

Foreclosures in Florida

Presented By:
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What you will learn

- Fannie Mae Approved Timeline
 - Potential Delays
 - How to Expedite the Case
 - Deficiency Judgments
- Alternatives to Foreclosure
 - Deed in Lieu
 - Note Suit (Breach of Contract for lack of payment on a note)

Foreclosure Timelines

- A foreclosure without any delays should take approximately 4-6 months.

Potential Delays

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

Foreclosure Timelines

- Demand Letter
 - Offers borrower a chance to reinstate their loan
 - Amount of time allowed is determined by loan documents (usually 10-30 days)

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November 5, 2012

*VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED,
AND STANDARD MAIL FIRST CLASS MAIL*

Samuel S. Somebody
Samantha S. Somebody
1542 Anywhere Road
Someplace, FL 32058

RE: Lender: Happy Acres Credit Union
Mortgagor(s): Samuel S. Somebody and Samantha S. Somebody
Loan No.: 1234567
Property address: 1542 Anywhere Road, Someplace, FL 32058

Dear Mr. and Mrs. Somebody,

Please be advised that the undersigned has been retained to represent Happy Acres Credit Union (hereinafter "Happy Acres"), and as such, has informed me that you are in default under the above-referenced loan. Account statements and other bank records maintained by Happy Acres indicate that you have failed to make the August 1, 2012, payment and all subsequent payments. Therefore, you are in default of the subject loan pursuant to the terms of the security instruments. If the default is not cured within thirty (30) days, Happy Acres may require immediate payment in full of all sums secured by the subject mortgage and without further demand may foreclose the mortgage.

To cure this default you must forward to Happy Acres certified funds in the amount of **\$2,596.67** no later than December 4, 2012. Said amount consists of the following:

Foreclosure Timelines

- Complaint Package

- Filed 31 days after Demand letter is sent
- When Lis Pendens filed, it estops claims of others from the date filed
- Defendants have 20 days from the date of service to file a response to the Complaint

IN THE CIRCUIT COURT OF THE 9TH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA
CIVIL DIVISION

CASE NO.:

HAPPY ACRES CREDIT UNION,
Plaintiff,

vs.

SAMUEL S. SOMEBODY; SAMANTHA S. SOMEBODY;
BLACKACRE HOMEOWNERS ASSOCIATION, INC.; JOHN DOE
AND JANE DOE AS UNKNOWN TENANTS IN POSSESSION OF
THE SUBJECT PROPERTY,
Defendant(s).

COMPLAINT TO FORECLOSE MORTGAGE

COMES NOW Plaintiff HAPPY ACRES CREDIT UNION, sues the Defendants named in the caption herein and alleges:

Mortgage Foreclosure

1. This is an action to foreclose a Mortgage on real property located and situated in DUVAL County, Florida.
2. This Court has jurisdiction over the subject matter herein as the amount in controversy exceeds \$15,000, exclusive of interest, costs, and attorney's fees.
3. Plaintiff is a State Chartered Credit Union organized and existing under the laws of the State of Florida.
4. Defendant(s), SAMUEL S. SOMEBODY and SAMANTHA S. SOMEBODY, are/were member(s) of Happy Acres Credit Union.
5. As member(s) of Happy Acres Credit Union, the Defendant(s), SAMUEL S. SOMEBODY and SAMANTHA S. SOMEBODY, have had knowledge that Plaintiff is in fact a credit union.
6. On September 23, 2005, SAMUEL S. SOMEBODY and SAMANTHA S. SOMEBODY, husband and wife, executed and delivered a Promissory Note and a Purchase Money Mortgage securing payment of said note to HAPPY ACRES CREDIT UNION. The Mortgage was recorded on September 29, 2005, in Official Records Book 13749 at Page 2012 of the Public Records of DUVAL County, Florida, and mortgaged the property described therein, then owned by and in possession of said mortgagor. A copy of the original Note and Mortgage are attached hereto and incorporated hereto as Exhibit A and B.
7. Plaintiff is the owner and holder of the Promissory Note and Mortgage.
8. The property is owned by Defendant(s), SAMUEL S. SOMEBODY and SAMANTHA S. SOMEBODY.
9. There is a default pursuant to the terms and conditions of the Promissory Note and Mortgage as the payment due for August 1, 2012, and all subsequent payments thereafter have not been made.

