

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULES
OF CIVIL PROCEDURE AND FORMS
FOR USE WITH RULES OF CIVIL
PROCEDURE.

CASE NO. 09-

**Emergency Rule and Form Proposals of the
Task Force on Residential Mortgage Foreclosure Cases**

The Supreme Court Task Force on Residential Mortgage Foreclosure Cases files this petition proposing emergency changes to the Rules of Civil Procedure and the Forms for Use with the Rules of Civil Procedure. In re: Task Force on Residential Mortgage Foreclosure Cases, No. AOSC09-8 (March 9, 2009) authorized the Task Force to propose new rules or rule changes that would facilitate early, equitable resolution of residential mortgage foreclosure cases, and directed the Task Force to pursue those changes with the appropriate Florida Bar rules committees. The Task Force submitted its rule proposals to The Florida Bar Rules of Civil Procedure Committee, through its chair, Mark A. Romance, Esquire, and committee liaison with the Task Force, Thirteenth Circuit Judge Claudia Isom. The committee promptly responded to the Task Force request for review and comment. The committee's report, containing a vote on the proposed changes, as well as comments and recommendations, is appended to this petition.

The rule and form changes proposed in this petition are intended to implement Task Force recommendations presented in the Task Force report, "Recommendations for Managing Residential Foreclosure Cases," which has been submitted to Chief Justice Peggy A. Quince contemporaneously with the filing of this petition.

The Task Force proposes an amendment to rule 1.110(b), an amendment to Form 1.997, Civil Cover Sheet, and adoption of two new forms for inclusion in the Forms for Use with the Rules of Civil Procedure. The proposed rule change requires verification of residential mortgage foreclosure complaints.

The proposed forms will add specificity to the Civil Cover Sheet, standardize affidavits of diligent search, and clarify the grounds for moving to cancel and reschedule a foreclosure sale.

The Task Force proposal for adding specificity to the Civil Cover Sheet was submitted to the Supreme Court Task Force on Management of Cases Involving Complex Litigation through its chair, former Second Judicial Circuit Judge Thomas H. Bateman. That Task Force had proposed changes to the Civil Cover Sheet that were approved by the Court in In Re: Amendments to the Florida Rules of Civil Procedure – Management of Cases Involving Complex Litigation, --- So.3d ----, 2009 WL 1473978, 34 Fla. L. Weekly S336 (May 28, 2009). The amended Civil Cover Sheet will be effective January 10, 2010. The additional changes to the Civil Cover Sheet proposed by the Task Force on Residential Mortgage Foreclosure Cases will be noted without objection in a response filed by the Task Force on Management of Cases Involving Complex Litigation to comments filed in Case No. SC08-1141.

The rule and form changes contained in this petition have been narrowly tailored because the work of the Task Force has been directed at the current court emergency caused by the flood of mortgage foreclosure cases in Florida's courts. The Task Force is also recommending a number of forms as "best practice" standard forms that chief judges throughout the state will be asked to consider using, and that are directed at the underlying emergency. As such, these forms are not suitable for inclusion in the Forms for Use with Rules of Civil Procedure, which should be used on a long-term basis and stand the test of time, as opposed to being directed at what is hoped to be a short-term emergency. Following is a summary of the Task Force proposals for changes and additions to the Rules of Civil Procedure and Forms for Use with Rules of Civil Procedure.

Amendment to Rule 1.110. General Rules of Pleading

The Task Force proposes the following additional language to rule 1.110(b) requiring the filing of a verified complaint in residential mortgage foreclosure cases:

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

“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.”

This rule change is recommended because of the new economic reality dealing with mortgage foreclosure cases in an era of securitization. Frequently, the note has been transferred on multiple occasions prior to default and filing of the foreclosure. Plaintiff’s status as owner and holder of the note at the time of filing has become a significant issue in these cases, particularly because many firms file lost note counts as a standard alternative pleading in the complaint. There have been situations where two different plaintiffs have filed suit on the same note at the same time. Requiring the plaintiff to verify its ownership of the note at time of filing provides incentive to review and ensures that the filing is accurate, ensures that investigation has been made and that the plaintiff is the owner and holder of the note. This requirement will reduce confusion and give the trial judges the authority to sanction those who file without assuring themselves of their authority to do so. The proposed rule was adapted from rule 5.020, Florida Probate Rules.

