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ADMINISTRATIVE POLICY

TO: Our Foreclosure Sale Customers

EFFECTIVE DATE: June 1, 2016

SUBJECT: Clerk's Judicial Sales Procedure

The Clerk of the Circuit Court of St. Lucie County, Florida, (hereinafter referred to as ("Clerk")) holds foreclosure sales pursuant to section 45.031, Florida Statute, Administrative Order No. 2010-09 (which may be viewed at <http://circuit19.org/cadmin/AOrders.html>) and the Final Judgment of Foreclosure entered in each case. All participants are deemed to have knowledge of the Florida statutes and Administrative Orders. The following information is provided to assist you in becoming familiar with judicial sales in St. Lucie County. Should you still have questions after reading this policy, please call the Circuit Civil Department at (772) 462-6938. The Circuit Civil Department is on the 2nd Floor of the Main Clerk's Office, located at 201 South Indian River Drive in Fort Pierce, FL.

This policy was amended on June 1, 2016, to comply with Administrative Order 2015-07, which became effective on September 1, 2015. Administrative Order 2015-07 replaces and supersedes Administrative Orders 2009-01, 2009-15, 2010-03, 2010-08, 2011-01, 2011-06, 2012-01 (previously terminated mediation), 2013-01, and 2013-13.

There are certain risks associated with bidding at foreclosure sales. One of them is the possibility of a foreclosure sale being set aside due to bankruptcy protection. If that is the case, the foreclosure sale may be set aside or be considered to be null and void. Absent Clerk error, if the sale is set aside, the Clerk shall retain the Clerk's sale fee, the electronic online auction fee and the registry fees earned.

The foreclosure laws are complicated and you should not bid on a foreclosure property unless you have thoroughly researched the property, understand the 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 you with information regarding the liens on a given property. Be advised that you are solely responsible for researching foreclosure properties and you assume sole responsibility for bidding and participating in the online foreclosure auction.

1. **LOCATION OF SALE:** Unless otherwise provided by Court Order, foreclosure sales are conducted online at: <https://stlucie.clerkauction.com>. Access to the electronic online auction is available at public terminals located in the Clerk's Office, 201 S. Indian River Dr., Research Department 4th Floor, Ft Pierce, FL 34950.
2. **DATES OF SALE:** Sales are held Tuesdays and Wednesdays, as advertised in the Scripps Treasure Coast Newspaper/St. Lucie News Tribune. The first property shall be auctioned at 11:00 am. **You may place your bids beginning at 8:00 am on the day of sale.** Check the electronic online auction calendar located at <https://stlucie.clerkauction.com> for exact dates of upcoming sales.
3. **PROPERTIES FOR SALE:** The properties available for sale may be viewed by sale date on the electronic online auction website at <https://stlucie.clerkauction.com>. The sale date of a particular property is subject to change without notice. The most current information regarding the status of a property or the sale date can only be obtained from the official court file. If you are an interested party, you are advised to check the court file as often as necessary to determine whether any pleadings, motions or orders may impact the sale or the sale date.
4. **VIEWING THE FILES:** Foreclosure files are available for electronic viewing between the hours of 8:00 a.m. and 5:00 p.m. in the Research Room, located on the 4th floor of the Clerk's office.
5. **CONDITIONS OF SALE:** The purchaser takes title to the property subject to all defects, liens, encumbrances and other matters which by law survive the foreclosure auction. Bidders should not assume a foreclosure sale extinguishes or releases all liens, encumbrances or defects in title.

THE CLERK'S OFFICE SELLS THE PROPERTY PURSUANT TO COURT ORDER AND THE BIDDER SHOULD NOT ASSUME THE SALE SHALL RESULT IN A TITLE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES OR DEFECT.

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 what the value of the property may be.

6. **REGISTRATION:** To be eligible to bid at an auction, you must register online prior to the auction at <https://stlucie.clerkauction.com> and satisfy the advance deposit requirements (see paragraph 11, "Deposit at Time of Sale"). You must register for yourself and list any and all affiliates, corporations, entities, non-profits, partnerships, businesses, etc. that you may represent as a bidder. Bidders must register using proper names. Use of fictitious names and/or initials for bidding purposes is prohibited. The Clerk reserves the right to require proof of a bidder's name and/or affiliation. There is no fee for registration. You do not need to register solely to view an auction.

