

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CIVIL
PROCEDURE**

CASE NO:

**FAST-TRACK REPORT IN RESPONSE TO
LEGISLATIVE CHANGES**

Mark Romance, Chair, Civil Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this 2009 fast-track report of the Civil Procedure Rules Committee under *Fla. R. Jud. Admin.* 2.140(f). The proposed amendments to *Fla. R. Civ. P.* Form 1.996, were approved by the Committee 44-1. They have been reviewed by the Board of Governors of The Florida Bar during its July 2009 meeting and approved by a vote of 41-0.

The Civil Procedure Rules Committee (“Committee”) originally approved proposed changes to Form 1.996 during its January 2009 meeting and submitted the proposal to the Board of Governors for review and approval. During its meeting on April 3, 2009, the Board of Governors approved the then current proposal by a vote of 39-0. The proposed changes were then published in the July 1, 2009, Florida Bar News (see Appendix E) and one comment was received, which is discussed below.

However, after the April Board of Governors meeting, a Board member notified the Committee that the Bar’s Real Property, Probate, and Trust Law (“RPPTL”) Section had also been working on revisions to Form 1.996. Rather than require the RPPTL Section to file formal comments, the Committee elected to work directly with the RPPTL’s subcommittee to incorporate its changes into its proposed version.

The Committee consulted with the RPPTL subcommittee that had also undertaken a review of Form 1.996. The RPPTL subcommittee proposed several changes to the form that were designed to improve its clarity and readability, and to better conform to the prevailing practices in the courts. These changes were reviewed and approved by the RPPTL Section’s

Executive Council, were then approved by the Civil Procedure Rules Committee in June 2009 by an e-mail vote of 44-1, and then were submitted to the Board of Governors for its July 2009 meeting and approved by a vote of 41-0. The revised proposed changes were not published in the Florida Bar News, in order to expedite filing of this fast-track report.

Multiple changes are proposed to Form 1.996 (see Appendix A) as follows:

1. In Chapter 2006-175, Laws of Fla., §1 (see Appendix B), the legislature added a requirement that final judgments of foreclosure contain a notice to lienholders and directions to property owners as to how to claim a right to funds remaining after public auction. The discrepancy between the statute and rule was noticed by a Bar staff attorney and committee liaison, who submitted a proposed rule amendment to the Committee. The Committee approved an amendment adding to Form 1.996 the mandatory statutory language. This text is the underlined text beginning with the text in all-capital letters in the form.

2. In Chapter 2008-194, Laws of Fla., §1 (see Appendix C), the legislature amended section 45.031, Florida Statutes, to allow the clerk of court in each circuit to conduct judicial sales via electronic means. The Committee proposes that Form 1.996 be amended to give the court the option to order a sale by electronic means. The proposed changes include boxes that must be checked by the court to indicate which method of sale has been designated by the court.

3. The RPPTL Section proposed changing Paragraph 1 to set out the amounts due in column format. This change was intended to provide greater clarity and to assist practitioners and the courts in preventing addition errors.

4. The RPPTL Section modified Paragraph 2 to allow for the possibility that there may be more than one defendant. Out of concern for the privacy interests of the defendant, the RPPTL Section also deleted the line for the address and social security number of the defendant. The RPPTL Section reasoned that the foreclosure judgment is not a personal final money judgment against the defendant borrower, but rather an in rem action against the real property. The RPPTL Section also concluded that the existing form was not clear as to whether social security number and addresses would be

needed for every defendant, where there were multiple defendants, some of whom might hold a junior interest in the real property without any liability for the underlying debt. The RPPTL Section suggested that if a deficiency judgment were later obtained against the defendant borrower, it would be appropriate to require that the social security number and address of that defendant (if known) be included in the deficiency judgment, since it would be a final money judgment.

5. The RPPTL Section proposed a new Paragraph 4 to ensure that a sale does not proceed without a representative of the plaintiff present, and to permit a plaintiff to cancel a sale subject to obtaining leave of court to reschedule the sale. This change would make the form more consistent with the practices of most clerks and would allow the plaintiff to cancel a scheduled sale rather than having to miss the sale and then move the trial judge to set aside the sale on the grounds that the plaintiff was not represented. The trial court would retain power over the rescheduling of the sale and could control any abuse by imposing proper conditions on the rescheduling.

