property or, if there are tenants in possession, such tenants have been provided notice as required by the Federal Protecting Tenants at Foreclosure Act, this ex-parte Motion for Writ of Possession does not seek an order that violates the tenant’s right to continued occupancy under the Act. A true and correct copy of the foregoing ex-parte Motion for an Order Directing the Polk County Clerk to issue a Writ of Possession was mailed to the subject property address to all parties.

- (2) Upon the filing of the appropriate Motion for Writ of Possession and certification as described above, the Clerk of Court is authorized to issue the Writ of Possession to the tenant(s) and to include with said writ(s) or “Affidavit of Bona Fide Tenant”, a copy of which is attached to this Administrative Order as Exhibit “A”.

D. Sale Date

The Final Judgment shall direct that the foreclosure sale take place not less than twenty (20) days nor more than thirty-five (35) days after the date of the Final Judgment, unless the Plaintiff or the Plaintiff’s attorney consents to some other time. *See* Section 45.031, Florida Statutes.

E. Proof of Publication/Notice of Sale/Notice of Rescheduled Sale

Pursuant to section 702.035, Florida Statutes, it is the **responsibility of the Plaintiff or the Plaintiff’s attorney to complete and submit Notices of Sale and Notices of Rescheduled Sale directly to the newspaper.** Proof of Publication of Sale or Rescheduled Sale shall be filed with the Clerk of Court no later than three (3) business days prior to any and all sales. Failure to comply will result in cancellation of the sale by the Clerk.

F. Cancellation of a Foreclosure Sale

Sales ordered by the Court may be cancelled by court order, satisfaction of the judgment or a Notice of Filing Bankruptcy. Parties shall use approved Form 1.996(b) Motion to Cancel and Reschedule Foreclosure Sale, Fla.R.Civ.P.

G. Registry Fee

The Clerk’s fee for depositing any funds into the Registry of the Court shall be paid at the same time bid funds are deposited in the Registry. The fee is determined by law. *See* Chapter 28.24, Florida Statutes.

H. Decorum

All foreclosure sales shall be held upon order of Court and in accordance with the following procedures, unless the Court Order directs otherwise. The same rules for decorum and behavior in courtroom and chambers as outlined in Administrative Order 1-6.1 shall be adhered to during foreclosure sales, including no loud or boisterous talking, laughing, or other noise distractions while sales are in progress; and no eating, smoking, or drinking beverages. Cellular telephones and audible beepers are to be turned off or on silence while live sales are in process in the courthouse. Rules for decorum and behavior as described above shall apply to bidders utilizing computers in the Clerk’s Office to participate in electronic sales.

I. Assignments

The name and address of the Principal as provided by the successful bidder shall be the name and address appearing on the Certificate of Title unless:

- (1) an original Assignment of Judgment is filed by the Plaintiff prior to the sale, or
- (2) an original Assignment of Bid is filed by a successful bidder subsequent to the sale.

All Assignments of Judgment made prior to the sale must be filed in the court file.

J. Certificate of Sale/Certificate of Title

- (1) A Certificate of Sale shall be issued by the Clerk of the Court as soon as possible after the sale. The right of redemption shall exist for the Mortgagor or the holder of any subordinate interest only until the issuance of said Certificate of Sale, unless otherwise specified in the Final Judgment. *See* section 45.0315, Florida Statutes.
- (2) The Certificate of Title will be issued within ten (10) days from the date of the filing of the Certificate of Sale unless redeemed by the Defendant Mortgagor or unless an objection is filed. If any objection is filed, the Certificate of Title will not be issued until such time as an order of court is entered on the objection.
- (3) The Certificate of Title will be issued exactly in the name of the bidder as it is given at the time of registration. The successful bidder or the successful bidder's assignee should supply the Clerk with the correct mailing address to be affixed to the Certificate of Title prior to issuance of the Certificate of Title.

K. Distribution of Funds

If the Plaintiff or a third party is the successful bidder, any funds that exist shall be held in the Registry of the Court, and distribution will be made in accordance with paragraph 5 of the Final Judgment of Foreclosure.

L. Order Setting Aside Sale

In the event an Order Setting Aside or Canceling Sale is entered by the Court subsequent to the sale of the property, the Clerk's Office is hereby directed to refund to the successful bidder all sums paid by the successful bidder and deposited in the Registry of the Court. In the event the Clerk is in doubt as to the party entitled to said funds, the Clerk may apply to the Court for entry of a further Order Directing Disbursement. The registry fee is non-refundable.

M. Conflict of Authority

If any conflict arises between the terms of this Order and the terms stated in any Final Judgment of Foreclosure, this Order shall prevail unless said Final Judgment expresses a specific intent to supersede this Administrative Order.

2. Procedures for Electronic Foreclosure Sales

A. Effective September 20, 2010, all Judicial Mortgage Foreclosure Sales shall be conducted online via the internet at www.polk.realforeclose.com. In the event the online sales option is unavailable, or should the Court so provide in the Final Judgment or other order, judicial sales may be, from time to time, conducted at the Polk County Courthouse at 255 North Broadway Avenue, Bartow, Florida 33830.

(1) For sales currently scheduled to be held in the Polk County Courthouse after September 20, 2010, the Clerk shall, at its expense, be responsible for providing written notification via U.S. mail to all parties listed in the Final Judgment of Foreclosure, of the electronic, rather than on-site, auctions to be conducted.