Plaintiff's and/or their representatives must register for the sale prior to the auction and pre-pay the Clerk's \$70.00 sale fee as provided in F.S.A. §45.031 and 45.035. In addition, an online sales fee of \$60.00 must be paid. **BOTH FEES MUST BE PAID AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO THE ONLINE SALE OR THE SALE WILL NOT BE HELD BY THE CLERK.** These fees shall be paid via the Florida Courts Efiling Portal <https://www.myflcourtaaccess.com>. Third party bidders must also register prior to the auction. **The Clerk will not issue a certificate of title to the property unless both fees have been paid.**

7. **PROOF OF PUBLICATION REQUIRED:** Proof that a Notice of Sale was published in accordance with section 45.031(2) and Chapter 50, Florida Statutes together with the publisher's affidavit of such publication, must be filed with the Clerk's Circuit Civil Department **no later than five (5) business days prior to the scheduled sale date.** Pursuant to court instructions regarding foreclosure summary judgment proceedings in Circuit Civil foreclosure cases, the judgment holder shall prepare and provide the Notice of Sale to the newspaper for publication. The original Notice of Sale shall be filed with the Clerk's office, and shall include the two (2) dates of publication. It is the publisher's responsibility to ensure that the Clerk's office receives the Notice of Sale in a timely manner.

8. **CANCELLATION OF SCHEDULED SALE:** In accordance with the Administrative Order, a court order shall be required to cancel any scheduled foreclosure sale, except where a bankruptcy petition, satisfaction of judgment or notice of redemption has been filed. Any party seeking to cancel and/or reschedule a sale shall file the written motion (which shall include the number of times the sale has been cancelled) at least five (5) business day prior to the sale date, pay the \$50 reopen fee (if filed more than 90 days after the final judgment) and provide the respective Judge a proposed order as prescribed in his/her procedures. Simply filing a Motion to Cancel a Sale shall not trigger the cancellation of the sale.

Any Order authorizing the cancellation of a sale received by the Clerk after the sale has already occurred may result in the imposition of the Clerk's sale fee and the online auction fee.

9. **BIDDING:** Bidding is done in increments of \$100.00 or more. By court order, the judgment holder usually receives credit up to the amount of the judgment.

All bidding must be done in good faith. If the Clerk finds you have bid in bad faith, you may be subject to costs and/or expenses incurred as a result of your bad faith bid. You, and any entities or corporations associated with you, may at the Clerk's office's sole discretion, be barred from bidding on foreclosure sales for one year.

10. **ASSIGNMENTS:** Assignments by a judgment holder shall only be permitted if the Final Judgment specifically provides that the judgment holder can assign, or, by court order allowing the assignment. The Circuit Civil Department must be notified of the assignment, in writing, no later than five (5) business days before the scheduled sale date for the bidding to be conducted in the assignee's name. Assignments filed less than five (5) business days before a sale may result in the sale being conducted and the Certificate of Sale being issued in the assignor's name. Additional document stamps may be due.

A third party bidder may present an assignment to the Clerk's Office up until the time that the final payment is made. After that date, the assignment will require a motion and proposed order be sent to the Judge, a reopen fee of \$50, and additional documentary stamps (unless the entity is exempt from paying documentary stamps).

11. DEPOSIT AT TIME OF SALE: Unless otherwise ordered by the Court, the successful bidder shall post with the Clerk, a deposit equal to five percent (5%) of the final bid (see sect. 45.031, Fla. Stat.). The deposit shall be applied to the sale price immediately after the auction closes. All bidders shall be required to ADVANCE funds sufficient to satisfy the deposit requirement, should they be the successful bidder (see sect. 45.031(10) Fla. Stat.)

Advance deposits may be tendered online through the electronic auction website via ACH. Online deposits shall be tendered **at least three (3) full business days before the auction** the bidder intends to participate in. Funds will clear on the fourth (4th) business day, which must be on or before the scheduled sale day. (For example, to bid in a Thursday auction, an ACH/electronic check payment transfer equal to five percent of the anticipated final bid must be completed by 4:00 p.m. on the preceding Friday.)

In addition, the deposit may be paid by cash, certified check and if represented by an attorney, by attorney trust account check (clearly delineated as such on the check) and presented to the Clerk's Office (201 South Indian River Dr., Fort Pierce) 2nd Floor Circuit Civil Department **by 4:00 pm the business day before the scheduled auction.** Deposits received on the day of an auction may not be available for bidding that day. If a deposit is made at the Clerk's office by certified check or Attorney Trust Account Check, the name and address of the person or entity shown as the remitter on the check will be the person or entity that will receive the credit for the deposit online. That person or entity must be registered with the same name and address on the online system.

For example, if the check shows a corporate name and address, that corporation must be the registered user on the online system under the name and address to be given the credit for the deposit. If a bidder wishes to submit and receive credit for deposits from various sources they must make their deposits via ACH. Personal checks shall not be accepted under any circumstances.

If you are the successful bidder, the advance deposit will be automatically applied to your final payment. **No refund of the deposit shall be given to the successful bidder without a court order.** If you are not the successful bidder, you may request a refund of your deposit on the electronic online auction site. Refunds of non-ACH deposits will be processed through the Clerk's ordinary course of business. A refund of unused ACH deposits will be automatically initiated on the 85th day following a deposit. Bidders shall timely submit a new deposit if they wish to bid after the 85th day in accordance with this policy. Any deposits not refunded shall be retained by the Clerk for the bidder's use in subsequent electronic online auctions.