6. The RPPTL Section modified Paragraph 5 (former Paragraph 4) to conform to existing practice. Under the current form, if there is active bidding, the plaintiff has to constantly recalculate what its bid credit is to cover the cost of the documentary stamps on the certificate of title. The RPPTL Section concluded that it is more efficient to simply require the successful purchaser (whether that is the plaintiff or the third party bidder) to pay the documentary stamps on the certificate of title.

7. The RPPTL Section modified Paragraph 7 (former Paragraph 6) in several ways. The first sentence was modified to recognize that there may be multiple defendants and to adapt to the requirements of Florida Statutes Section 45.0315 (right of redemption), Chapter 718 (the Condominium Act), and Chapter 720 (the homeowners' associations act). Section 45.0315 provides that the right of redemption expires upon the filing of the certificate of sale, unless a later time is specified in the judgment, order, or decree of foreclosure. Chapters 718 and 720 provide that some or all of any unpaid assessments continue to be a lien on the property even after foreclosure sale. The RPPTL Section suggested language that would prevent tying up court time over arguments of whether or not the use of the form negates the statutory lien rights of the condominium or homeowners' association. The last sentence of Paragraph 7 was added to allow the purchaser to obtain a

Writ of Possession from the Clerk without having to schedule another hearing to deal with a defendant (i.e., a party to the litigation) who refuses to vacate the property after the certificate of title is issued.

Comments Received

During the Civil Rules Committee discussion, one member opposed the form because it does not include in Paragraph 1 a line item for recovery of advances made for property insurance, which costs are recoverable. The Committee determined that this item can be noted under the “Other” category in that paragraph.

The Committee did receive one comment from Henry Trawick to the July 1, 2009, publication of the original proposed form. (see Appendix D). However, the Committee determined that the comment was not related to the published proposed changes, but rather, proposed a new and unrelated change to the form. Because the comment was not related to the proposed changes, and in an effort to maintain this as a fast-track report, the Committee will consider Mr. Trawick’s comments as a proposed rule change in the Committee’s 2013 cycle report.

The Committee respectfully asks the Court to amend Florida Rule of Civil Procedure Form 1.996 as described in this report.

Respectfully submitted, _____.

MARK ROMANCE
Chair, Civil Procedure Rules Committee
Richman Greer P.A.
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305/373-4000
FLORIDA BAR NO.: 21520

JOHN F. HARKNESS, JR.
Executive Director
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Tallahassee, FL 32399-2300
850/561-5600
FLORIDA BAR NO.: 123390

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to Henry Trawick, P.O. Box 4009, Sarasota, FL 34230-4009, this ____ day of _____, 2009.

CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in accordance with the font requirements of Fla. R. App. P. 9.210(a)(2).

I certify that this form was read against West's *Florida Rules of Court – State* (2009).

MADOLON HORWICH
Bar Staff Liaison, Civil Procedure Rules Committee
The Florida Bar
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FLORIDA BAR #316512

APPENDIX A

Changes to Form 1.996 in Legislative Format

FORM 1.996. FINAL JUDGMENT OF FORECLOSURE

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff,(name and address)...., is due ~~..... as principal, \$..... as interest to date of this judgment, \$..... for title search expense, \$..... for taxes, \$..... for insurance premiums, \$..... for attorneys' fees, with \$..... for court costs now taxed, less \$..... for undisbursed escrow funds and less \$..... for unearned insurance premiums, under the note and mortgage sued on in this action, making a total sum of \$....., that shall bear interest at the rate of% a year.~~

Principal	\$.....
Interest to date of this judgment
Title search expense
Taxes
Attorneys' fees
Court costs, now taxed
Other:
Subtotal	\$.....
LESS: Escrow balance
LESS: Other
TOTAL	\$.....

that shall bear interest at the rate of% a year.

2. Plaintiff holds a lien for the total sum superior to ~~any~~all claims or estates of defendant(s), ~~....(name and address, and social security number if known)....~~, on the following described property in County, Florida:

(describe property)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on(date)....., ~~between 11:00 a.m. and 2:00 p.m.~~ to the highest bidder for cash, except as prescribed in paragraph 4~~5~~, at the ~~.... door of the courthouse~~ located at(street address of courthouse)..... in County in(name of city)....., Florida, in accordance with section 45.031, Florida Statutes, using the following method (CHECK ONE):

At(location of sale at courthouse; e.g., north door)....., beginning at(time of sale)..... on the prescribed date.

