



FLORIDA

STATESTATS+ STATUTES

JUDICIAL

**DEFICIENCY
JUDGMENTS**
ALLOWED

**REDEMPTION
PERIOD**
NONE.
**REDEMPTION
EXPIRES**
AT SALE.

ANALYSIS: STATE OF THE STATE

Florida remains one of the top states for foreclosures, despite most of the County reporting a recovery. In May, 2015 one in every 409 units had a foreclosure filing according to data provided by RealtyTrac. The US foreclosure rate was one in every 1041 units, by comparison. However, foreclosure activity in the State has declined by more than a third from a year ago. The foreclosure rate could continue to worsen as interest only loans continue to mature, making monthly payments too high for mortgagors. Pending foreclosure cases in the State have declined from 329,171 in January 2013 to 109,706 in January 2015. Florida Courts are now bracing for the loss of \$21 million in funding from the National Mortgage Settlement which allowed the States 20 Circuit Courts to increase foreclosure court technology, add Senior Judges, case managers and magistrates. The loss of funds may result in short term turmoil as cases are shuffled to division Judges who may not be familiar with foreclosure law. Hearing times may be limited and timelines will be extended as a result.

ESTIMATED FORECLOSURE TIMELINE

660 DAYS

EVICTIONS

Pursuant to Florida House Bill 779, when a foreclosed home is sold, renters must be given thirty days notice before being evicted. The statute, s. 83.561, titled "Termination of rental agreement upon foreclosure" replaces the expired "Protecting Tenants in Foreclosure Act" of 2009 and does not require the new owners to honor any existing lease agreement with the occupant. Following a foreclosure, only a notice to terminate a rental agreement is needed. Doing so authorizes the tenant to remain in the property for 30 days following receipt of the written notice to terminate. If the tenant fails to vacate the property, the purchaser at sale may apply to the clerk of the court for a writ of possession. The statute also prescribes form language for the 30-day notice of termination. The new law becomes effective in Florida on July 1, 2015.

CONDO ASSOCS.

Florida Statute § 718.116(1)(b) limits a foreclosing first mortgagee's liability for past due condominium assessments by providing that liability will be the lesser of twelve months of past due assessments or one percent of the original mortgage provided the association is named as a defendant in the lawsuit. Although the term "first mortgagee" is not defined within F.S. 718, a recent decision provides some clarity. In *Beltway Capital, LLC v. The Greens COA, Inc.*, the court found that since Beltway Capital was the holder of the first mortgage when it obtained title to the property through the foreclosure sale, that it was entitled to the safe harbor provision, although it was not the "original mortgagee." This case stands for the proposition that the "safe harbor" provision applies to the original first mortgage lender and all subsequent assignees.

5 YEARS

Foreclosure
process limitation

1 YEAR

Deficiency
judgment limitation

10 DAYS

Objection
to sale period

30 DAYS

Appeal
final order

ALTERNATIVES TO MOTIONS FOR SUMMARY JUDGMENT

In recent years, many Courts throughout the State of Florida have successfully implemented non-jury trials in an effort to reduce the foreclosure population within the State. While many Counties are now eliminating the Senior Judge programs that previously handled the Non-Jury Trials, the individual Circuit Court Judges continue to follow this procedure in setting foreclosures for trial. In addition, many counties within the State of Florida (although, not all), permit judgment to be obtained through the Certification of Business Records process under Fla.Stat. 90.803(6), whereby the lender can certify its business records via affidavit in lieu of a live witness at trial in order to obtain judgment. Currently, Miami-Dade, Marion, and Volusia Counties are the only known counties that will not enter judgment through this means. Further, if all parties in a foreclosure action are defaulted and the lender agrees to waive deficiency, then a plaintiff in a foreclosure action can move for immediate judgment under Fla.Stat. 702.065.

**SPECIAL
insert**

109,706
pending
foreclosure
cases

Information
current as of print
date. For updated
information,
contact our state
editor.

FLORIDA STATUTE

» 702

ALFN FLORIDA EDITORS

JANE BOND, ESQ.

McCalla Raymer
jane.bond@mccallaraymer.com
(321) 332-8565
mccallaraymer.com

ROBYN KATZ, ESQ.

McCalla Raymer
rk@mccallaraymer.com
(954) 332-9424
mccallaraymer.com

MR
McCalla Raymer, LLC

KEEP YOUR EYE ON THE CASE LAW

US BANK V. BARTRAM

In *Bartram*, the Court held that even if the limitations period had expired after involuntary dismissal of a foreclosure action, a subsequent action would not be time barred, providing a separate default occurred after dismissal of the first case. The *Bartram* Court reversed the trial court's decision that the bank's subsequent foreclosure was time barred. Also at issue is whether acceleration of payments under a note and mortgage in a foreclosure case which is then dismissed involuntarily triggers application of the statute of limitations to a subsequent foreclosure action based on defaults occurring after dismissal. Oral arguments in this Florida Supreme Court Case are expected in the Fall of 2015.

DEUTSCHE BANK V. BEAUVAIS

Subsequent to *Bartram*, the 3rd DCA ruled mortgages with standard acceleration clauses are subject to the five-year limitations period when the borrower prevails in the original foreclosure proceeding. The key issue is whether the original foreclosure was dismissed with prejudice or without prejudice. If dismissed with prejudice, then a lender may breach under a new default date within a five-year period and file a new foreclosure action based on that new breach date. If dismissed without prejudice, then the debt has been fully accelerated, and the lender may be precluded from re-filing the foreclosure unless some affirmative action, in the form of de-acceleration of the loan, occurs.