

**IN THE TENTH JUDICIAL CIRCUIT COURT
IN AND FOR HARDEE COUNTY, FLORIDA**

ADMINISTRATIVE ORDER NO. 3-36.0

**IN RE: STANDARD PROCEDURES AND LANGUAGE FOR HARDEE COUNTY
FORECLOSURE PROCEEDINGS AND 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;

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 Hardee County, Florida.

I. PROCEDURES APPLICABLE TO ALL FORECLOSURE ACTIONS:

CERTAIN RISKS ARE ASSOCIATED WITH BIDDING AT FORECLOSURE SALES, INCLUDING THE POSSIBILITY OF A FORECLOSURE SALE BEING SET ASIDE BECAUSE A DEFENDANT HAS FILED FOR BANKRUPTCY PROTECTION. IN SUCH CASE, EVEN WHERE THE PLAINTIFF AND THE CLERK ARE UNAWARE THAT A DEFENDANT HAS FILED FOR BANKRUPTCY PROTECTION, THE FORECLOSURE SALE CAN BE SET ASIDE, OR CAN BE CONSIDERED NULL AND VOID. ABSENT CLERK ERROR, IF THE SALE IS SET ASIDE, THE CLERK WILL RETAIN THE CLERK'S SALE FEE AND THE REGISTRY FEES EARNED PURSUANT TO SECTION 28.24(10) AND 45.035, FLORIDA STATUTES.

FORECLOSURE LAWS ARE COMPLICATED, AND PROSPECTIVE BIDDERS SHOULD NOT BID ON A FORECLOSURE PROPERTY UNLESS THEY HAVE THOROUGHLY RESEARCHED THE PROPERTY, UNDERSTAND FORECLOSURE AND RELATED REAL PROPERTY LAWS, AND UNDERSTAND WHAT LIENS OR ENCUMBRANCES MAY SURVIVE THE FORECLOSURE SALE. ATTORNEYS AND TITLE COMPANIES MAY BE ABLE TO PROVIDE INFORMATION REGARDING LIENS ON A GIVEN PROPERTY. BIDDERS ARE SOLELY RESPONSIBLE FOR RESEARCHING FORECLOSURE PROPERTIES AND ASSUME SOLE RESPONSIBILITY FOR MAKING ANY BID AT THE FORECLOSURE AUCTION.

THE CLERK'S OFFICE SELLS FORECLOSED PROPERTY PURSUANT TO COURT

ORDER. BIDDERS SHOULD NOT ASSUME THE SALE WILL RESULT IN A TITLE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES OR DEFECTS. THE CLERK'S OFFICE MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTIES BEING SOLD AND/OR THE RESULTS OF THE SALE, INCLUDING BUT NOT LIMITED TO, THE VALUE OF, OR THE TITLE TO, THE PROPERTY FOLLOWING A SALE. IT IS THE RESPONSIBILITY OF THE INTERESTED PARTY TO CONDUCT ALL RESEARCH REGARDING THE PROPERTY, INCLUDING WHETHER ANY OF THE DEFENDANTS HAVE FILED FOR BANKRUPTCY PROTECTION, WHETHER THERE ARE ANY LIENS OR ENCUMBRANCES OR DEFECTS IN TITLE, AND THE VALUE OF THE PROPERTY.

A. Familiarity with Law: 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 approved Fla. R. Civ. P. Form 1.996 Final Judgment of Foreclosure.
- (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.____) and shall state "bidding begins at 11 a.m. EST/EDT." The sale shall start promptly at 11:00 a.m. EST/EDT and shall be held at the Hardee 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 section 83.561, Florida Statutes, **prior to the Clerk issuing a Writ of Possession** after foreclosure on any dwelling or residential real property,

the immediate successor-in-interest **shall first** file “a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period.” § 83.561(2), Florida Statutes.

(2) Upon the filing of the appropriate Motion for Writ of Possession, proposed Order Directing Clerk to Issue Writ of Possession, required Sworn Affidavit (Section 83.561(2), Florida Statutes), and the *signed* Order Directing Clerk to Issue Writ of Possession from the Court on residential real properties, and upon receipt by the Clerk of the Affidavit of Bona Fide Tenant (pursuant to Fla. R. Civ. P. 1.580(b); see the attached “Schedule A”) attached to the unexecuted Writ of Possession, the Clerk of Court is authorized to issue the Writ of Possession to the tenant(s). A proposed Writ of Possession shall be provided to the Clerk by the requesting party and shall contain the following notice: “If you are a tenant and request a hearing to dissolve this Writ of Possession, you must sign and file the attached “Affidavit of Bona Fide Tenant” with the Clerk of Court for Hardee County within 24 hours of the date and time this Writ of Possession is served.”

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 consents or the Court sets some other time. *See* § 45.031, Fla. Stat.

