

Foreclosure lawsuits by Lender now employ an Order to Show Cause and Requirements

Florida Statute 702.10 was enacted to allow foreclosure Lenders a procedure by which they may attempt to expedite the foreclosure process when they serve the homeowner with a foreclosure lawsuit. Following the procedure of Florida Statute 702.10, once the Lender serves you with a foreclosure lawsuit, the Lender must file a motion for an Order to Show Cause and then the Court will enter an Order requiring the homeowner to appear in court and contest why a Final Judgment of Foreclosure should not be entered. Foreclosure Lenders have been trying to employ this procedure more often as of late; however, most do not correctly follow the procedure set forth in Florida Statute 702.10.

Under the plain language of Florida Statute 702.10, an Order to Show Cause can only be entered when the foreclosure Lenders file a “verified” pleading. Even though Florida Rules of Civil Procedure 1.110(b) permits foreclosure pleadings to be verified on “knowledge and belief,” that is not the same verification requirement as in Florida Statute 702.10. For a foreclosure Lender to be able to employ the expedited process set forth in Florida Statute 702.10, the pleading must be verified in the manner set forth by Florida Statute 92.525, which is under penalty of perjury.

The foregoing analysis might appear to be in direct conflict with the Second District’s recent rulings on verification, which allow foreclosure pleadings to be verified on “knowledge and belief.” However, the Second District’s recent rulings dealt with the verification obligations in the normal, run-of-the-mill case, not the expedited procedure set forth in Florida Statute 702.10. Because of the technical nature of Florida Statute

702.10, it is recommend that you immediately contact an attorney once you are served with a foreclosure complaint. You may also contact our office at 305-227-4030 for more information.

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