If a judgment holder is the successful bidder, credit for the judgment amount is applied to the bid. Payment of the advance deposit shall be made prior to the scheduled sale in the same manner as discussed above for non-judgment holder bidders. If the judgment holder is bidding through their law firm that has registered online, the law firm may be the remitter on a deposit made by certified check or an Attorney Trust Account check.

12. FULL PAYMENT OF BIDS AND RELATED COSTS: The successful bidder's deposit will be retained by the Clerk. The difference between the deposit and the total amount due must be received by the Clerk's Office (201 South Indian River Dr., Fort Pierce) 2nd Floor Circuit Civil Department **by 2:00 p.m. on the next business day after the sale or by the deadline stated in the judgment.** If final payment is not made by such time, the deposit shall be forfeited. The Clerk shall assess a non-refundable registry fee, a non-refundable electronic online auction fee, and any other costs from the forfeited deposit. Any remaining funds from the forfeited deposit shall be applied toward the judgment.

Pursuant to sections 28.24(10), 45.035(3), 201.02, Florida Statutes, the successful bidder shall pay the following costs unless otherwise provided in the Judgment: the Clerk's electronic online auction fee of \$60.00; documentary stamp taxes (\$.70 per \$100.00, or a fraction thereof of the amount bid); and registry fees of three percent (3%) of the first \$500.00, and one and a half percent (1 ½ %) of the balance of the amount bid and any other costs as Final Payment may be made by Cash, Certified Check or Attorney Trust Account check. **Additionally, final payment may be made by wire transfer. Such wire transfer must be received by the Clerk's bank by 2:00 p.m. the next business day after the sale and clearly indicate the case number for which payment is being made. Final Payment may not be made by ACH/electronic check, unless you are the judgment holder represented by counsel and your bid does not exceed your judgment credit.**

If a judgment holder represented by counsel is the successful bidder and the final bid does not exceed his or her judgment credit, the attorney for the judgment holder may pay the electronic online auction fee (\$60) and the documentary stamp tax online by ACH/electronic check payment, in addition to the forms of final payment discussed above with respect to bidders set forth in the Judgment.

No final payments shall be accepted absent a court order authorizing the same after 2:00 p.m. the next business day following the sale. Payments received after 2:00 p.m. shall be returned to the bidder and the sale will be forfeited. A successful bidder's final payment made by wire (which can have varying processing times) must allow enough time for the wire to be processed and received by the Clerk's bank **by the 2:00 p.m. deadline. A final payment made by wire that is initiated by the successful bidder's bank prior to the 2:00 pm deadline, but not received by the Clerk's bank by the 2:00 p.m. deadline, shall be returned to the bidder and the sale shall be forfeited.**

IF THE SALE IS SET ASIDE, THE CLERK WILL RETAIN THE SALES FEE, THE ELECTRONIC ONLINE AUCTION FEE AND THE REGISTRY FEES AS AUTHORIZED BY LAW.

13. FORMS OF PAYMENT: Please note: Even in cases where an order states that the property will be sold for cash, the Clerk is legally authorized to accept payments for bids, deposits, costs and fees at sales as follows:

The Clerk accepts payments in the form of CASH, CERTIFIED CHECK and ATTORNEY TRUST ACCOUNT CHECK (clearly delineated as such on the check) for payment of bids and deposits. The Clerk reserves the right to refuse tender of a check if the check does not appear to be legally sufficient in the Clerk's sole discretion. All checks must be drawn

upon a U.S. banking institution and made payable to Joseph E. Smith, St. Lucie County Clerk of the Circuit Court.

If you are an attorney and you (or your client) are the successful bidder, you may pay by an attorney trust account check (clearly delineated as such on the check). Under no circumstances shall the Clerk accept credit card, personal checks or third party checks. When permitted under this Policy, payments made through ACH/electronic check payment shall be effectuated through the Clerk's online electronic auction site.

When permitted under this Policy, wire transfers shall be made pursuant to the instructions provided on the electronic online auction website at <https://stlucie.clerkauction.com>.

In order to cover wire transaction fees, the Clerk requires an additional \$5.75 (\$5.00 for wire fee and \$.75 for postage) to be included in the total amount due. The sale will be forfeited if the full amount is not received.

NO OTHER FORMS OF PAYMENT WILL BE ACCEPTED.