Foreclosure Timelines

- Default

- If no answer filed, Defendants can be defaulted 21 days after service

- Military Search

- Non-Military Affidavit

- Motion and Order for Default

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

CASE NO.: 16-2012-CA-015973-XXXX-MA
DIVISION FC-A

HAPPY ACRES CREDIT UNION
Plaintiff,

HAPPY

vs.

SAMUEL S. SOMEBODY; ET AL,
Defendants),

vs.

SAMU

MOTION FOR DEFAULT

Plaintiff moves for entry of a Default by the Clerk against Defendant(s), SAMUEL S. SOMEBODY, SAMANTHA S. SOMEBODY, and BLACKACRE HOMEOWNERS ASSOCIATION, INC., for failure to serve any paper on the undersigned or file any paper as required by law.

NOTE TO CLERK:

In the event that any of the aforementioned Defendants have timely filed any paper in the above-styled cause, or should their return of service not be filed, then please strike the name of such Defendant from the above motion.

STATE
COUN

DATED this _____ day of _____, 20__

duly as

VERNIS & BOWLING
OF NORTH FLORIDA, P.A.
Attorneys for Plaintiff
4309 Salisbury Road
Jacksonville, Florida 32216
Telephone: (904) 296-6751
Facsimile: (904) 296-8938

By:

Michelle L. Glass
Florida Bar No. 0674109
mkg@stateof-florida-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Default and Non-Military Affidavit, were delivered to the parties on the attached mailing list by first class U.S. mail and/or electronic service this _____ day of _____, 20__.

Michelle L. Glass
Florida Bar No. 0674109

DEFAULT

A Default is hereby entered in this action against the Defendant(s) SAMUEL S. SOMEBODY, SAMANTHA S. SOMEBODY, and BLACKACRE HOMEOWNERS ASSOCIATION, INC., for failure to serve or file any paper as required by law.

Sworn

WITNESS my hand and seal of said Court this _____ day of _____, 20__

JIM FULLER
CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

(SEAL)

NOTA
Comm
Pessoas

Foreclosure Timelines

- Drop
 - Parties named as unknowns in the complaint to include potential spouses and tenants are dropped if service reveals that such parties do not exist.
 - Best practice is to leave Unknown Tenants on the mailing list to provide notice of the proceedings to any potential future tenants.

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

CASE NO.: 16-2012-CA-015973-XXXX-MA
DIVISION FC-A

HAPPY ACRES CREDIT UNION,
Plaintiff,

vs.

SAMUEL S. SOMEBODY; ET AL.,
Defendant(s).

NOTICE OF DROPPING PARTY DEFENDANT(S)

COMES NOW, Plaintiff, HAPPY ACRES CREDIT UNION, by and through its undersigned counsel gives notice that Plaintiff voluntarily drops JOHN DOE AND JANE DOE as Defendant(s) to this action, pursuant to §§ 1.250(b) and 1.420(a)(1) of the Florida Rules of Civil Procedure, without prejudice.

DATED this _____ day of _____, 20____.

VERNIS & BOWLING
OF NORTH FLORIDA, P.A.
Attorneys for Plaintiff
4309 Salisbury Road
Jacksonville, Florida 32216
Telephone: (904) 296-6751
Facsimile: (904) 296-8938

By: _____
Michelle L. Glass
Florida Bar No. 0674109
realestate@florida-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Notice of Dropping Party Defendant(s) was delivered to the parties on the attached mailing list by regular first class U.S. mail and/e electronic service this _____ day of _____, 20____.

Michelle L. Glass
Florida Bar No. 0674109

Foreclosure Timelines

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

CASE NO.: 16-2012-CA-015973-XXXX-MA
DIVISION FC-A

HAPPY ACRES CREDIT UNION,
Plaintiff,

vs.