Form 1.997. Civil Cover Sheet

The proposed changes to the Civil Cover Sheet specify three types of mortgage foreclosure cases, including residential/homestead, residential/not homestead and commercial, and add the following clarifications and definitions of these case types to the Instructions for Attorneys Completing Civil Cover Sheet:

- ~~Real Property/Mortgage Foreclosure — all matters relating to the possession, title, and boundaries of real property except mortgage foreclosure. All matters involving foreclosures and sales, including foreclosures associated with condominium associations and condominium units.~~
- (P) Mortgage Foreclosure Residential/Homestead all matters relating to the termination of a residential property owner’s interest by a lender to gain

title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption.

(Q) Mortgage Foreclosure Residential/ Not Homestead all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption.

(R) Mortgage Foreclosure Commercial all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property.

Proposed changes to both the existing Civil Cover Sheet and the newly-amended Civil Cover Sheet that will be effective January 10, 2010 are appended to the petition.

The purpose of this proposal is to allow the Court to case manage foreclosure cases. Residential cases will be case managed differently than commercial cases. Those residential cases that are homestead will be managed differently than non-homestead properties. Requiring these designations on the Civil Cover Sheet permits categorization of the cases as early as possible. The Task Force elected to use homestead status as it is an objective analysis of whether the property currently has a homestead exemption with the property tax appraiser, a matter easily determined without requiring locating the borrower.

Affidavit of Diligent Search Form

The Task Force proposes adoption of the Affidavit of Diligent Search as a new form. The proposed form was adapted from Forms 12.913(b) and (c), Florida Family Law Forms. Many foreclosure cases are served by publication, and currently, affidavits of diligent search are formatted many different ways and include different information. These are categories of criteria that are available to locate a defendant, and only those utilized would be checked. The entire affidavit will be reviewed for diligence upon application for default. The most significant addition is the additional criteria that if the process server serves an occupant in the property, he inquires of that occupant whether he knows the location of the borrower-defendant. Currently, that is not occurring. The logic is that those occupants are probably paying rent to a defendant-owner

someplace. The goal is to locate defendants and make sure they are on notice as efficiently as possible.

Motion to Cancel and Reschedule Foreclosure Sale

The Task Force proposes a new standard Motion to Cancel and Reschedule Foreclosure Sale. Currently, many foreclosure sales set by the final judgment and handled by the clerks of court are the subject of vague last-minute motions to reset sales without giving any specific information as to why the sale is being reset. It is important to know why sales are being reset so as to determine when they can properly be reset, or whether the sales process is being abused. Therefore, this form requires that the movant advise the court specifically as to why the foreclosure sale is being sought to reset. Again, this is designed at promoting effective case management and keeping properties out of extended limbo between final judgment and sale.

Respectfully submitted,

Jennifer D. Bailey, Chair
Task Force on Residential Mortgage
Foreclosure Cases

Circuit Judge
Eleventh Judicial Circuit

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this rule petition of the Task Force on Residential Mortgage Foreclosure Cases is submitted in Times New Roman 14-point font, in compliance with rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Jennifer D. Bailey

APPENDIX A

PROPOSED RULE AND FORM AMENDMENTS

RULE 1.110. GENERAL RULES OF PLEADING

(a) **Forms of Pleadings.** Forms of action and technical forms for seeking relief and of pleas, pleadings, or motions are abolished.

(b) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

“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.”

(c) **The Answer.** In the answer a pleader shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge, the defendant shall so state and such statement shall operate as a denial. Denial shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of an averment, the pleader shall specify so much of it as is true and shall deny the remainder. Unless the

pleader intends in good faith to controvert all of the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or may generally deny all of the averments except such designated averments as the pleader expressly admits, but when the pleader does so intend to controvert all of its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial.

(d) Affirmative Defenses. In pleading to a preceding pleading a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if justice so requires, shall treat the pleading as if there had been a proper designation. Affirmative defenses appearing on the face of a prior pleading may be asserted as grounds for a motion or defense under rule 1.140(b); provided this shall not limit amendments under rule 1.190 even if such ground is sustained.

