

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 3-15.15

**STANDARD PROCEDURES AND LANGUAGE IN FORECLOSURE
PROCEEDINGS; ELECTRONIC FORECLOSURE SALES IN LIEU
OF ON-SITE AUCTIONS; WRITS OF POSSESSION**

WHEREAS pursuant to Section 45.031(10), Florida Statutes, the Clerk of the Circuit Court is statutorily authorized to conduct the sale of real or personal property under an order or judgment by electronic means, and

WHEREAS the Clerk of the Circuit Court of Polk County, Florida, has made electronic judicial sales available through online access, and has established criteria and procedures to sell property for cash at a public sale to the highest and best bidder, and
WHEREAS electronic judicial sales eliminate the need for security personnel at onsite sales, eliminate impropriety and collusion among bidders and increase accessibility to interested parties to view, research, bid and manage cases, and

WHEREAS the electronic foreclosure sales process is now available at the Clerk's foreclosure auction website at www.polk.realforeclose.com,

NOW THEREFORE, pursuant to the authority vested in me as Chief Judge of the Tenth Judicial Circuit of Florida under Rule 2.215, Florida Rules of Judicial Administration, the Court hereby adopts the following procedures and standard language for foreclosure sale proceedings in the Circuit Court in and for Polk County, Florida.

1. PROCEDURES APPLICABLE TO ALL FORECLOSURE ACTIONS

CERTAIN RISKS ARE ASSOCIATED WITH BIDDING AT FORECLOSURE SALES, INCLUDING THE POSSIBILITY OF A FORECLOSURE SALE BEING SET ASIDE BECAUSE A DEFENDANT HAS FILED FOR BANKRUPTCY PROTECTION. IN SUCH CASE, EVEN WHERE THE PLAINTIFF AND THE CLERK ARE UNAWARE THAT A DEFENDANT HAS FILED FOR BANKRUPTCY PROTECTION, THE FORECLOSURE SALE CAN BE SET ASIDE, OR CAN BE CONSIDERED NULL AND VOID. ABSENT CLERK ERROR, IF THE SALE IS SET ASIDE, THE CLERK WILL RETAIN THE CLERK'S SALE FEE, THE ELECTRONIC ONLINE AUCTION FEE AND THE REGISTRY FEES EARNED PURSUANT TO SECTION 28.24(10) AND 45.035, FLORIDA STATUTES.

FORECLOSURE LAWS ARE COMPLICATED, AND PROSPECTIVE BIDDERS SHOULD NOT BID ON A FORECLOSURE PROPERTY UNLESS THEY HAVE THOROUGHLY RESEARCHED THE PROPERTY, UNDERSTAND FORECLOSURE AND RELATED REAL PROPERTY LAWS, AND UNDERSTAND WHAT LIENS OR ENCUMBRANCES MAY SURVIVE THE FORECLOSURE SALE. ATTORNEYS AND

TITLE COMPANIES MAY BE ABLE TO PROVIDE INFORMATION REGARDING LIENS ON A GIVEN PROPERTY. BIDDERS ARE SOLELY RESPONSIBLE FOR RESEARCHING FORECLOSURE PROPERTIES AND ASSUME SOLE RESPONSIBILITY FOR MAKING ANY BID AT THE ONLINE FORECLOSURE AUCTION.

THE CLERK'S OFFICE SELLS FORECLOSED PROPERTY PURSUANT TO COURT ORDER. BIDDERS SHOULD NOT ASSUME THE SALE WILL RESULT IN A TITLE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES OR DEFECTS. THE CLERK'S OFFICE MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTIES BEING SOLD AND/OR THE RESULTS OF THE SALE, INCLUDING BUT NOT LIMITED TO, THE VALUE OF, OR THE TITLE TO, THE PROPERTY FOLLOWING A SALE. IT IS THE RESPONSIBILITY OF THE INTERESTED PARTY TO CONDUCT ALL RESEARCH REGARDING THE PROPERTY, INCLUDING WHETHER ANY OF THE DEFENDANTS HAVE FILED FOR BANKRUPTCY PROTECTION, WHETHER THERE ARE ANY LIENS OR ENCUMBRANCES OR DEFECTS IN TITLE, AND THE VALUE OF THE PROPERTY.

A. The Clerk, all parties, bidders and the public at large shall become familiar with and follow the laws regarding foreclosures, in particular Chapter 45, Florida Statutes, all **current** statutes, rules, forms, administrative orders and any other laws pertaining to foreclosure issues.

