

FLORIDA FORECLOSURE LAW

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**Michael Starks
Heidi Bassett
2022**

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Printed in the United States of America

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-949884-70-8

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About This Book

Since the first publication of this book in 2016, foreclosure law in Florida has continued to evolve with incredible speed. Just when lawyers and litigants think they've identified all the issues to be resolved in foreclosures, new areas of discussion and disagreement arise. Such growth is reflected in this newest edition. We've added authors and chapters, and will continue to do so as the subject matter requires.

Like many areas of practice in Florida, this subject is far from settled. Even among the authors of this edition, intelligent minds may differ as to the appropriate arguments to make, motions to file, or strategies to employ in bringing a foreclosure case to conclusion. As we've always maintained, it must be noted that each of these chapters reflects the interpretation of Florida law as researched and understood by the respective author. Litigants and their attorneys are encouraged to review this information, conduct their own research, and craft their arguments according to the specific issues in each individual case. Finally, each author may describe the parties using different terminology. Mortgagor, borrower, and defendant are generally interchangeable, with the exception of defendants to a foreclosure action that are not the mortgagor/borrower. Mortgagee, lender, and plaintiff are also generally interchangeable.

Acknowledgments

As a starting point, I should acknowledge my co-author, Heidi Bassett. When the original publisher contacted me to write a book on Florida foreclosure law, my initial response was, “No thanks, I’d like to stay married and have my kids recognize me.” But I thought more about it and wanted to pursue it, so I naturally turned to Heidi, the firm colleague who, after I’d been taken to an emergency room on April 25, 2014, the last day of a firm retreat in Memphis, Tennessee, brought me an iPhone charger so I could call my wife and respond to e-mails congratulating me on the opinion that came out that morning, *U.S. Bank Nat. Ass’n v. Bartram*, 140 So. 3d 1007 (Fla. 5th DCA 2014), and then helped get my luggage from the hotel and me to the airport on time to fly home. Heidi graciously agreed to co-author, and then, due to my need to focus on parental commitments with a third baby on the way, agreed to just handle the whole book while allowing me to write a single chapter, and the next year, two chapters. Heidi, apparently unconcerned with the possible drop in book sales concomitant with my picture appearing in it, asked me to co-author again. This time, I followed through. Heidi is to be commended for her tireless efforts, past and present, in working with the various chapter authors, editing and transferring the book from an idea to a concrete reality. I’d also like to acknowledge the many other lawyers in this field who have taught me so much over the past twelve years, many of which are the past and present chapter authors in this book (the rest of you, you know who you are). Obviously, I thank God for this opportunity, who controls all. Next, I thank Holly (my smart/beautiful/kind wife) and Hayden, Kyle, and Addie (my three, wonderful kids) for their patience and support while I took the time to explore this God-given opportunity. I also thank my Dad (who is no longer with us) and my Mom who have always supported and encouraged me at every turn.

Michael Starks

I have long been blessed with outstanding colleagues who humble me with their knowledge and generously share what they know for the benefit of the legal community and the public. The authors who contributed to this edition are leaders in their field and I am grateful for all of their hard work. I’m particularly grateful to Mike Starks, who introduced me to this opportunity, and to my husband, Rick, for his ongoing love, support, and humor.

Heidi Bassett

About the Authors

Michael D. Starks is a senior attorney of Liebler, Gonzalez & Portuondo, and having practiced in the field almost exclusively since 2009, led the charge to clarify the law surrounding the foreclosure statute of limitations issue. He is a recognized voice in the consumer finance litigation, practice area. He has written and published two book chapters in this (and prior iterations of this) book, as well as two book chapters in two other treatises on the law of spoliation of evidence in Florida. Mr. Starks has lectured at Barry University's law school on various topics, including Florida constitutional law and legal ethics. He has been representing clients for 23 years in a wide array of legal areas, including foreclosure, consumer finance, general commercial litigation, products liability, construction, spoliation of evidence, and section 1983 actions defending law enforcement agencies.

Since 2012, Mr. Starks has received the Martindale-Hubbell® AV rating, and in 2016 and 2019 been recognized by Florida Trend Magazine as a legal elite honoree. In 2006, he received the Florida Bar *Journal* Excellence in Writing Award for best written article of that year, after which he served on The *Florida Bar Journal/News* Editorial Board until 2012. He is a proud member of the Christian Legal Society, the Federalist Society, and the Federal Bar Association, and now serves on the Legislation and Government Regulation of Lending Sub-Committee, and the Foreclosure and Debtor/Creditor Rights Sub-Committee of the Real Property Finance and Lending Committee, of the Real Property, Probate and Trust Law Section of The Florida Bar.