SAMUEL S. SOMEBODY; SAMANTHA S.
SOMEBODY; BLACKACRE HOMEOWNERS
ASSOCIATION, INC.; JOHN DOE AND JANE
DOE AS UNKNOWN TENANTS IN
POSSESSION OF THE SUBJECT PROPERTY,
Defendant(s).

**MOTION FOR SUMMARY FINAL JUDGMENT OF MORTGAGE FORECLOSURE
AND ATTORNEY FEES**

Plaintiff, HAPPY ACRES CREDIT UNION, moves the Court for entry of a Summary Final Judgment of Mortgage Foreclosure, including an award of attorney's fees to Plaintiff, on the grounds that Plaintiff is entitled to such a Final Judgment as a matter of law. The substantial matter of law to be argued is the priority of the lien of Plaintiff's mortgage over the interest of all other Defendants in the real property encumbered by said mortgage and Plaintiff's entitlement to an award of attorney's fees.

In support of this motion, Plaintiff shows the Court:

1. This Motion for Summary Final Judgment of Foreclosure is filed pursuant to Rule 1.510, Florida Rules of Civil Procedure. The particular grounds upon which said Motion is based are set forth below.
2. Plaintiff filed its Complaint to Foreclose a Mortgage on real property located in DUVAL County, Florida, the legal description of which is set forth in said Complaint.
3. Defendants were duly served with process.

- Motion for Summary Judgment ("MSJ")

- Time can be saved at this step. If the borrowers consent to the entry of the judgment, this step can be accomplished without filing a MSJ or having a hearing.
- 21 days after Complaint is filed, the Motion for Summary Judgment can be filed if service is obtained
- Affidavit of Indebtedness states amounts owed
- The hearing is set for a minimum of 25 days after MSJ is filed with supporting affidavits
- At the mercy of the Court as to the hearing date

Foreclosure Timelines

- Final Summary Judgment

- Typically Final Judgment is entered at hearing
- Sale date set

IN THE CIRCUIT COURT OF THE 9TH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA
CIVIL DIVISION

CASE NO.: 16-2012-CA-015973

HAPPY ACRES CREDIT UNION,

Plaintiff,

vs.

SAMUEL S. SOMEBODY; SAMANTHA S.
SOMEBODY; BLACKACRE HOMEOWNERS
ASSOCIATION, INC.; JOHN DOE AND JANE
DOE AS UNKNOWN TENANTS IN
POSSESSION OF THE SUBJECT PROPERTY;

Defendant(s).

FINAL JUDGMENT OF MORTGAGE FORECLOSURE

THIS ACTION was heard before the Court on Plaintiff's Motion for Summary Final Judgment on February 12, 2013. On the evidence presented, it is

ADJUDGED that:

1. The Plaintiff's Motion for Summary Judgment is GRANTED. Service of process has been duly and regularly obtained over SAMUEL S. SOMEBODY; SAMANTHA S. SOMEBODY; BLACKACRE HOMEOWNERS ASSOCIATION, INC., Defendant(s).

2. There is due and owing to the Plaintiff the following:

Principal due on the note secured by the mortgage foreclosed	\$146,239.58
Interest on the note and mortgage (from 8/1/12 to 12/31/12)	\$2,455.65
Per diem interest @ 5 16.05 (from 1/1/13 to 2/12/13)	\$690.15
Pre-acceleration late charges	\$180.00
Property appraisal	\$150.00
Property inspections	\$100.00

Foreclosure Timelines

- Foreclosure Sale

- Property auctioned and sold to the highest bidder “at the courthouse steps” or online
- Certificate of Title issued 10 days after the sale

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

CASE NO.: 16-2012-CA-015973-XXXX-MA
DIVISION FC-A

HAPPY ACRES CREDIT UNION,
Plaintiff,

vs.