(2) The Clerk's notification shall state:

“Pursuant to Administrative Order No. 3-15.12, the Polk County Clerk of the Courts is authorized to conduct on-line auctions of real property in lieu of on-site auctions. The Clerk of the Courts shall sell the property described in the Final Judgment or any court order scheduling the sale, **on-line at 10:00 a.m. (Eastern Time) at www.polk.realforeclose.com** to the highest bidder for cash after giving notice as required by section 45.031, Florida Statutes.

The *date* of the sale as described in the Final Judgment or any other court order rescheduling said sale remains *unchanged*. All other provisions of the Final Judgment or any other court order rescheduling the sale shall remain in full force and effect, except where inconsistent with Administrative Order No. 3-15.12.

AO 3-15.12 can be viewed at www.jud10.org/AdministrativeOrders/admin.htm.”

B. Prospective bidders are responsible for conducting their own research regarding property being sold. Neither the Court nor the Clerk make any representation about the condition, marketability, existing or potential uses, title, encumbrances, zoning regulations or laws that may affect current or future uses of the property, or existence of any conditions regarding any property and structures or fixtures thereon offered for sale.

- C.** Electronic sales shall be conducted Monday through Friday (except legal holidays) beginning at 10:00 a.m. Eastern Time on the date specified in the judicial order or final judgment.
- D.** Bidding begins at 10 a.m. Eastern Time on www.polk.realforeclose.com. The Clerk shall make available a minimum of two public access computer terminals for bidders at the Polk County Courthouse in Bartow. Bidders may obtain specific terminal location information in the Clerk's Civil Law Department
- E.** In order to bid on property, bidders must register at www.polk.realforeclose.com and place an advance deposit equal to 5% of their anticipated high bid for each item to be bid upon.
- F.** Advance deposits may be made in person at the Civil Law Department in the Polk County Courthouse by cash or cashier's check not more than six months old. Deposits made in person must be made by 5:00 p.m. Eastern Time the day prior to the sale. Advance deposits may also be made on the website either via wire transfer or electronic check (ACH). ACH and wire deposits may require three full business days for processing. Funds will not be available for bidding until such deposits have cleared.
- G.** Foreclosure Plaintiffs must submit the Clerk sale fee established by law (currently \$70.00) by the close of business the day prior to the sale date. *See* section 45.035(1), Florida Statutes. The Clerk shall not conduct the sale if the payment has not been received.
- H.** All bids must be made in increments of at least \$100.00 more than the previous bid. All bid increments must be made in multiples of \$100.00.
- I.** Five per cent (5%) of the final bid will be deducted from the successful bidder's advance deposit and applied toward the sale price. If a bidder is unsuccessful, the deposit may be refunded by the Clerk without the necessity of a court order. Refunds will be made within two to five business days after the sale.
- J.** The successful bidder must pay the balance of the final bid plus the court registry fee, electronic service charge, documentary stamp tax and Clerk's service charge, if applicable, by 12:00 noon EST the next business day following the sale.
- K.** Final payment may only be made by wire transfer or in person at the Civil Law Department in the Polk County Courthouse by cash or cashier's check not more than six months old. In the event a sale is set aside or vacated, some fees may be refundable. The court registry is non-refundable.
- L.** Failure to pay the balance of the final bid plus all fees due by 12:00 p.m. Eastern Time the next business day following the sale will result in forfeiture of the deposit

and nullification of the sale. The forfeited deposit will be reduced by the registry fee and shall be applied to re-advertise and pay all costs of the sale. Any remaining funds from the deposit shall be applied toward the judgment. The Clerk will issue a Certificate of Incomplete Sale, and the Plaintiff shall be required to reschedule the sale by obtaining a supplemental court order.

- M.** If a bidder fails to pay the balance of the final bid, the Clerk may petition the Court to bar that person from bidding on their own behalf, or for some other person or entity at future sales.
- N.** Bidders who disrupt the Clerk's online sales, as well as any corporation, partnership, business or nonprofit organization under whose name they bid, may be permanently banned if they continue to engage in disruptive behavior.
- O.** Electronic sales do not require the presence of the plaintiff or its representative. The sale will be conducted whether or not the plaintiff participates.

Administrative Order 3-15.11, entered on October 8, 2007, is hereby VACATED.

This Order shall take effect upon entry.

DONE and ORDERED on this 27th day of August, 2010.

J. DAVID LANGFORD, Chief Judge

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

_____,
PLAINTIFF,

v.

CASE NO: _____

_____,
DEFENDANT(S)

AFFIDAVIT OF BONA FIDE TENANT

After being duly sworn by the undersigned authority I hereby swear under the penalty of perjury that I am a bona fide tenant in the residence which is the subject of this Writ of Possession and have not received the 90 day notice required by the Protecting Tenants at Foreclosure Act of 2009. I am entitled to occupy the residence under my rental agreement and request a hearing before the Court to dissolve the Writ.

Occupant Signature

Printed Name

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me under oath this ___ day of _____, 20___ by _____.

Deputy, Law Enforcement Officer or Notary Public

Personally Known _____ OR Produced Identification _____

EXHIBIT "A"