

Florida Foreclosure Webinar Series

Part 3: Foreclosure Trials

BAKER DONELSON

EXPAND YOUR EXPECTATIONS[®]

Setting Trials- Is the case at issue?

Fla. R. Civ. P. 1.440 controls whether the case is set by the Court or noticed as ready for trial by a party:

- *Dispose of motions directed to the last pleading; or*
- *20 days after service of the last pleading (if no motion has been filed which is directed to the pleading)*

**It is reversible error to proceed with trial when a case is not at issue and the parties have not waived objections*

Setting Trials

- Either party may file and serve Notice of Readiness once the case is at issue
- Court may set trial by sending a trial order
- Trial may be set no less than 30 days out

Witnesses and Exhibits

- Witness Lists
 - General “Corporate Representative” vs. naming a specific witness
 - Listing borrowers as witnesses

****Tip: If you list borrowers as witnesses, consider serving subpoenas. If you don't, they may not appear.***

Witnesses and Exhibits

- Exhibit Lists
 - Promissory Note
 - Mortgage
 - Loan Payment History
 - Breach Letter
 - Pooling and Servicing Agreement/Loan Schedule
 - Power of Attorney
 - Servicing Notes
 - Bailee Letter/Screen Shots
 - Other Correspondence
 - Public records, agency records, court files

Trial Preparation

- Attorneys- Prepare every trial as if it is a fully litigated, fully contested case
- Witnesses- Focus on what you know... not on what you don't know

Trial Preparation

- Review the trial order
- Outline the case
- Identify problems
- Compile case law
- Schedule an initial witness prep (telephonic) and then prepare in person as much as possible.
- Communicate with opposing counsel

Trial Preparation

- Witness Preparation
 - Talk through case strategy
 - Get to know your witness
 - Encourage investigation
 - Never script a direct examination
 - Practice, practice, practice!

Trial Preparation

- Exhibits
 - Each exhibit has an evidentiary basis – learn what it is and be prepared to cite to law
 - Prepare for objections
 - Bring certified copies where appropriate
- Requests for Judicial Notice

Trying the Case

- Opening Statement – usually waived
- Direct Exam of Plaintiff's Witness:
 - Background – establish witness credibility
 - Knowledge of the loan
 - Standing to Foreclose
 - Status of Loan (default)
 - Condition Precedent (notice of acceleration)
 - Damages

Trying the Case

Hearsay and Business Records

- Record made at or near the time of events reflected
- Record made by a person with knowledge
- Record made in the course of ordinary business
- Regular business practice to keep this record

Trying the Case

Remember...
business record exception only applies
to business records!

Unique Issues

- Conforming Pleadings to the Evidence
- Avoiding motions to strike witnesses and exhibits
- Preservation of appellate record (more to come on Thursday)

Questions