(e) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(f) Separate Statements. All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth.

(g) Joinder of Causes of Action; Consistency. A pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if

separate items make up the cause of action, or if 2 or more causes of action are joined. A party may also set forth 2 or more statements of a claim or defense alternatively, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both. All pleadings shall be construed so as to do substantial justice.

(h) Subsequent Pleadings. When the nature of an action permits pleadings subsequent to final judgment and the jurisdiction of the court over the parties has not terminated, the initial pleading subsequent to final judgment shall be designated a supplemental complaint or petition. The action shall then proceed in the same manner and time as though the supplemental complaint or petition were the initial pleading in the action, including the issuance of any needed process. This subdivision shall not apply to proceedings that may be initiated by motion under these rules.

Committee Notes

1971 Amendment. Subdivision (h) is added to cover a situation usually arising in divorce judgment modifications, supplemental declaratory relief actions, or trust supervision. When any subsequent proceeding results in a pleading in the strict technical sense under rule 1.100(a), response by opposing parties will follow the same course as though the new pleading were the initial pleading in the action. The time for answering and authority for defenses under rule 1.140 will apply. The last sentence exempts post judgment motions under rules 1.480(c), 1.530, and 1.540, and similar proceedings from its purview.

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

(Name of Court) _____

Plaintiff _____

Case #: _____

Judge: _____

vs.

Defendant _____

II. TYPE OF CASE (Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution <input type="checkbox"/> Dissolution <input type="checkbox"/> Support — IV-D <input type="checkbox"/> Support — Non IV-D <input type="checkbox"/> UIFSA — IV-D <input type="checkbox"/> UIFSA — Non IV-D <input type="checkbox"/> Domestic violence <input type="checkbox"/> Other domestic relations	<input type="checkbox"/> Professional malpractice <input type="checkbox"/> Products liability <input type="checkbox"/> Auto negligence <input type="checkbox"/> Other negligence	<input type="checkbox"/> Contracts <input type="checkbox"/> Condominium <input type="checkbox"/> Real property/ Mortgage foreclosure <u>Mortgage foreclosure</u> <input type="checkbox"/> <u>Residential/homestead</u> <input type="checkbox"/> <u>Residential/not</u> <u>homestead</u> <input type="checkbox"/> <u>Commercial</u> <input type="checkbox"/> Eminent domain <input type="checkbox"/> Challenge to proposed constitutional amendment <input type="checkbox"/> Other

III. IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
 No

DATE _____

SIGNATURE OF ATTORNEY FOR PARTY
 INITIATING ACTION _____

FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Type of Case. Place an “X” in the appropriate box. If the cause fits more than one type of case, select the most definitive. Definitions of the cases are provided below.

- (A) Simplified Dissolution of Marriage — petitions for the termination of marriage pursuant to Fla.Fam.L.R.P. 12.105.
- (B) Dissolution of Marriage — petitions for the termination of marriage other than simplified dissolution.
- (C) Support — IV-D — all matters relating to child or spousal support in which an application for assistance has been filed under Title IV-D, Social Security Act, except for such matters relating to dissolution of marriage petitions (sections 409.2564, 409.2571, and 409.2597, Florida Statutes), paternity, or UIFSA.
- (D) Support — Non IV-D — all matters relating to child or spousal support in which an application for assistance has not been filed under Title IV-D, Social Security Act.
- (E) UIFSA — IV-D — all matters relating to Chapter 88, Florida Statutes in which an application for assistance has been filed under Title IV-D, Social Security Act.
- (F) UIFSA — Non IV-D — all matters relating to Chapter 88, Florida Statutes, in which an application for assistance has not been filed under Title IV-D, Social Security Act.
- (G) Domestic Violence — all matters relating to injunctions for protection against domestic violence pursuant to section 741.30, Florida Statutes.
- (H) Domestic Relations — all matters involving adoption, paternity, change of name, child custody, separate maintenance, annulment, or other matters not included in categories (A) through (G).
- (I) Auto Negligence — all matters arising out of a party’s allegedly negligent operation of a motor vehicle.
- (J) Professional Malpractice — all professional malpractice lawsuits.
- (K) Products Liability — all matters involving injury to person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.
- (L) Other Negligence — all actions sounding in negligence, including statutory claims for relief on account of death or injury, not included in categories (I), (J), and (K).
- (M) Condominium — all civil lawsuits pursuant to Chapter 718, Florida Statutes, where a condominium association is a party in the lawsuit.
- (N) Eminent Domain — all matters relating to the taking of private property for public use, including inverse condemnation by state

agencies, political subdivisions, and public service corporations.

