

PUBLICATION

Florida Court Reverses Stance on Post-Judgment Inferior Liens

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On January 25, Florida's Fourth District reversed itself and held that inferior liens are not extinguished in a foreclosure proceeding until the issuance of the certificate of sale. This restores the stability that was lost as a result of the initial ruling, which disrupted what had been years of standard practice and procedure in foreclosure cases and title insurance. In its initial ruling, the court held that the interests of all junior lienholders and any unrecorded interests were extinguished when the final judgment was entered, such that all the liens of the municipality that were recorded after the judgment were not affected by the foreclosure and survived.

In its new, very succinct ruling, the court held that it rejected the previous argument that the lis pendens statute applied only to liens existing or accruing prior to the date of the final judgment. More importantly, the court recognized that the statute in fact contemplates that the lis pendens continues through a "judicial sale," as suggested by the Florida Land Title Association. The court confirmed that it is the sale that discharges all liens, whether recorded before or after the final judgment:

A proper reading of section 48.23(1)(d) is, as the Florida Land Title Association suggests, that "when a foreclosure action is prosecuted to a judicial sale, that sale discharges all liens, whether recorded before the final judgment or after, if the lienor does not intervene in the action within 30 days" after the recording of the notice of lis pendens.

The court also addressed the implication of Form 1.996(a) of the Florida Rules of Civil Procedure enacted by the Florida Supreme Court, which it had previously asserted was in conflict with its decision, because it "suggests that all liens from the filing of the lis pendens until the certificate of sale is filed are discharged." In retreating from this ruling, the court relied on the analysis provided by the Business Law Section of the Florida Bar, which argued that the form reflects the common understanding of the operation of the lis pendens statute. Noting that the form was first adopted in 1971 and, as of the most recent amendments in January 2016, continued to contain the language that all liens are discharged upon the filing of the certificate of sale.

Key take-away: This ruling should put to rest the issue of when inferior liens are discharged in a foreclosure action. Lenders no longer have to worry about intervening liens where there is a delay from the entry of final judgment until a sale is actually held.