

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF CIVIL PROCEDURE – FORM 1.996  
(FINAL JUDGMENT OF FORECLOSURE)

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SC09-1579  
SC09-1460

**COMMENT AND REQUEST FOR  
AMENDMENT TO FORM OF JUDGMENT**

I, Deborah Marks, request that this Court consider a modification to the proposed Form 1.996 and state:

- 1) In the course of my practice I have, for in excess of 10 years, represented an entity that acquires and services delinquent ad valorem tax liens (tax certificates and tax deed applications) in volume. As a result of that representation, I have appeared in innumerable foreclosure actions where tax certificates have been sold on the property that is the subject matter of the foreclosure.
- 2) The current proposed form appropriately includes, in paragraph 1, credit and reimbursement to the Plaintiff for payment of Taxes. At paragraph 6, all claims since the lis pendens (which could well include tax certificates depending upon the time of year and length of the foreclosure action) are foreclosed with the exception of Chapter 718 and Chapter 720 claims.

- 3) In the past, Plaintiffs in mortgage foreclosure actions did, indeed, pay the real property taxes as they constitute a first priority lien on the property that can extinguish the mortgage itself should the holder of the certificate seek a tax deed to collect and a tax deed is sold.
- 4) In practice, more and more Plaintiffs in mortgage foreclosure proceedings have not paid and do not pay the delinquent taxes. As a result, if the form is left as is and the Plaintiff does not pay the taxes, the Judgment appears to extinguish that senior lien as arguably although it is a claim against the property itself it could conceivably be argued that it is a claim against the Defendant<sup>1</sup>.
- 5) Additionally, many foreclosure proceedings filed in Florida erroneously claim that the tax certificate holders have an inferior position to the mortgagee. A provision in the form that deals with tax liens would simplify matters dramatically, and will cause no harm in cases where the tax liens have been paid prior to the judgment.

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<sup>1</sup> This would have been less of a problem had the Chapter 718 and 720 claims not been added, as those too can be considered liens against the property as opposed to personal claims against the Defendants. Once some are included, then the exclusion of others becomes significant.

- 6) An easy fix for this problem would be to include a paragraph that claims or rights arising from tax certificates or tax deed applications which have not been already paid by the Plaintiff or satisfied from the proceeds of the sale<sup>2</sup> shall remain an obligation of the property.

WHEREFORE, it is respectfully requested that this Court amend the proposed form to include a paragraph which would expressly state that taxes not paid by the Plaintiff or satisfied from the proceeds of the sale shall remain an obligation of the property

I hereby certify that a true and correct copy of the foregoing was mailed this 31<sup>st</sup> day of March, 2010 to Mark A. Romance, Committee Chair, 201 S, Biscayne Blvd, Ste 1000, Miami, FL 33131.

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By: \_\_\_\_\_  
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<sup>2</sup> Assuming a surplus, the Clerk of Court is statutorily required to pay off liens to certain creditors that should include any and all outstanding taxes in accordance with F.S. 197.217- something that is not always done in practice and cannot be done if there is no surplus to distribute.

**Typestyle Certification:**

I hereby certify that this document has been prepared in Times New Roman  
14.

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Deborah Marks