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Welcome to the NEWSLETTER of Fisher's Law Office, providing you with legal information you can use in your everyday life. If you have any questions about any of the articles in this newsletter please don't hesitate to contact us.

NOW IS THE TIME TO OBTAIN YOUR FREE ANNUAL CREDIT REPORT!

-To get your free credit report you should log onto www.annualcreditreport.com.

Under the law each of the 3 major credit bureaus, Experian, TransUnion, and Equifax are required to provide you with a free credit report (but not your credit score) once per year.



- When you log onto the site you should have your social security number, date of birth, full name and other important information including what lines of credit you have open and what credit cards and bank cards you are currently using.

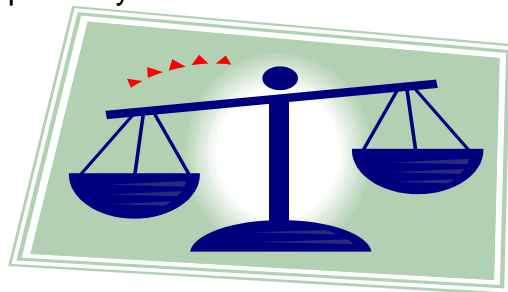
-You should compare the information on the credit report to your own records to make sure no one has applied for credit in your name and illegally obtained a bank card or a line of credit that you are unaware of.

IS YOUR GIRLFRIEND PREGNANT?

If so be very cautious about going to the hospital on the day of the birth.

Florida Statutes are very strict on issues of paternity. If a purported father signs an

acknowledgment of paternity which is witnessed by 2 individuals and signed under penalty of perjury there is a rebuttable presumption under Florida Statute 742.10 of paternity.



Under the law the father signing the acknowledgement of paternity only has 60 days after the date of signing to rescind the acknowledgement.

You have been warned! After the 60 day period a signed voluntary acknowledgment of paternity shall constitute a legal establishment of paternity and may *only* be challenged in a court based on fraud, duress or material mistake of fact with the burden of proof being on the challenger. Moreover, during the time that a father who signed an acknowledgement of paternity is contesting paternity he must still pay child support.

**** Practice Note ****

Do not sign an acknowledgement of paternity even if you think you are the father of a child born out of wedlock. Instead, file an action to determine paternity under Florida Statute chapter 742 and ask the court to order a scientific test to determine paternity. A scientific test may be requested of a court under the law.

HERE'S AN UPDATE ON THE FORECLOSURE BATTLES TAKING PLACE IN FLORIDA:

1. At the present time the Florida Supreme Court is considering the famous *US Bank v Bartram*, 140 So. 3d 1007 (Fla. 5th DCA 2014) case to decide whether or not there is a statute of limitations for bringing a foreclosure action.

For years banks in suing for foreclosure declared all of the amounts due under the loan as a part of the foreclosure lawsuit. If a bank lost the case, under Florida Statute chapter 95.11, the bank only had only five years to sue again after accelerating the balance in the first case.

In *Bartram* the Florida Supreme court is going to decide whether this statute will be upheld by the courts. The Florida Supreme Court is expected to rule sometime in 2016.

2. Banks are delaying foreclosure cases causing homeowners to rack up tens of thousands of dollars in homeowner association assessments.

-Under the law, the homeowner is responsible for all homeowner association assessments up until the day of a foreclosure sale, even if he's moved out of the home.

-Unfortunately because of delays in processing foreclosure cases homeowners are finding themselves with enormous homeowner association assessments even if they have agreed to surrender the property in a bankruptcy. (The assessments often accrue after the owner receives a discharge in bankruptcy.)

- Anyone in foreclosure who lives in a community with homeowner association fees should either make sure that the fees are paid or make sure that the bank records title in its name either through a foreclosure sale or through a deed in lieu of foreclosure in order to halt the accrual of homeowner association assessments.



3. The Federal National Mortgage Association (Fannie Mae) is starting to go after homeowners for “deficiency judgments”, (the difference between the value of the foreclosed home on the day of the foreclosure sale and the balance owed on the mortgage as set forth in the final judgment.)

For example: You owe \$200,000.00 pursuant to a foreclosure judgment and your house sells for \$150,000.00 at the foreclosure sale. Here, the bank could go back to court and ask the court to declare that you owe \$50,000.00 as a “deficiency judgment”. Fannie Mae has been hiring companies to go after certain homeowners who it feels have “strategically defaulted” on the homes.