SAMUEL S. SOMEBODY, SAMANTHA S. SOMEBODY;
BLACKACRE HOMEOWNERS ASSOCIATION, INC.; JOHN DOE
AND JANE DOE AS UNKNOWN TENANTS IN POSSESSION OF
THE SUBJECT PROPERTY,
Defendant(s).

CERTIFICATE OF TITLE

The undersigned Clerk of the Court certifies that he/she executed and filed a Certificate of Sale in this action on _____, 20____, for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections.

The subject property is located in DUVAL County, Florida, and described as follows:

LOT 4, BLACKACRE, ACCORDING TO PLAT THEREOF, RECORDED IN
PLAT BOOK 40, PAGES 59 AND 59A, OF THE CURRENT PUBLIC
RECORDS OF DUVAL COUNTY, FLORIDA.

was sold to: _____

WITNESS my hand and seal of said Court this ____ day of _____, 20____.

(SEAL)

JIM FULLER
CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

This document prepared by:
VERNIS & BOWLING
OF NORTH FLORIDA, P.A.
Attorneys for Plaintiff
4099 Salisbury Road
Jacksonville, Florida 32216

Post-Foreclosure

- Writ of Possession
 - Borrowers/Owners may be evicted as soon as Certificate of Title is issued if they remain in the subject property
 - Tenant evictions are governed by the Protecting Tenants at Foreclosure Act of 2009, and Amended in 2011
 - Must be given 90 days to prove they are bona fide third-party tenants under a written lease
 - + Paying market value rent
 - + Have proof that they are current on their rent payments
 - + Arms length transaction (not a close familial relationship to owner – parent, sibling, child)
- Deficiency Judgment
 - Motion For Deficiency is filed in the same case as the foreclosure action
 - Appraisal of Property good as of the foreclosure sale date – you MUST have an appraisal good as of this date
 - Affidavit of Property Appraiser
 - Affidavit in Support of Motion for Deficiency
 - Available even if borrower/defendant was published on for service issues as you can personally serve the party at this point
 - Deficiency Judgment Hearing
 - Some Judges require an evidentiary hearing wherein the appraiser testifies to the value as set forth in the appraisal. This hearing is set for same time as the Motion for Deficiency Judgment.
 - Deficiency Judgment
 - After Judgment filed by the Court, obtain a certified copy from the Clerk and record that certified copy to create a lien upon any property owned by the borrower in the county in which it is recorded

Foreclosure Alternatives

- Deed in Lieu of Foreclosure
 - Executed by borrowers in forgiveness of the debt
 - Settlement agreement and Estoppel Affidavit
 - Deficiency is typically forgiven
 - Title insurance should be purchased

Foreclosure Alternatives (cont'd)

- Note Suit – Breach of Contract
 - Obtain Money Judgment against Borrowers
 - Good for Second Mortgages where there is no equity in the property
 - Timeline:
 - 30-day Reinstatement Demand (exact timing determined by loan documents)
 - 30-day Acceleration Demand (exact timing determined by loan documents)
 - Complaint is filed with Request for Admissions
 - Service/default deadline is same as Foreclosure (21 days after service)
 - + Defendant has 45 days to respond to the Request for Admissions
 - Motion for Summary Judgment filed 46 days after Complaint along with Motion regarding Admissions
 - Hearing set for a minimum of 25 days after Motion for Summary Judgment is filed
 - + Again, at the mercy of the Court as to the hearing date
 - Typically Judgment is granted at Hearing
 - After Judgment filed by the Court, obtain a certified copy from the Clerk and record that certified copy to create a lien upon any property owned by the borrower in the county in which it is recorded

Do you have Questions?

- Michelle L. Glass, Esq.
 - (904) 296-6751
 - mglass@florida-law.com

THANK YOU
for your time and attention!

Homeowner Associations

Presented By:
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Homeowner Associations and the Safe Harbor Statute

- Homeowner Association
 - Florida Statute §720.3085
 - (2)(c) Notwithstanding anything to the contrary contained in this section, the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title, shall be the lesser of:
 1. The parcel's unpaid common expenses and regular periodic or special assessments that accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
 2. One percent of the original mortgage debt.