By electronic sale beginning at(time of sale)..... on the prescribed date at(website).....

4. The sale of the property shall not begin until a duly authorized representative of the plaintiff or the plaintiff's counsel is present. Plaintiff has the right upon notice to the clerk of the court to cancel the public sale. Plaintiff may thereafter schedule a new public sale only upon entry of court order.

4.5. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it; as is necessary to pay the bid in full.

5.6. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

6.7. On filing the certificate of title sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property ~~and the purchaser at the sale, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any.~~ Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

7.8. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, ~~writs of possession and a~~ deficiency judgment.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at, Florida, on(date).....

Judge

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Florida Statutes; *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla. 4th DCA 1998). ~~The address and social security number (if known) of each person against whom the judgment is rendered must be included in the judgment, pursuant to section 55.01(2), Florida Statutes.~~

Committee Notes

1980 Amendment. The reference to writs of assistance in paragraph 7 is changed to writs of possession to comply with the consolidation of the 2 writs.

2010 Amendment. Mandatory statements of the mortgagee/property owner's rights are included as required by the 2006 amendment to section 45.031, Florida Statutes. Changes are also made based on 2008 amendments to section 45.031, Florida Statutes, permitting courts to order sale by electronic means.

Additional changes were made to bring the form into compliance with chapters 718 and 720 and section 45.0315, Florida Statutes, and to better align the form with existing practices of clerks and practitioners. The breakdown of the amounts due is now set out in column format to simplify calculations. The requirement that the form include the address and social security number of all defendants was eliminated to protect the privacy interests of those defendants and in recognition of the fact that this form of judgment does not create a personal final money judgment against the defendant borrower, but rather an in rem judgment against the property. The address and social security number of the defendant borrower should be included in any deficiency judgment later obtained against the defendant borrower.

APPENDIX B

Chapter 2006-175, Laws of Fla., §1

CHAPTER 2006-175

House Bill No. 65

An act relating to foreclosure proceedings; amending s. 45.031, F.S.; revising procedures and requirements for judicial sales; creating s. 45.032, F.S.; providing for disbursement of surplus funds after a judicial sale; providing definitions; establishing a rebuttable presumption of entitlement to surplus funds in certain filings; providing legislative intent; providing requirements and procedures for disbursement of surplus funds by the clerk of court; providing for appointment of a surplus trustee under certain circumstances; providing for notice of appointment; providing for termination of appointment; providing for treatment of surplus funds as unclaimed property under certain circumstances; providing construction relating to title of property in a foreclosure sale; creating s. 45.033, F.S.; providing for a sale or assignment of rights to surplus funds in a property subject to foreclosure; establishing a rebuttable presumption of entitlement to surplus funds; providing requirements for proof; providing legislative intent; providing requirements for rebutting the presumption; providing requirements for transfers or assignments of surplus funds; providing duties and authority of a court in payment of surplus funds under a transfer or assignment; providing for nonapplication to certain instruments; specifying absence of effect on title or marketability of certain property or validity of certain liens; creating s. 45.034, F.S.; providing qualifications for appointment as a surplus trustee by the Department of Financial Services; providing requirements for appointment as a surplus trustee; providing for application and renewal fees; providing duties of the department in certifying surplus trustees; requiring the department to establish a rotation system for assignment of cases to surplus trustees; providing duties of a surplus trustee; providing entitlement of a surplus trustee to certain service charges and fees; creating s. 45.035, F.S.; specifying service charges for clerks of court for administering judicial sales and surplus funds; creating s. 501.2078, F.S.; providing definitions; providing a civil penalty for knowingly using unfair or deceptive homeowner victimization methods, acts, or practices in residential foreclosure proceedings; specifying higher priority of an order of restitution or reimbursement over imposition of a civil penalty; providing for deposit of civil penalties into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs; allocating such funds for certain purposes; specifying nonapplication to certain encumbrances, deeds, or actions; amending s. 702.035, F.S.; specifying different newspaper legal notice and process requirements for counties above a certain population size; limiting certain costs chargeable in a foreclosure proceeding; amending s. 201.02, F.S.; correcting a cross-reference; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in ss. 45.031-45.035~~following procedure~~ may be followed as an alternative to any other sale procedure if so ordered by the court.:

(1) FINAL JUDGMENT SALE BY CLERK.—

(a) In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff’s attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

(b) If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT INFORMATION FOR APPLICABLE COURT] WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST

LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

(c) A copy of the final judgment shall be furnished by the clerk by first class mail to the last known address of every party to the action or to the attorney of record for such party. Any irregularity in such mailing, including the failure to include this statement in any final judgment or order, shall not affect the validity or finality of the final judgment or order or any sale held pursuant to the final judgment or order. Any sale held more than 35 days after the final judgment or order shall not affect the validity or finality of the final judgment or order or any sale held pursuant to such judgment or order thereto.