(O) ~~Real Property/Mortgage Foreclosure~~ — all matters relating to the possession, title, and boundaries of real property except mortgage foreclosure. ~~All matters involving foreclosures and sales, including foreclosures associated with condominium associations and condominium units.~~

(P) ~~Mortgage Foreclosure Residential/Homestead~~ all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption.

(Q) ~~Mortgage Foreclosure Residential/Not Homestead~~ all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption.

(R) ~~Mortgage Foreclosure Commercial~~ all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property.

~~(P)~~(S) Contract and indebtedness — all contract actions relating to promissory notes and other debts, including those arising from the sale of goods. Excludes contract disputes involving condominium associations.

~~(Q)~~(T) Challenge to proposed constitutional amendment — a challenge to a legislatively initiated proposed constitutional amendment. Excludes challenges to citizen-initiated proposed constitutional amendments, because the Florida Supreme Court has direct jurisdiction of such challenges.

~~(R)~~ (U) Other Civil — all civil matters not included in categories (A) through ~~(Q)~~ (R).

III. Is Jury Trial Demanded In Complaint? Check the appropriate box to indicate whether a jury is being demanded in the complaint.

DATE AND ATTORNEY SIGNATURE.
Date and sign the civil cover sheet.

REVISED [August 7, 2009]

IN RE: Amendments to the Florida Rules of Civil Procedure –

Management of Cases Involving Complex Litigation, SC08-1141

Form 1.997 Civil Cover Sheet

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions for completion).

I. CASE STYLE

(Name of Court) _____

Plaintiff _____

Case #: _____

Judge: _____

vs.

Defendant _____

II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability—commercial
 - Premises liability—residential

- Products liability
- Real property/Mortgage foreclosure
 - Commercial foreclosure \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 - \$50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Nonhomestead residential foreclosure \$0 - \$50,000
 - Nonhomestead residential foreclosure \$50,001 - \$249,999
 - Nonhomestead residential foreclosure \$250,000 or more
 - Other real property actions \$0 - \$50,000
 - Other real property actions \$50,001 - \$249,999
 - Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice—business
 - Malpractice—medical
 - Malpractice—other professional
- Other
 - Antitrust/Trade regulation
 - Business transactions
 - Constitutional challenge—statute or ordinance
 - Constitutional challenge—proposed amendment
 - Corporate trusts
 - Discrimination—employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secret

III. REMEDIES SOUGHT (check all that apply):

- monetary;
- non-monetary declaratory or injunctive relief;
- punitive

IV. NUMBER OF CAUSES OF ACTION: []
(specify) _____

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If “yes”, list all related cases by name, case number, and court.

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature _____ Fla. Bar # _____
Attorney or party (Bar # if attorney)

(type or print name) Date

FORM 1.997. INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET
Plaintiff must file this cover sheet with first paperwork filed in the action or proceeding (except small claims cases or other county court cases, probate, or family cases). Domestic and juvenile cases should be accompanied by a completed Family Court Cover Sheet, Florida Supreme Court Approved Family Law Form 12.928. Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Type of Case. Place an “X” in the appropriate box. If the cause fits more than one type of case, select the most definitive. If the most definitive label is a subcategory (indented under a broader category label, place an “X” in the category and subcategory boxes. Definitions of the cases are provided below in the order they appear on the form.

(A) Condominium - all civil lawsuits pursuant to Chapter 718, Florida Statutes, in which a condominium association is a party.

(B) Contracts and indebtedness - all contract actions relating to promissory notes and other debts, including those arising from the sale of goods, but excluding contract disputes involving condominium associations.

