



### **Florida Foreclosure Sales Issues: Servicers Beware**

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With home values increasing, more and more properties are selling to third party purchasers at foreclosure sales. Additionally, more borrowers are remitting payoffs or reinstating prior to the foreclosure sale.

When a borrower remits a payoff or reinstatement the day before the sale, it is unlikely the sale can be cancelled. To cancel a foreclosure sale, most courts require a motion and hearing. Moreover several judges require that a motion be filed at least two weeks prior to a scheduled foreclosure sale. As such, it is recommended that requests to cancel the sales be made two weeks prior to the sale.

If the sale cannot be cancelled due to a last minute payoff or reinstatement, the sale will need to be vacated. If the property has sold to a third party, litigation can arise regarding which party is liable to reimburse the third party purchaser for the non-refundable clerk registry fees. Depending on the purchase price, these fees can be significant. Therefore, payoff quotes should include language advising the borrower that additional sums may become due from the borrower if the payment is not made in time to cancel the scheduled foreclosure sale.

Another issue can arise when the borrower redeems the judgment prior to sale. Sums necessary to “redeem” a judgment are generally defined as the amount of the judgment, plus interests, plus costs. *Indian River Farms v. YBF Partners*, 777 So.2d 1096,1098 (Fla. 4th DCA 2001); *Sedra Family Ltd. Partnership & 4750, LLC*, 124 So.3d 935, 936 (Fla. 4th DCA. 2012). Further, a party entitled to redeem can redeem through the mortgagee (servicer) or clerk. *Indian River Farms v. YBF Partners*, 777 So.2d at 1099; *Verneret v. Foreclosure Advisors, LLC*, 45 So.3d 889, 892 (Fla. 3d DCA 2010). Accordingly, the borrower can submit funds to redeem to the servicer and if those funds may be insufficient to payoff, the loan may be considered sufficient for redemption, or payoff, of the judgment. For example, if taxes or insurance was advanced after the foreclosure sale, the borrower can omit those amounts from the redemption funds and the court may hold the borrower still properly redeemed the judgment. As such, if taxes or insurances advances are made, and the loan is redeemed, we recommend amending the judgment or filing an affidavit of additional advances so all parties are on notice of the additional amounts due.

In conclusion, when a borrower reinstates or pays off prior to the sale, the loan must be reviewed to determine if there is sufficient time to cancel the sale, and if not, whether the payment may be considered a redemption, requiring amendment of the judgment.

***The attorneys at Gilbert Garcia Group are always available to answer questions and to review these issues with you on a case-by-case basis.***