(2) PUBLICATION OF SALE.—Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:

- (a) A description of the property to be sold.
- (b) The time and place of sale.
- (c) A statement that the sale will be made pursuant to the order or final judgment.
- (d) The caption of the action.
- (e) The name of the clerk making the sale.

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim within 60 days after the sale.

~~The clerk shall receive a service charge of up to \$60 for services in making, recording, and certifying the sale and title that shall be assessed as costs.~~The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

(3)(2) CONDUCT OF SALE; DEPOSIT REQUIRED.—The sale shall be conducted at public auction at the time and place set forth in the final judgment. The clerk shall receive the service charge imposed in s. 45.035 for services in making, recording, and certifying the sale and title that shall be assessed as costs. At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(4)(3) CERTIFICATION OF SALE.—After a sale of the property the clerk shall

promptly file a certificate of sale and serve a copy of it on each party ~~not in default~~ in substantially the following form:

(Caption of Action)

CERTIFICATE OF SALE

The undersigned clerk of the court certifies that notice of public sale of the property described in the order or final judgment was published in ..., a newspaper circulated in ... County, Florida, in the manner shown by the proof of publication attached, and on ..., ...(year)..., the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property in the amount of \$... was submitted by ..., to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order or final judgment or law. WITNESS my hand and the seal of this court on ..., ...(year)....

...(Clerk)...

By ...(Deputy Clerk)...

~~(5)~~(4) CERTIFICATE OF TITLE.—If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party ~~not in default~~ in substantially the following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she executed and filed a certificate of sale in this action on ..., ...(year)..., for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections.

The following property in ... County, Florida:

(description)

was sold to.

WITNESS my hand and the seal of the court on(year)....

...(Clerk)...

By ...(Deputy Clerk)...

~~(6)~~(5) CONFIRMATION; RECORDING.—When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named

in the certificate without the necessity of any further proceedings or instruments.

~~(6) RECORDING.~~—The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.—

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party ~~not in default~~, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

(b) The certificate of disbursements shall be, in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name	Amount
Total <u>disbursements</u> :	\$
<u>Surplus retained by clerk, if any</u> :	\$

IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE SURPLUS.

WITNESS my hand and the seal of the court on, ...(year)....

...(Clerk)...

By ...(Deputy Clerk)...

(c) If no objections to the report are served within 10 days after it is filed, the

disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

(d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the surplus shall be distributed as provided ss. 45.031-45.035.

(8) VALUE OF PROPERTY.—The amount of the bid for the property at the sale shall be conclusively presumed to be sufficient consideration for the sale. Any party may serve an objection to the amount of the bid within 10 days after the clerk files the certificate of sale. If timely objections to the bid are served, the objections shall be heard by the court. Service of objections to the amount of the bid does not affect or cloud the title of the purchaser in any manner. If the case is one in which a deficiency judgment may be sought and application is made for a deficiency, the amount bid at the sale may be considered by the court as one of the factors in determining a deficiency under the usual equitable principles.

(9) EXECUTION SALES.—This section shall not apply to property sold under executions.

APPENDIX C

Chapter 2008-194, Laws of Fla., §1

CHAPTER 2008-194

Council Substitute for House Bill No. 773

An act relating to judicial sales; amending s. 45.031, F.S.; permitting certain sales to be conducted by electronic means; requiring electronic sales to comply with specified procedures; providing exceptions; requiring clerks to provide public access terminals for electronic sales; permitting clerks to receive electronic payments and deposits related to electronic sales; amending s. 45.035, F.S.; providing a service charge to be received by clerks for sales conducted by electronic means under a specified provision; providing an exception to the fee for moneys in the registry of the court; amending s. 197.542, F.S.; providing for electronic tax deed sales; requiring clerks to provide public access terminals for electronic sales; permitting clerks to receive electronic payments and deposits related to electronic sales; providing provisions relating to electronic tax deed sales in charter counties; for providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) is added to section 45.031, Florida Statutes, to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(10) ELECTRONIC SALES.—The clerk may conduct the sale of real or personal property under an order or judgment pursuant to this section by electronic means. Such electronic sales shall comply with the procedures provided in this chapter, except that electronic proxy bidding shall be allowed and the clerk may require bidders to advance sufficient funds to pay the deposit required by subsection (3). The clerk shall provide access to the electronic sale by computer terminals open to the public at a designated location and shall accept an advance credit proxy bid from the plaintiff of any amount up to the maximum allowable credit bid of the plaintiff. A clerk who conducts such electronic sales may receive electronic deposits and payments related to the sale.