(C) Eminent domain - all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, or public service corporations.

(D) Auto negligence - all matters arising out of a party’s allegedly negligent operation of a motor vehicle.

(E) Negligence—other - all actions sounding in negligence, including statutory claims for relief on account of death or injury, that are not included in other main categories.

(F) Business governance - all matters relating to the management, administration, or control of a company.

(G) Business torts - all matters relating to liability for economic loss allegedly caused by interference with economic or business relationships.

(H) Environmental/Toxic tort - all matters relating to claims that violations of environmental regulatory provisions or exposure to a chemical caused injury or disease.

(I) Third party indemnification - all matters relating to liability transferred to a third party in a financial relationship.

(J) Construction defect - all civil lawsuits pursuant to Chapter 558, Florida Statutes, in which damage or injury was allegedly caused by a failure to follow acceptable construction trade standards.

(K) Mass tort - all matters relating to a civil action involving numerous plaintiffs against one or more defendants.

(L) Negligent security - all matters involving injury to a person or property allegedly resulting from insufficient security.

(M) Nursing home negligence - all matters involving injury to a nursing home resident resulting from negligence of nursing home staff or facilities.

(N) Premises liability—commercial - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a commercial property.

(O) Premises liability—residential - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a residential property.

(P) Products liability - all matters involving injury to a person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.

(Q) Real property/Mortgage foreclosure - all matters relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property, including foreclosures associated with condominium associations or condominium units.

(R) Commercial foreclosure - all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(S) Homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(T) Nonhomestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(U) Other real property actions - all matters relating to land, land improvements, or property rights not involving commercial or residential foreclosure. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(V) Professional malpractice - all professional malpractice lawsuits.

(W) Malpractice—business - all matters relating to a business's or business person's failure to exercise the degree of care and skill that someone in the same line of work would use under similar circumstances.

(X) Malpractice—medical - all matters relating to a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.

(Y) Malpractice—other professional - all matters relating to negligence of those other than medical or business professionals.

(Z) Other - all civil matters not included in other categories.

(AA) Antitrust/Trade regulation - all matters relating to unfair methods of competition or unfair or deceptive business acts or practices.

(AB) Business transactions - all matters relating to actions that affect financial or economic interests.

(AC) Constitutional challenge—statute or ordinance – a challenge to a statute or ordinance, citing a violation of the Florida Constitution.

(AD) Constitutional challenge—proposed amendment – a challenge to a legislatively initiated proposed constitutional amendment, but excluding challenges to a citizen-initiated proposed constitutional amendment because the Florida Supreme Court has direct jurisdiction of such challenges.

(AE) Corporate trusts - all matters relating to the business activities of financial services companies or banks acting in a fiduciary capacity for investors.

(AF) Discrimination—employment or other - all matters relating to discrimination, including employment, sex, race, age, handicap, harassment, retaliation, or wages

(AG) Insurance claims - all matters relating to claims filed with an insurance company.

(AH) Intellectual property - all matters relating to intangible rights protecting commercially valuable products of the human intellect.

(AI) Libel/Slander - all matters relating to written, visual, oral, or aural defamation of character.

(AJ) Shareholder derivative action - all matters relating to actions by a corporation's shareholders to protect and benefit all shareholders against corporate management for improper management.

(AK) Securities litigation - all matters relating to the financial interest or instruments of a company or corporation.

(AL) Trade secrets - all matters relating to a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.

III. Remedies Sought. Place an “X” in the appropriate box. If more than one remedy is sought in the complaint or petition, check all that apply.

IV. Number of Causes of Action. If the complaint or petition alleges more than one cause of action, note the number and the name of the cause of action.

V. Class Action. Place an “X” in the appropriate box.

VI. Related Cases. Place an “X” in the appropriate box.

VII. Is Jury Trial Demanded In Complaint? Check the appropriate box to indicate whether a jury trial is being demanded in the complaint

ATTORNEY OR PARTY SIGNATURE. Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that the filer has provided accurate information on the civil cover sheet.