B. Final Judgments

(1) Plaintiffs shall use Final Judgment of Foreclosure Form 1.996(a), Fla.R.Civ.P.

(2) All proposed Final Judgments of Foreclosure and all Notices of Sale and Notices of Rescheduled Sale shall refer to this Administrative Order (3-15.14) and shall state "bidding begins at 10 a.m. Eastern Time on www.polk.realforeclose.com." If the sale is not to be held online, it shall start promptly at 10:00 a.m. Eastern Time and shall be held at the Polk County Courthouse, unless otherwise specified in said Final Judgment.

(3) All proposed Final Judgments and all Notices of Sales—and Notices of Rescheduled Sale shall contain the following language required pursuant to Administrative Order 1- 21.5:

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Office of the Court Administrator, 255 North Broadway Avenue, Bartow, FL 33830, (863) 534-4686, at least seven days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven days; if you are hearing or voice

impaired, call 711.”

C. Writ of Possession

(1) In compliance with section 83.561, Florida Statutes, **prior to the Clerk issuing a Writ of Possession** after foreclosure on any dwelling or residential real property, the immediate successor-in-interest **shall first file** “a sworn affidavit that the 30-day notice of termination was delivered to the tenant and the tenant has failed to vacate the premises at the conclusion of the 30-day period.” Section 83.561(2), Florida Statutes.

(2) Upon the filing of the appropriate Motion for Writ of Possession, proposed Order Directing Clerk to Issue Writ of Possession, required Sworn Affidavit (Section 83.561(2), Florida Statutes), and the *signed* Order Directing Clerk to Issue Writ of Possession from the Court on residential real properties, and upon receipt of the Affidavit of Bona Fide Tenant* (Schedule “A”) attached to the unexecuted Writ of Possession, the Clerk of Court is authorized to issue the Writ of Possession to the tenant(s).

*Rule 1.580(b), Fla.R.Civ.P.

D. Sale Date

The Final Judgment shall direct that the foreclosure sale take place not less than twenty (20) days nor more than thirty-five (35) days after the date of the Final Judgment, unless the plaintiff consents or the Court sets some other time. See §45.031, Fla. Stat.

E. Proof of Publication/Notice of Sale/Notice of Rescheduled Sale

Pursuant to section 702.035, Florida Statutes, it is the **responsibility of the plaintiff or the plaintiff’s attorney to complete and submit Notices of Sale and Notices of Rescheduled Sale directly to the newspaper.** Proof of Publication of Sale or Rescheduled Sale shall be filed with the Clerk of Court no later than three (3) business days prior to any and all sales. Failure to comply will result in cancellation of the sale by the Clerk.

F. Cancellation of a Foreclosure Sale

Sales ordered by the Court may be cancelled by court order, satisfaction of the judgment or a Notice of Filing Bankruptcy. Parties shall use approved Form 1.996(b) Motion to Cancel and Reschedule Foreclosure Sale, Fla.R.Civ.P.

FILING A MOTION TO CANCEL SALE WILL NOT CAUSE THE SALE TO BE CANCELLED. ONLY A COURT ORDER WILL CANCEL A SALE.

ANY ORDER TO CANCEL RECEIVED BY THE CLERK AFTER THE SALE HAS ALREADY OCCURRED MAY RESULT IN THE IMPOSITION OF THE CLERK’S SALE FEE, REGISTRY FEE AND ONLINE AUCTION FEE.

G. Assignments

The Clerk's Civil Law Department must be notified of an assignment of judgment in writing no later than three (3) business days before the scheduled sale date for the bidding to be conducted in the assignee's name. Assignments filed less than three (3) business days before a sale may result in the sale being conducted and the Certificate of sale being issued in the assignor's name.

The name and address of the Principal as provided by the successful bidder shall be the name and address appearing on the Certificate of Title unless:

- (1) an original Assignment of Judgment is filed by the plaintiff prior to the sale, or
- (2) an original Assignment of Bid is filed by a successful bidder subsequent to the sale.

All Assignments of Judgments made prior to the sale must be filed in the court file.

H. Registry Fee

The Clerk's fee for depositing any funds into the Registry of the Court shall be paid at the same time bid funds are deposited in the Registry. The fee is determined by law. See §28.24, Fla. Stat.