Mr. Starks received his J.D., *magna cum laude*, in 1996 from the Florida State University College of Law, where he was admitted to the Order of the Coif and served as both associate and legislative editor of the *Florida State University Law Review*. He received his B.S. in Advertising, *cum laude*, in 1990 from the University of Florida. He currently lives in Apopka, Florida with his beautiful wife, Holly, and three wonderful children, Hayden, Kyle, and Addie, who are the major source of his happiness.

Heidi Bassett is a partner at Hellmuth & Johnson in Edina, Minnesota. She represents clients throughout Florida and Minnesota in litigation related to financial services, real estate, and business. She has also represented clients in more than two hundred appeals.

Ms. Bassett is rated AV Preeminent and AV Preeminent (Judicial Edition) by Martindale Hubbell, and was invited by the Litigation Counsel of America to become a fellow in the Trial Lawyer Honorary Society, an elite society comprised of less than one half of one percent of American lawyers.

Ms. Bassett obtained her J.D. from the University of St. Thomas School of Law in Minneapolis, Minnesota and her B.A. from the University of Minnesota Duluth. She is admitted to practice before all of the state courts of Minnesota and Florida, the United States District Courts for the District of Minnesota and the Middle and Southern Districts of Florida, the United States Courts of Appeal for the Eighth and Eleventh Circuits and the United States Supreme Court.

Contributing Authors

Jonathan Blackmore: Chapters 4, 15

Jonathan Blackmore is of Counsel at GrayRobinson. Jonathan received his J.D. from Nova Southeastern University and his Bachelor of Arts from Florida Southern College. He specializes in representing mortgage servicers and lenders in contested foreclosure and consumer finance litigation in state and federal court at the trial and appellate levels. Jonathan gives special thanks to his beautiful wife, Yvetha, and their sons, Samuel and Benjamin, for their love and support.

Ileen J. Cantor: Chapters 8, 12

Ileen J. Cantor has over 26 years of experience representing clients in public and private sectors throughout the state of Florida at both the state and federal levels. Ms. Cantor is rated AV Preeminent by Martindale-Hubbell. She received her B.A. degree in Political Science *summa cum laude* from the State University of New York at Stony Brook and her J.D. degree *cum laude* from Nova Southeastern University Law Center where she served as a staff member on the Nova Law Review and elected representative of the Student Bar Association.

Ms. Cantor is the lead litigation and appellate attorney in the Boca Raton office of the law firm of LOGS Legal Group, LLP, whose clients include mortgage lenders and mortgage loan servicers. Ms. Cantor maintains a broad practice, in recent years focusing primarily in the area of consumer finance litigation defense, title litigation and contested residential mortgage foreclosures in state and federal court at both the trial and appellate levels. She is admitted to practice before the United States District Courts for the Northern, Middle, and Southern Districts of Florida and the United States Court of Appeals for the Eleventh Circuit. Ms. Cantor serves as a member of a Legal and Compliance Committee that has the general responsibility to oversee implementation of compliance programs, policies and procedures for a national network of firms. She is also a member of the Subcommittee for the Real Property Finance and Lending Committee of the RPPTL Section of the Florida Bar.

Ms. Cantor has taught Law School for Administrators as an adjunct faculty member at the Abraham S. Fischler College of Education of Nova Southeastern University.

Ms. Cantor wishes to give special thanks to Michael Starks and Heidi Bassett for the opportunity to contribute to this book and to her family, colleagues, and friends for their support, unwavering loyalty, and kindness.

Jennifer Chapkin: Chapters 1, 13

Jennifer Chapkin is the founder of Chapkin Law in Boca Raton, Florida. She handles a wide variety of civil and commercial litigation matters involving business, foreclosures, community associations, collections, contracts, appeals, and real estate disputes. Jennifer has experience at both the trial and appellate levels and serves clients throughout Florida, including Palm Beach, Broward and Miami-Dade counties. Her client base is diverse and consists of individuals, small businesses and large corporations. Ms. Chapkin has been licensed to practice law since 2009 and has handled more than 300 trials. She is admitted to practice in Florida and New York and before the United States District Courts for the Northern, Middle and Southern Districts of Florida and the United States Court of Appeals for the 11th Circuit. Jennifer earned a bachelor's degree in advertising and public relations from the University of Central Florida in 2003. She attained her law degree from Shepard Broad College of Law of Nova Southeastern University and received training in basic trial skills from the National