14. POST JUDGMENT CREDIT FOR INTEREST, COSTS AND FEES: If the judgment holder has been awarded interest accrued after judgment, the Clerk shall calculate the interest earned before the sale. The Clerk calculates post-judgment interest as follows:

Amount of judgment (J) times interest rate (I) divided by number of days in year equals per Diem rate. [Per Diem rate times number of days from judgment to date of sale equals total interest. $J \times I \div \# \text{ of days in year} = \text{per diem rate}$. Per Diem rate $\times \# \text{ of days from judgment to date of sale (including day of sale) or date specified in Final Judgment} = \text{total interest.}$]

In order to receive credit at the time of the sale for publication costs incurred after judgment, each judgment holder must provide to the Clerk no later than three (3) business days before the sale an affidavit stating the amounts incurred along with the invoice for publication. All other post judgment costs and fees must be approved by court order.

15. DOCUMENTS/ACTIONS REQUIRED TO BE TAKEN/ SUBMITTED BY THE JUDGMENT HOLDER/WINNING BIDDER:

A **judgment holder** in whose favor a Final Judgment of Foreclosure is issued, shall do the following:

After registering on the electronic online auction site, judgment holders or their authorized representatives must enter the **complete** legal description of the property. If the legal description is not entered, a Proposed Certificate of Title will be required to be submitted to the Clerk.

The Clerk will not issue a Certificate of Title unless the judgment holder or his/her authorized representative enters the legal description on the electronic online auction site when registering or the Proposed Certificate of Title is provided to the Clerk.

No later than 10 days after the sale, the successful **third party bidder** shall submit a prepared Certificate of Title to the Clerk's office for issuance. The Certificate of Title shall include the

full name of the purchaser, the address of the purchaser, the full address of the purchased property, and the **complete** legal description of the subject property.

The judgement holder, third party bidders, and/or their assignees will be responsible for any errors in the information provided to the Clerk. Scrivener's errors can only be corrected by submitting a motion and proposed order to the Judge. A reopen fee of \$50 applies.

16. REDEMPTION: Pursuant to section 45.0315, Florida Statutes (2012), the mortgagor 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 later of the filing of a Certificate of Sale by the Clerk of Court or the time specified in the judgment, order, or decree of foreclosure, the mortgagor or the holder of any subordinate interest may cure the mortgagor's indebtedness and prevent a foreclosure sale by paying the amount of moneys specified in the judgment, order, or decree of foreclosure, or if no judgment, order, or decree of foreclosure has been rendered, by tendering the performance due under the security agreement, including any amounts due because of the exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the of the creditor. Otherwise, there is no right of redemption."

Payment for redemption must be made by cash or certified check drawn upon a U.S. banking institution made payable to Joseph E. Smith, St. Lucie County Clerk of the Circuit 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.

17. EFFECT OF BANKRUPTCY: If a Suggestion of Bankruptcy or a copy of a bankruptcy petition is filed by a defendant in the foreclosure case prior to the sale, and is still pending at the time of the scheduled sale, the Clerk will not sell the property. An Order to Reschedule the Foreclosure Sale and one of the following documents must be filed with the Clerk before the Clerk will sell the property:

- I. Order Lifting the Stay;
- II. Voluntary Dismissal or order dismissing bankruptcy case;
- III. Order Discharging Debtor, or;
- IV. Other types of orders evidencing the same.

18. DISRUPTIONS OF AUCTIONS:

Pursuant to Administrative Order 2010-09 "bidders who disrupt the Clerk's internet online auction, as well as any corporation, partnership, business or nonprofit organization under whose name they bid, will be barred from future internet online auctions for two (2) consecutive auction dates. Bidders continuing to engage in disruptive behavior may be permanently banned from the auction process.

19. PRESENCE OF PLAINTIFFS AT AUCTION:

Pursuant to Administrative Order 2010-09 “internet online auctions by the Clerk of the Circuit Court do not require the presence of the plaintiff, a plaintiff s representative or plaintiff s counsel.”

If a Suggestion of Bankruptcy or a copy of a bankruptcy petition is filed by a defendant in the foreclosure case prior to the sale but is dismissed, or an order is entered lifting the bankruptcy stay prior to the time of the scheduled sale, then absent a court order to the contrary, the foreclosure sale will take place as scheduled if ALL of the following conditions are satisfied:

- I. Proof of the dismissal of bankruptcy or order lifting the stay is filed with the Clerk; and
- II. All other statutory requirements for the sale have been met.

In accordance with the Clerk’s Administrative Policy, the Defendant shall deliver a copy of the bankruptcy petition or Suggestion of Bankruptcy to the Circuit Civil Department prior to the date and time of the scheduled foreclosure sale.

IF YOU INTEND TO FILE A PAPER WHICH WILL AFFECT THE CLERK'S ABILITY TO SELL THE PROPERTY, YOU MUST MAKE OUR DEPUTY CLERK PROFESSIONALS AWARE OF THE PAPER AT THE TIME OF FILING FOR EXPEDITED PROCESSING AS APPROPRIATE.

Date

JOSEPH E. SMITH
Clerk of the Circuit Court
St. Lucie County, Florida