I. Decorum

All foreclosure sales shall be held upon order of Court and in accordance with the following procedures, unless the Court Order directs otherwise. The same rules for decorum and behavior in courtroom and chambers as outlined in Administrative Order 1-6.1 shall be adhered to in the event a foreclosure sale is conducted at the courthouse or other location, including no loud or boisterous talking, laughing, or other noise distractions while sales are in progress; and no eating, smoking, or drinking beverages. Cellular telephones and audible beepers are to be turned off or on silence while live sales are in process in the courthouse. Rules for decorum and behavior as described above shall apply to bidders utilizing computers in the Clerk's Office to participate in electronic sales.

J. Redemption

Pursuant to section 45.0315, Florida Statutes, the mortgagor (defendant) or the holder of any subordinate interest may cure the indebtedness and prevent a foreclosure sale by paying the amount of monies specified in the judgment "at any time before the filing of a certificate of sale by the clerk of court or the time specified in the judgment, whichever is later." Payment for redemption must be made by cash or certified check drawn upon a U.S. or Canadian banking institution made payable to Stacy M. Butterfield, Clerk of the Court, in the amount of the judgment, plus both Clerk sale and electronic sale fees (if redemption occurs after the sale), registry fee, interest and all related costs of the sale. If drawn on a Canadian bank, the funds must be in U.S. dollars.

K. Certificate of Sale/Certificate of Title

(1) A Certificate of Sale shall be issued by the Clerk of the Court as soon as possible after the sale. The right of redemption shall exist for the Mortgagor or the holder of any subordinate interest only until the issuance of said Certificate of Sale, unless otherwise specified in the Final Judgment. See §45.0315, Fla. Stat. and Section J “Redemption” above.

(2) If no objections to the sale are filed within ten (10) days after filing the Certificate of Sale, the Clerk shall file a Certificate of Title and serve a copy of it on each party, unless the property is redeemed by the defendant Mortgagor or unless an objection is filed. If any objection is filed, the Certificate of Title will not be issued until such time as an order of Court is entered on the objection. See §45.031(5) and §45.031(7)(c), Fla. Stat.

(3) The Certificate of Title will be issued exactly in the name of the bidder as it is given at the time of registration. The successful bidder or the successful bidder’s assignee should supply the Clerk with the correct mailing address to be affixed to the Certificate of Title prior to issuance of the Certificate of Title.

L. Distribution of Funds

If the Plaintiff or a third party is the successful bidder, any funds that exist shall be held in the Registry of the Court, and distribution will be made in accordance with paragraph 5 of the Final Judgment of Foreclosure. In the event a third party fails to complete the purchase and the deposit is insufficient to pay the costs of the sale and re-advertisement, the plaintiff’s attorney shall reschedule and re-advertise the sale.

M. Order Setting Aside Sale

In the event an Order Setting Aside or Canceling Sale is entered by the Court subsequent to the sale of the property, the Clerk’s Office is hereby directed to refund to the successful bidder all sums paid by the successful bidder and deposited in the Registry of the Court. In the event the Clerk is in doubt as to the party entitled to said funds, the Clerk may apply to the Court for entry of a further Order Directing Disbursement. The registry fee is non-refundable.

N. Conflict of Authority

If any conflict arises between the terms of this Order and the terms stated in any Final Judgment of Foreclosure, this Order shall prevail unless said Final Judgment expresses a specific intent to supersede this Administrative Order.

2. PROCEDURES FOR ELECTRONIC FORECLOSURE SALES

A. All Judicial Mortgage Foreclosure Sales shall be conducted online via the internet at www.polk.realforeclose.com. In the event the online sales option is unavailable, or

should the Court so provide in the Final Judgment or other order, judicial sales may be, from time to time, conducted at the Polk County Courthouse at 255 North Broadway Avenue, Bartow, Florida 33830.