Institute for Trial Advocacy. Since 2016, Jennifer has been named to the annual Florida Super Lawyers “Rising Stars” list, a rating earned by only 2.5 percent of attorneys in the state of Florida. In 2020, she was named to Palm Beach Illustrated’s list of Top Lawyers in the area of Business Litigation. Jennifer is involved in the legal community and maintains an active membership in the Broward County Bar Association. She is also a member of the appellate practice; real property, probate and trust law; business law; and trial lawyers sections of the Florida Bar.

Gaspar Forteza: Chapters 5, 11

Gaspar Forteza is a partner in the law firm of Blaxberg, Grayson, Kukoff & Forteza, P.A. and lives in Miami, Florida. He specializes in real estate, business and commercial litigation, with an emphasis in consumer and creditor rights. He was born in Argentina in 1980 and immigrated to the United States when he was 10 years old. Having come from a family comprised almost exclusively of doctors and other medical professionals, he naturally became a lawyer. Mr. Forteza received his Bachelor of Arts from University of Miami and Juris Doctorate from Florida International University School of Law. He owes the full sum of his happiness to his beautiful wife, Radia, and his two precocious daughters, Julia and Olivia.

Richard S. McIver: Chapter 17

Richard S. McIver is a shareholder of Kass Shuler, P.A. in Tampa, Florida, and has represented banks, mortgage companies and loan servicers in litigation matters in Florida for over 30 years. He is Board Certified by the Florida Bar as a specialist in Real Estate Law (2007-present), has an AV[®] Rating by Martindale-Hubbell, and has been recognized as a Super Lawyer[®], from 2015 to the present. Richard is very active in the Florida Bar Real Property, Probate and Trust Law Section as chair of the Real Property Finance and Lending Committee. He is also a member of the Hillsborough County Bar Association, Mortgage Bankers Association, Bay Area Real Estate Council, and American Legal and Financial Network. Richard is a frequent author and lecturer, including as author of the “Mortgage Financing” chapter in Florida Real Property Sales Transactions, 5th through 8th Editions (Florida Bar, 2008-2015), as editor of: “Hotels, Motels, Restaurants, and Marinas” chapter in Florida Real Property Complex Transactions, 8th Edition (Florida Bar, 2016), “Navigating a Foreclosure Title Commitment”, (RPPTL’s Action Line, 2018), and as speaker: “Fundamentals of Mortgage Foreclosure” – Real Property Board Certification Review (2020-21); “Post Bartram - When is a Residential Mortgage Foreclosure Barred by the Statute of Limitations?” - June, 2017; “Professionalism for the Real Property Litigator” - November, 2016; “Deutsche Bank v. Beauvais” - October, 2015; “When is it Too Late to Foreclose a Mortgage?” - April, 2014; “Ethics Issues Concerning Short Sales, Defaults and Mortgage Foreclosures” - November, 2010. Richard was born in Texas, and received his J.D. in 1980 from Southern Methodist University, Dedman School of Law, Dallas, Texas, and his BBA from the SMU Edwin L. Cox School of Business. Richard has lived in Tampa, Florida since 1985 with his wife, Lynda Scalf-McIver, Ph.D., and they are proud parents of their daughter, Caitlin, who lives in Brooklyn, NY.

Nicole Mariani Noel: Chapters 10, 18

Nicole Mariani Noel is a shareholder at Kass Shuler, PA, where she has been practicing in the fields of Bankruptcy, Creditors’ Rights and Insolvency, Real Estate, Consumer, and Business Litigation since 2009. Nicole heads the Bankruptcy practice group for the firm and handles cases throughout the State of Florida, including the Northern, Middle, and Southern Districts. Her membership includes the