APPENDIX D

Comment Received after Publication of Proposed Changes

[Please note that only the last comment in this letter pertains to Form 1.996. The rest are comments in response to the Civil Procedure Rules Committee's proposed three-year-cycle report, which will be filed in January 2010.]

LAW OFFICES
HENRY P. TRAWICK, P.A.
2033 WOOD STREET
SUITE 218
SARASOTA, FLORIDA 34237

PLEASE REPLY TO:
P. O. BOX 4009
SARASOTA, FLORIDA 34230

July 23, 2009

TELEPHONE (941) 366-0660
FAX (941) 366-8941

Date 7/27/09
Scanned _____
TW _____
Client _____
Cal. _____
Cl. Rpt _____

Mr. Mark A. Romance
Richmond Greer, P.A.
201 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131

Dear Mr. Romance:

I have the following comments concerning the proposed amendments to the Civil Procedure Rules:

Rule 1.080(b) - This change now makes two time periods for actual delivery. It seems to me this is a retrograde step. The Castillo case does not require it. If the Committee wants to give five days after actual delivery, say so.

Rule 1.285 - This rule is very poorly phrased. I enclose a xerox copy of the changes that would make it more concise and leave most of the meaning as it is. Subdivision (c) would eliminate the specified grounds since they are not limited to those grounds. The subdivision should say that the grounds for challenge may be made on any proper basis. By the same token the court should make its order on any proper basis. The only two items need be considered in addition are the scope of discovery and the extent of the claimed privilege. The drafters of the rule were verbose.

Rule 1.351(c) - This change is a mistake. Service should be made by a sheriff or process server. Otherwise, there is no proper return that can be relied on. This would also eliminate the change to Rule 1.410(d).

July 23, 2009

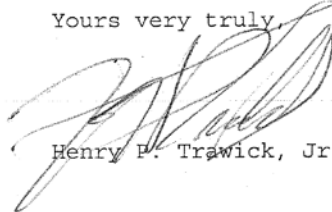
Rule 1.420(a)(1) - The first change is not necessary. A party can either amend his pleadings or withdraw a claim or any part of an action or claim.

Rule 1.510(c) - This is not a proposed change. It would be to correct what is already erroneously in the subdivision. There is no such thing as summary judgment evidence. It is a summary judgment record. The use of "evidence" gives rise to all sorts of problems in lawyers' and judges' thinking. I hope you will consider making that change.

Form 1.996 - The commencement of this form omits the required finding on attorney fees of the reasonable number of hours and the reasonable hourly rate for the lawyer. This should be added before the adjudicatory parts.

If I can be of any further assistance, please let me know.

Yours very truly,



Henry F. Trawick, Jr.

HPT/wjd
enc.

APPENDIX E

Notice in Florida Bar *News*

July 1, 2009

Amendments to the Florida Rules Of Civil Procedure

The Civil Procedure Rules Committee is proposing amendments to Fla.R.Civ.P. Form 1.996 in response to 2006 and 2008 legislation. The Committee invites comment on the proposed out-of-cycle amendments, which are summarized below. The full text of the proposals can be found at the Bar's web site at www.floridabar.org. Interested persons have until August 1 to submit comments electronically to Mark Romance, Chair, Civil Procedure Rules Committee, mromance@richmangreer.com.

RULE	COMMITTEE VOTE	REASONS FOR CHANGE
Form 1.996	(1) 38-0 (2) 55-1	(1) To be consistent with Laws of Fla. 2006-175, §1, amending F.S. 45.031 to require that final judgments of foreclosure contain a notice to lienholders and property owners of how to claim a right to funds remaining after public auction. (2) To be consistent with Laws of Fla. 2008-194, §1, amending F.S. 45.031 to provide for judicial sale of certain property by electronic means.