- B. Electronic sales shall be conducted Monday through Friday (except legal holidays) beginning at 10:00 a.m. Eastern Time on the date specified in the judicial order or final judgment.
- C. Bidding begins at 10 a.m. Eastern Time on www.polk.realforeclose.com. The Clerk shall make available a minimum of two public access computer terminals for bidders at the Polk County Courthouse in Bartow. Bidders may obtain specific terminal location information in the Clerk's Civil Law Department.
- D. In order to bid on property, bidders must register at www.polk.realforeclose.com and place an advance deposit equal to 5% of their anticipated high bid for each item to be bid upon.
- E. Advance deposits may be made in person at the Civil Law Department in the Polk County Courthouse by cash or cashier's check not more than six months old. Deposits made in person must be made by 5:00 p.m. Eastern Time the day prior to the sale. Advance deposits may also be made on the website either via wire transfer or electronic check (ACH). ACH and wire deposits may require three full business days for processing. Funds will not be available for bidding until such deposits have cleared.
- F. Foreclosure plaintiffs must submit the Clerk sale fee established by law (currently \$70.00) and the electronic sale service charge (currently \$70.00) by the close of business the day prior to the sale date. See §§45.035(1) and 45.035(3), Fla. Stat. The Clerk shall not conduct the sale if the payment has not been received.
- G. All bids must be made in increments of at least \$100.00 more than the previous bid. All bid increments must be made in multiples of \$100.00.
- H. Five per cent (5%) of the final bid will be deducted from the successful bidder's advance deposit and applied toward the sale price. If a bidder is unsuccessful, the deposit may be refunded by the Clerk without the necessity of a court order. Refunds will be made within two (2) to five (5) business days after the sale.
- I. The successful bidder must pay the balance of the final bid plus the court registry fee by 12:00 noon EST the next business day following the sale.
- J. Final payment may only be made by wire transfer or in person at the Civil Law Department in the Polk County Courthouse by cash or cashier's check not more than six months old. In the event a sale is set aside or vacated, some fees may be refundable. The court registry is non-refundable.
- K. Failure of the successful bidder, other than the Plaintiff, to pay the balance of the final bid plus all fees due by 12:00 Noon Eastern Time the next business day following the sale will result in forfeiture of the deposit and nullification of the sale. The forfeited deposit will be reduced by the registry fee and shall be applied to re-advertise and pay all costs of

the sale. Any remaining funds from the deposit shall be applied toward the judgment. The Clerk will issue a Certificate of Incomplete Sale, and the Clerk shall reschedule the sale. See §45.031(3), Fla. Stat.

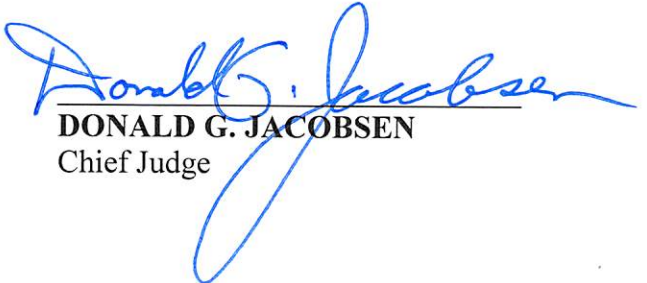
If the Plaintiff is the successful bidder, no Certificate of Title shall be issued until all fees and costs are paid.

- L. If a bidder fails to pay the balance of the final bid, the Clerk may petition the Court to bar that person from bidding on their own behalf, or for some other person or entity at future sales.
- M. Bidders who disrupt the Clerk's on-line sales, as well as any corporation, partnership, business or nonprofit organization under whose name they bid, may be permanently banned if they continue to engage in disruptive behavior.
- N. Electronic sales do not require the presence of the plaintiff or its representative. The sale will be conducted whether or not the plaintiff participates.

3. Administrative Order 3-15.14, entered July 8, 2015, is hereby VACATED.

4. This Order shall take effect upon entry.

DONE and ORDERED on this 3rd day of July, 2017.


DONALD G. JACOBSEN
Chief Judge

Original:
Polk County Clerk of the Court

Copies:
All Judges
Polk County Clerk of the Court
Electronic Bar Mailing

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

CASE NO: _____
SECTION NO: _____

_____,
PLAINTIFF,

v.

_____,
DEFENDANT(S)
_____ /

AFFIDAVIT OF BONA FIDE TENANT

After being duly sworn by the undersigned authority I hereby swear under the penalty of perjury that I am a bona fide tenant in the residence which is the subject of this Writ of Possession and have not received the 30 day notice required by section 83.561, Florida Statutes. I am entitled to occupy the residence under my rental agreement and request a hearing before the Court to dissolve the Writ.

Occupant Signature

Printed Name

STATE OF FLORIDA
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me under oath this ____ day of _____,
20 ____ by _____.

Deputy, Law Enforcement Officer or Notary Public

Personally Known _____ OR Produced Identification _____