American Bankruptcy Institute, Tampa Bay Bankruptcy Bar Association (TBBBA), The Florida Bar, and the American Legal and Financial Network. Nicole chairs the Bankruptcy Practice Group for the American Legal and Financial Network (ALFN) and formerly chaired the Case Law Update Subcommittee for the Real Property Finance and Lending Committee of the Real Property Probate and Trust Law Section of the Florida Bar. Nicole's published work includes *Was Brown a Rash Decision?* (The Cramdown, Summer 2014); *Incompatible Personalities: Investigating the Mutually Exclusive Nature of § 1322(b)(2), (5)* (ABI Journal, November 2012); and *Stripping Down Your Spouse: Tenancy by the Entirety Property Ownership Under § 506* (ABI YLC Newsletter, September 2012). Nicole is active in the community and frequently volunteers her time to speak at local universities on topics which include ethical concerns facing young attorneys, time management, and first year law practice pointers. She is an adjunct professor at St. Petersburg College and Hillsborough Community College teaching Bankruptcy, Business Law and Civil Litigation. Nicole participated in the 2016 NextGeneration program held by the Bankruptcy Judges during the National Conference of Bankruptcy Judges (NCBJ). She was honored to become a Fellow for the Florida Bar Leadership Academy. She has also been named one of ALFN's Junior Professionals and Executives Group (JPEG)'s stand-out young professionals to watch in 2016. She received her undergraduate degree from The Florida State University and her Juris Doctor and Masters of Business Administration degrees from Stetson University College of Law and Stetson University School of Business Administration. Nicole was born and raised in St. Petersburg, Florida and is enjoying embarking on her greatest adventure, being the mother of two daughters, along with her husband. Nicole would like to thank her husband and family for their unconditional support.

David Rodstein: Chapters 2, 3

David Rodstein is the founder of Rodstein Law in Tamarac, Florida. David handles all manner of real estate litigation, including high-risk mortgage foreclosure cases, plus law firm liability defense and civil appeals. He has represented clients at every trial and appellate level in the state and federal courts of Florida. David litigates, lectures, and publishes on high-risk, high-impact mortgage foreclosure issues. David's Florida Bar-accredited seminars include "When is it too late to foreclose a mortgage?" and "Evidence in Foreclosure Cases."

David has earned Martindale-Hubbell's highest rating, AV Preeminent, for both legal ability and ethical standards every year since he was first rated in 2018 and has been honored in Florida Trend's Legal Elite since 2020. He is an active member of the Florida Bar Real Property and Probate Law Section, in which he chairs the subcommittee on Legislation and Government Regulation of Lending, serves on the Foreclosure and Debtor/Creditor Rights Subcommittee, and has served in several special subcommittees including: Best Practices for Remote Proceedings, Partition Actions, and Stale Mortgages. David is also an active member of the Florida Bar's Appellate Practice Section.

David is a graduate of the University of Pennsylvania with honors and the Washington & Lee University School of Law with distinction in trial advocacy. He served as law clerk to the Honorable Justice Lawrence L. Koontz, Jr. of the Supreme Court of Virginia. David thanks the Almighty for his accomplishments, for his wonderful wife, Rina, and for their four precious children. He also thanks Michael Starks and Heidi Bassett for the opportunity to contribute to this book.

Morgan Weinstein: Chapters 7, 16, Appendix

Morgan Weinstein is a founding partner at Twig, Trade, & Tribunal, PLLC. He received his Juris Doctorate from the University of Florida Levin College of Law and his Bachelor of Arts *magna cum laude* from the University of Florida. He is board certified in the area of appellate practice and concentrates his practice on appellate law, as well as real property and commercial litigation.

Mr. Weinstein is the cochair of the communications committee of the appellate practice section of the Florida Bar, as well as a member of the pro bono and outreach committees of the appellate practice section of the Florida Bar. He is also the cochair of the Broward County Bar Association's appellate practice section. Prior to establishing Twig, Trade, & Tribunal, PLLC, he was the managing attorney of the Miami, Florida office of Van Ness Law Firm, PLC.

He thanks his wife, Shannon Weinstein, and gives special thanks to Frank P. Irizarry for his support and guidance over the years.

Steven Weitz: Chapters 6, 20

Steven Weitz is a partner with Weitz & Schwartz, P.A. Mr. Weitz focuses his practice on advising lenders, mortgage servicers and investors on issues related to consumer finance compliance and litigation, title litigation and other real estate related matters. Mr. Weitz graduated with a Bachelor of Arts from the University of Florida and a Juris Doctor degree from Emory University School of Law. He has earned Martindale-Hubbell's AV Pre-eminent rating for attorneys.

He thanks his wife and colleague, Sarah Weitz, his amazing children, Julia and Joe, and his colleagues—past and present—at Weitz & Schwartz, P.A. without whom this would not have been possible. He also thanks Michael Starks and Heidi Bassett for the opportunity to contribute to this book.