Condominium Associations and the Safe Harbor Statute

- Condominium Association
 - Florida Statute §718.116
 - (1)(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:
 - a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
 - b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

Post Foreclosure Notice to Associations

VERNIS & BOWLING
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WEB SITE: www.Florida-Law.com

March 31, 2013

Blackacre Homeowners Association, Inc.
c/o Christina Perry, as Registered Agent
1654 Anywhere Road
Someplace, FL 32058

RE: Case Style: Happy Acres Credit Union v. Samuel S. Somebody, et al
Case No.: 16-2012-CA-015973-XXXX-MA DIVISION FC-A
Our File No.: 1234-567890
Property Addr.: 1542 Anywhere Road, Someplace, FL 32058

Dear Sir/Madam,

This firm represented the Plaintiff in the above-referenced case. Pursuant to the issuance of the Certificate of Title, a copy of which is attached hereto for your reference, our client, Happy Acres Credit Union, now holds title to the above-referenced property. Please forward any and all correspondence regarding the above-referenced property directly to:

Happy Acres Credit Union
ATTN: Mortgage Loan Servicing
P.O. Box 123456
Orlando, FL 32802-3456

In addition, at this time, we are requesting the following be provided immediately to Happy Acres Credit Union at the above address:

- Account number for the property located at 1542 Anywhere Road, Someplace, FL 32058;
- Itemized list of all amounts due and owing to date;
- Regular association fee amount, along with the frequency payments are due, the regular due date and grace period;
- Address for remittance of payment; and
- Copies of the Covenants and Restrictions.

- Letter to Association to request status of account after Certificate of Title Issued

- Puts association on notice of the change in title
- Offers association a chance to provide information timely

Post Foreclosure Notice to Associations

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OF NORTH FLORIDA, P.A.
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WEB SITE: www.FloridaLaw.com

April 16, 2013

Sent via facsimile to (904) 630-5555 & U.S. Mail

Blackacre Homeowners Association, Inc.
c/o Christina Perry, as Registered Agent
1654 Anywhere Road
Someplace, FL 32058

RE: Case Style: Happy Acres Credit Union v. Samuel S. Somebody, et al
Case No.: 16-2012-CA-015973-XXXX-MA DIVISION FC-A
Our File No.: 1234-567890
Property Addr.: 1542 Anywhere Road, Someplace, FL 32058
Blackacre Homeowners Association

Dear Sir/Madam,

We are in receipt of your letter dated April 15, 2013, addressed to VyStar Credit Union (hereinafter "VyStar"). Please be advised we represent VyStar in the above referenced matter and will continue to do so in regards to the settlement of this matter. Pursuant to your letter you have made a demand of \$15,236.04 for past due fees.

Please be advised that our client took title to the subject property pursuant to a Certificate of Title via a foreclosure sale. With that said, according to Florida law VyStar's liability for past unpaid assessments are capped. VyStar is not responsible for "all fees" as your letter has improperly stated.

Pursuant to Florida Statute 720.3085 (2)(c)(1) and (2) VyStar's liability is limited to the lesser of one of the following - unpaid dues that "came due during the 12 months immediately preceding the acquisition of title" or "one percent of the original mortgage debt" assuming the "association was joined as a defendant in the foreclosure action." Blackacre Homeowners Association, Inc. (hereinafter "Blackacre") was a named defendant in the foreclosure action.

The amount of the original mortgage was \$150,000.00. Based on Florida Statute 720.3085 (2)(c)(2), the total amount due and owing to Blackacre will be 1% of this debt, which totals \$1,500.00. Please consult with your attorney as VyStar is ready to submit a check in this amount to settle this matter as constituted by the Florida Statute.

- Letter to Association to inform them of amount due under Safe Harbor Statute
 - Lender must pay this fee within 30 days after the sale
 - A similar letter would be sent to a Condominium Association, referencing the appropriate Statute

Do you have Questions?

- Michelle L. Glass, Esq.
 - (904) 296-6751
 - mglass@florida-law.com

THANK YOU
for your time and attention!