NEW FORM FOR AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, (full legal name) (individually or an Employee of _____), being sworn, certify that the following information is true:

- 1. I have made diligent search and inquiry to discover the current residence of _____ . **Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[√ all that apply]

Inquiry of Social Security Information

- Telephone listings in the last known locations of defendant's residence

- Statewide directory assistance search

- Internet people finder search {specify sites searched}

- Voter Registration in the area where defendant was last known to reside.

- Nationwide Masterfile Death Search

- Tax Collector's records in area where defendant was last known to reside.

- Tax Assessor's records in area where defendant was last known to reside

- Department of Motor vehicle records in the state of defendant's last known address

- Driver's License records search in the state of defendant's last known address.

- Department of Corrections records in the state of defendant's last known address.

- Federal Prison records search.

- Regulatory agencies for professional or occupational licensing.

- Inquiry to determine if defendant is in military service.

- Last known employment of defendant.

{List all additional efforts made to locate defendant}

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Plaintiff

Printed Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

Telefacsimile: _____

STATE OF _____
COUNTY OF _____

Sworn to or affirmed and signed before me on this _____ day of _____, 2009 by _____.

NOTARY PUBLIC, STATE OF _____

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally known

Produced identification

Type of identification produced _____

NOTE: This form is used to obtain constructive service on the defendant.

NEW FORM FOR MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE

Comes now _____, Plaintiff, by and through undersigned counsel, and respectfully moves this Court to cancel and reschedule a mortgage foreclosure sale and as grounds therefore states as follows:

1. On _____ this Court entered a Summary Final Judgment of Foreclosure pursuant to which a foreclosure sale was scheduled for _____, 20_____.

2. Said sale needs to be canceled for the following reason(s):

a. _____ Plaintiff and Defendant are continuing to be involved in loss mitigation;

b. _____ Defendant is negotiating for the sale of the property which is the subject of this matter and Plaintiff is desirous of allowing the Defendant an opportunity to sell same and pay off the debt which is due and owing to Plaintiff.

c. _____ Defendant has entered into a contract to sell the property which is the subject of this matter and Plaintiff is desirous of allowing the Defendant an opportunity to consummate the sale and pay off the debt which is due and owing to Plaintiff.

d. _____ Defendant has filed a Chapter _____ Petition under the Federal Bankruptcy Code;

e. _____ Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f. _____ Plaintiff and Defendant have entered into a Forbearance Agreement;

g. _____ Other

3. Should this Court cancel the foreclosure sale Plaintiff respectfully requests that the Court re-schedule same.

WHEREFORE PREMISES CONSIDERED Plaintiff requests that this Court cancel the foreclosure sale previously scheduled for _____ and to re-schedule same.

APPENDIX B

PROPOSED RULE AND FORM AMENDMENTS

Proposed Rule	Reason for Change
<p>Rule 1.110 General Rules of Pleading</p> <p>(a) Forms of Pleadings. NO CHANGE</p> <p>(b) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.</p> <p><u>When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:</u></p> <p><u>“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.”</u></p> <p>(c) The Answer. NO CHANGE</p> <p>(d) Affirmative Defenses. NO CHANGE</p> <p>(e) Effect of Failure to Deny. NO CHANGE</p> <p>(f) Separate Statements. NO CHANGE</p>	

**(g) Joinder of Causes of Action;
Consistency. NO CHANGE**

(h) Subsequent Pleadings. NO CHANGE

Committee Notes

1971 Amendment. Subdivision (h) is added to cover a situation usually arising in divorce judgment modifications, supplemental declaratory relief actions, or trust supervision. When any subsequent proceeding results in a pleading in the strict technical sense under rule 1.100(a), response by opposing parties will follow the same course as though the new pleading were the initial pleading in the action. The time for answering and authority for defenses under rule 1.140 will apply. The last sentence exempts post judgment motions under rules 1.480(c), 1.530, and 1.540, and similar proceedings from its purview.

APPENDIX C

Report of The Florida Bar Rules of Civil Procedure Committee

APPENDIX D

CERTIFICATION

I certify that I read rules 1.110, Florida Rules of Civil Procedure, and Form 1.997, Forms for Use with Rules of Civil Procedure, contained in Appendices A and B of this petition against rule 1.110, and Form 1997, as published in *Thompson West Florida Rules of Court, State, 2007*.

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Foreclosure Cases