

# Foreclosure Trends

(Contested Foreclosure and  
Recently Passed Legislation)

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# Foreclosures in General

- Fannie Mae Approved Timeline
  - A foreclosure without any delays should take approximately 4-6 months.
- How to Expedite the Case
  - Consent Final Judgment
  - Alternatives to Foreclosure
    - Deed in Lieu
    - Note Suit (Breach of Contract for lack of payment on a note)
- Delays for litigation, service, bankruptcy, etc.

# Foreclosures in General

## Potential Delays

- Avoiding Service / Unable to Locate
  - Publish for service
- Bankruptcy
  - Motion for Relief from Stay
- Court Dockets
- Litigation

# Foreclosure Litigation Affirmative Defenses

## ➤ Standing

- Proof of Assignment of Mortgage and Note
- Possession of Original Loan Documents
- How to overcome

## ➤ Unclean Hands

- “. . . applies not only to fraudulent and illegal transactions, but to any unrighteous, unconscientious, or oppressive conduct.”
- How to overcome

# Foreclosure Litigation

## Affirmative Defenses

- Conditions Precedent
  - Failure to comply with notice provisions
  - How to overcome
- Statute of Limitation and Laches
  - Prevents enforcement after a certain amount of time
  - Fla. Stat. § 95.03
  - Fla. Stat. § 95.11(2)(c)
  - Laches
  - How to overcome

IN THE CIRCUIT COURT OF THE 4<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA  
CIVIL DIVISION

CASE NO.: 16-2012-CA-015973-XXXX-MA

HAPPY ACRES CREDIT UNION,  
Plaintiff,  
vs.  
SAMUEL S. SOMEBODY; ET AL;  
Defendant(s).

**DEFENDANTS', SAMUEL S. SOMEBODY AND SAMANTHA S. SOMEBODY,  
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT TO  
FORECLOSE MORTGAGE**

COMES NOW the Defendants, Samuel S. Somebody and Samantha S. Somebody, (hereinafter referred to as "Defendants"), by and through their undersigned attorneys, and hereby answer Plaintiff's Complaint to Foreclose Mortgage and Reform Mortgage (hereinafter referred to as "Complaint") and assert their affirmative defenses, to wit:

1. Admitted for jurisdictional purposes only.
2. Admitted for jurisdictional purposes only.
3. Without knowledge, therefore denied.
4. Admitted.
5. Admitted.
6. Without knowledge, therefore denied.
7. Without knowledge, therefore denied.



# Foreclosure Litigation Discovery

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HAPPY ACRES CREDIT UNION,  
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vs.  
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Defendant(s).

**DEFENDANTS', SAMUEL S. SOMEBODY AND SAMANTHA S. SOMEBODY,  
FIRST INTERROGATORIES DIRECTED TO PLAINTIFF**

COMES NOW the Defendants, Samuel S. Somebody and Samantha S. Somebody, (hereinafter referred to as "Defendants"), by and through their undersigned attorneys, and pursuant to Rules 1.280 and 1.340, Florida Rules of Civil Procedure, and request Plaintiff, Happy Acres Credit Union (hereinafter referred to as "Plaintiff"), answer fully and completely, in writing and under oath, the following Interrogatories within thirty (30) days of service hereof.

**PRELIMINARY STATEMENT AND INSTRUCTIONS**

If you fail to provide information requested in these Interrogatories under claim or privilege of immunity, furnish a list identifying each item of information for which the privilege or immunity is claimed, together with the following information: all basis on which the privilege is being used

1. Th
2. Th
3. Th
4. Th

- Request for Production
  - Borrower
  - Junior Lienholder
- Request for Admissions
  - Borrower
  - Homeowner / Condominium Association
- Interrogatories
  - Borrower

# Foreclosure Trial

- Uncontested Trials
- Trial is necessary if there is an issue of material fact remaining.
  - Many circuits only allow fifteen (15) minutes for “Mini-Trials,” although a longer time will be allowed if necessary
  - Representative from Plaintiff/Lender must be physically present in the courtroom
  - Typically no other Defendants attend
  - Bench Trial with no jury
- Contested Trials

# Foreclosure Trends: HB 87

## The Foreclosure Complaint

- Requires that in order to foreclose a mortgage on residential real property, the complaint must establish that the plaintiff holds the original note or is a person entitled to enforce a promissory note.
- A plaintiff in possession of the original promissory note must certify, under penalty of perjury, that the plaintiff possesses the original note.
- A plaintiff seeking to enforce a lost, destroyed, or stolen instrument must attach to the complaint an affidavit executed under penalty of perjury:
  - Detailing the chain of all endorsements, transfers, or assignments of the promissory note
  - Setting forth the facts and documents showing that the plaintiff is entitled to enforce the instrument.
- Adequate protection as required under § 673.3091(2), F.S., must be provided before final judgment.



# Foreclosure Trends: HB 87

## Finality of the Mortgage Foreclosure Judgment

- The bill provides that an action to challenge the validity of a final judgment of mortgage foreclosure, or to establish or re-establish a lien or encumbrance of property is limited to monetary damages if certain conditions apply.
- Former owner can continue to pursue money damages against the lender.
- The bill provides that when a foreclosure of a mortgage occurs based upon enforcement of a lost, destroyed, or stolen note, a subsequent purchaser of the note has no claim against the foreclosed property once it is conveyed to a person not affiliated with the foreclosing lender or the foreclosed owner.

# Foreclosure Trends: HB 87 Statute of Limitations

## ➤ ***Statute of Limitations on Certain Actions***

- Reduces the statute of limitations period to enforce a deficiency judgment following the foreclosure of a one-family to four-family dwelling unit from 5 years to 1 year, regardless of when the cause of action accrued.
- This is for any deficiency action that commences on or after July 1, 2013.
- Any action that would not have been barred under § 95.11(2)(b), F.S., before July 1, 2013, must be commenced within five (5) years after the action accrued or by July 1, 2014, whichever occurs first

# Foreclosure Trends: HB 87

## Deficiency Judgments

- The bill limits the amount of a deficiency judgment on owner-occupied residential property.
  - Limited to the difference between the judgment amount and the “fair market value” on the date of the foreclosure sale.
- Similarly, the deficiency for a short sale is limited.
  - It may not exceed the difference between the outstanding debt and the “fair market value” of the property on the date of the sale.

# Foreclosure Trends: HB 87

## Application & Implementation of the Bill

- The Legislature finds that the act is remedial and not substantive in nature.
- The act applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, regardless of when executed.
- The following sections are exempted from this general rule of application:
  - § 702.015, F.S., only applies to cases filed on or after July 1, 2013.
  - The amendments to § 702.10, F.S., and the entirety of § 702.11, F.S., apply to causes of action pending on the act's effective date.
- The Legislature also requests the Supreme Court to amend the Rules of Civil Procedure to implement the expedited foreclosure process.
- **As of June 7, 2013, this bill has been signed by the Governor.**

# Do you have Questions?

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**THANK YOU**  
**for your time and attention!**