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 provide the Clerk’s office with Notice(s) of Sale or Notice(s) of Rescheduled Sale.** 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 Fla. R. Civ. P. Form 1.996 Motion to Cancel and Reschedule Foreclosure Sale.

FILING A MOTION TO CANCEL SALE WILL NOT CAUSE THE SALE TO BE CANCELLED. ONLY A COURT ORDER WILL CANCEL A SALE.

ANY ORDER TO CANCEL RECEIVED BY THE CLERK AFTER THE SALE HAS ALREADY OCCURRED MAY RESULT IN THE IMPOSITION OF THE CLERK’S SALE FEE AND REGISTRY FEE.

G. Assignments:

- (1) The Clerk's Civil Department must be notified of an assignment of judgment in writing no later than three (3) business days before the scheduled sale date for the bidding to be conducted in the assignee's name. Assignments filed less than three (3) business days before a sale may result in the sale being conducted and the Certificate of sale being issued in the assignor's name.
- (2) 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: (a) an original Assignment of Judgment is filed by the plaintiff prior to the sale, or (b) an original Assignment of Bid is filed by a successful bidder subsequent to the sale. All Assignments of Judgments made prior to the sale must be filed in the court file.

H. 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* §28.24, Fla. Stat.

I. 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 in the event a foreclosure sale is conducted at the courthouse or other location, 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.

J. Redemption: Pursuant to section 45.0315, Florida Statutes, the mortgagor (defendant) or the holder of any subordinate interest may cure the indebtedness and prevent a foreclosure sale by paying the amount of monies specified in the judgment "at any time before the filing of a certificate of sale by the clerk of court or the time specified in the judgment, whichever is later." Payment for redemption must be made by cash or certified check drawn upon a U.S. banking institution made payable to Victoria L. Rogers, Clerk of the Court, in the amount of the judgment, plus the Clerk sale fee (if redemption occurs after the sale), registry fee, interest, and all related costs of the sale.

K. 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* §45.0315, Fla. Stat. and Section J “Redemption” above.

(2) If no objections to the sale are filed within ten (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, unless the property is 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. *See* §45.031(5) and §45.031(7)(c), Fla. Stat.

(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.

L. 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 the Final Judgment of Foreclosure. In the event a third party fails to complete the purchase and the deposit is insufficient to pay the costs of the sale and re-advertisement, the plaintiff’s attorney shall reschedule and re-advertise the sale.

M. 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.

N. 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.

II. PROCEDURES FOR FORECLOSURE SALES:

A. All Hardee County judicial foreclosure mortgage sales shall be conducted in the hallway outside of Room 202 (Second Floor) of the Hardee County Courthouse at 417 West Main Street, Wauchula, Florida 33873.

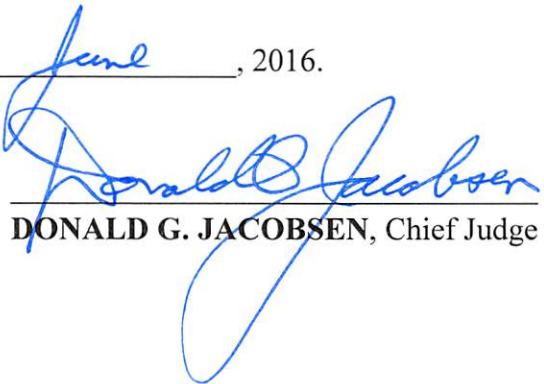
B. Sales shall be conducted, beginning at 11 a.m. EST/EDT, on the Wednesday specified

in the judicial order or final judgment.

- C. Foreclosure plaintiffs must submit the Clerk sale fee established by law (currently \$70.00) prior to the sale. *See* Florida Statute 45.035. The Clerk shall not conduct the sale if the payment has not been received.
- D. 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.
- E. At the time of the sale, the successful bidder must pay five percent (5%) of the final bid plus the Clerk service charge, *see* Florida Statute 45.031, and court registry fee, *see* Florida Statute 28.24. The balance of the final bid and documentary stamp tax, *see* Florida Statute §§ 201.01 and 201.02, must be paid by 2:00 p.m. EST/EDT the day of the sale.
- F. Failure of the successful bidder to pay the balance of the final bid and documentary stamp tax by 2:00 p.m. EST/EDT the day of 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 shall reschedule the sale. *See* Florida Statute 45.031.
- G. If a bidder fails to pay the balance of the final bid and documentary stamp tax, 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.

III. This Order shall take effect upon entry.

DONE and **ORDERED** on this 27th day of June, 2016.


DONALD G. JACOBSEN, Chief Judge

Copies:
All Judges
Hardee County Clerk of Court
Nick Sudzina, Trial Court Administrator
Electronic Bar Mailing

"Schedule A"

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

CASE NO: _____

_____,
PLAINTIFF,

v.

_____,
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 30 day notice required by section 83.561, Florida Statutes. 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 _____