Re-foreclosure under Florida law.

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The ultimate goal of a mortgage or lien foreclosure is to eliminate the owner, as well as any junior interest holder's rights to the foreclosed property. The foreclosing party can then sell the property foreclosure sale with a title "free and clear" of all subordinate interests. The foreclosure attorney must have named and served all of the proper parties in eliminate order the inferior to property interests. Naming all of the proper parties however is not always as easy as naming "Joe Borrower" as the defendant. If Joe Borrower is married. his wife likely homestead rights in the property. Her interest, if any, would have to be foreclosed as well even if she was not a borrower obligated to pay the debt. If Joe Homeowner is deceased, the potential interests of his known and unknown heirs would need to be foreclosed. If Joe Borrower is the trustee of a trust that owns the property, then according to the Fund Title Notes, the person serving as trustee must be named in the lawsuit individually, as well as in their capacity as trustee of the trust. The examples are myriad, which leads to a myriad of potential title problems.

With the immense numbers of foreclosures having moved through the Florida courts since 2008,

inevitable. The mistakes are foreclosing party (or the title company) may have missed a junior mortgage when searching the public records. The foreclosing party (or their attorney) may have not have named, as alluded to above, the borrower's spouse, or the trustee in both their individual and trustee capacity. As foreclosed properties move from judicial sale into the market, mistakes in the foreclosure process will emerge that the real estate litigator will need to address.

the Unless omitted cooperate by executing quitclaim deeds or otherwise, court assistance is required. Fortunately, Florida law provides for the right foreclosure. White v. Mid-Atlantic Federal Savings and Loan Assoc., 530 So.2d 959 (Fla. 5th DCA 1988)(citing Quinn Plumbing Co. v. New Miami Shores Corp., 129 So. 690 (Fla. 1930)). The right to re-foreclose an omitted party passes with the title to the property. Therefore, the purchaser at the original foreclosure sale, as well as their successors, have the right to re-foreclose any omitted iunior interest holders.

The essence of a re-foreclosure action is to allow the omitted party the opportunity to exercise their right of redemption within a time-certain or

have that right eliminated. The term "right of redemption" takes different meanings when referring to the type of property interest being "Right of redemption" addressed. context used in the of owner/mortgagor means the right of the owner/mortgagor to satisfy the mortgage-debt at any time prior to the filing of the certificate of sale (or the time specified in the final judgment of foreclosure) order in to retain ownership of the property. Islamorada Bank v. Rodriquez, 452 So.2d 61 (Fla. 3rd DCA 1984). For example, if Bank A was foreclosing on its firstagainst priority mortgage Borrower, Joe Borrower has absolute right to keep his ownership property by paying the in mortgage-debt prior to issuance of a certificate of sale by the clerk of court following the foreclosure sale. In comparison, "right of redemption" with regard to a junior mortgagee refers to the junior mortgagee's right to satisfy a prior mortgage, thereby becoming equitably subrogated to all rights of the prior mortgagee. Id. The only absolute right of a junior mortgagee as to a senior mortgagee is the right of redemption. Plumbing Co. v. New Miami Shores Corp., supra. In other words, assume Bank A was foreclosing on a firstmortgage against priority Borrower on property that Bank B had a second-priority mortgage. Bank B has the right to pay the mortgagedebt owed to Bank A and assume Bank A's position as the first-priority mortgage holder.

The type of "right of redemption" being foreclosed in a reforeclosure action determines the course of the litigation. If the right of redemption being foreclosed is that of an owner, then the re-foreclosure proceeds much the same traditional foreclosure action. The reforeclosing plaintiff must prove its entitlement to a final judgment of reforeclosure. The final judgment of reforeclosure will require that the owner pay the entire indebtedness owed under the judgment within a time certain or otherwise, the property is sold at a judicial sale.

In comparison, if the "right of redemption" at issue is held by a junior mortgagee, then the property does not need to be resold at judicial sale. Once again, the re-foreclosing plaintiff must first prove its right to foreclose the junior interest. Then, the court can enter an order requiring the junior mortgagee to exercise its "right of redemption" within a time certain or otherwise have their right, title, interest, estate or claim eliminated from the property through entry of a final judgment.

The amount that the redeemer, whether owner or omitted lienholder, must pay in order to exercise their right of redemption is calculated as the principal amount, plus accrued interest and costs incurred by the mortgagee protecting its mortgage lien (i.e. payment of taxes, etc.)

through the first foreclosure date. Mid-Atlantic White v. Federal Savings and Loan Assoc., supra. That amount does not include attorney's fees and costs incurred in the earlier action, Quinn Plumbing Co. v. New Miami Shores Corp., supra, because the omitted interest holder was not a party to the earlier action. The courts have reasoned that a non-party to an earlier action cannot be liable for the attorney's fees and costs incurred in the earlier foreclosure action because that non-party did not have the opportunity to challenge the propriety of the attorney's fees and costs incurred.

If the omitted owner does not pay the amount due under the final judgment of re-foreclosure within the timeframe provided, then the property is sold at a subsequent foreclosure sale. Upon issuance of the certificate of sale, the omitted property owner's right of redemption is terminated. Upon issuance of the certificate of title, the purchaser at the foreclosure sale will obtain title to the property free of the interests of all parties foreclosed in the original action, as well as the omitted-parties named in the re-foreclosure action.

With respect to an omitted junior lienholder, rather than entering a final judgment of re-foreclosure, the court can enter an order requiring the redemption amount to be paid in a time-certain. If that amount is not paid within the timeframe provided by the order, then the court can enter a subsequent final judgment of reforeclosure, which terminates the omitted junior lienholder's interest in the property. The property owner will then retain the property free and clear of the re-foreclosed junior lien.