How can homeowners avoid this?

Often banks will waive the right to a deficiency judgment in exchange for agreeing to a foreclosure judgment. Also, there are occasions when the property is in fact worth more on the day of the foreclosure sale than the amount of the foreclosure judgment. Anyone in a potential deficiency judgment situation should seek legal counsel right away to help sort out their legal rights and obligations.



4. As of late 2015 appellate courts in Florida are less likely to rule for a homeowner based on “technicalities” in a foreclosure case.

Specifically, appellate courts are allowing banks to “substantially comply” with mortgage default notice requirements unless a homeowner can show *prejudice*.

Examples:

-In *Green Tree Servicing, LLC v. Milam, No. 2D14-660 (Fla. 2nd DCA 2015)* the court ruled that even if a default letter demanded mortgage payments that we not yet due, the letter “substantially complied” with the requirement to notify a homeowner of a default.

Result? The bank can proceed with the foreclosure.

-In *Gorel v. Bank of New York Mellon, 165 So. 3d 44 (Fla.5th DCA. 2015)* a bank only gave a homeowner 28 days to cure the default instead of the full 30 days as required by the terms of the mortgage.

The appellate court stated “Absent some prejudice, the breach of a condition precedent does not constitute a defense to the enforcement of an otherwise valid contract.”

**** Practice Note **** If a default letter “materially fails” to provide the basic information required under the terms of the mortgage or completely omits one of the essential elements that the letter must contain, the court may dismiss a foreclosure case for failure to comply with the notice requirement contained in the mortgage.

For example: If the bank fails to send any letter prior to foreclosure or completely omits one of the elements required under the terms of the mortgage courts are more likely to dismiss a bank’s foreclosure action. (See *Samaroo v Wells Fargo Bank, 137 So. 3d 1127 (5th DCA 2014)* where no right to reinstate the loan after default was mentioned in the letter.)

What’s new in the Florida Court system?

Electronic filing is now the law in Florida. Since late 2013 virtually all legal pleadings are filed electronically in the state of Florida. At the present time only attorney’s may file pleadings electronically. Individuals representing themselves (pro se litigants) must file paper pleadings with the clerk of the court. However, there are plans to open up the electronic pleading system to all litigants including individuals representing themselves

What’s new in Hillsborough’s Court system:

Beginning in February 2016 in Hillsborough County, Florida the public will be allowed to see the actual electronic documents that have been filed in court cases from home computers. Currently, the public can only see “dockets”- a list of court papers filed in cases- but this is set to change in 2016.

BUT BE WARNED!

Because of the public nature and the easy accessibility of pleadings in court case, it is very important that if you file a pleading in a court case that you file a **Notice of confidential filing** when confidential document is filed in a court case.

Once the clerk of the court is notified that a confidential item is included in a court filing the court can take steps to deny access to the confidential item.

Hint: Don’t hesitate to ask your lawyer if he follows proper protocol when he files confidential information on your behalf in a court of law.

FISHER’S LAW OFFICE SPECIAL OFFER-in 2016 we celebrate 33 Years of Legal Service and offer \$33 Consultations!

If you have received this newsletter you are entitled to a discount on your next consultation with Fisher’s Law Office. To celebrate our upcoming 33rd year of legal service to Lutz, we offer \$33 consults for our clients. This offer will expire on December 31, 2016.

Education:

1977

Degree in Accounting,
University of Florida,
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1978

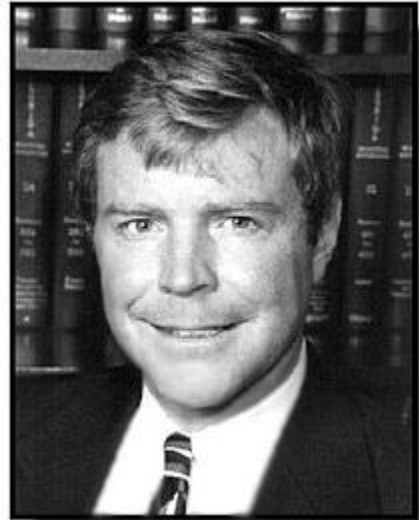
License Issued (currently inactive)
Certified Public Accountant

1983

Juris Doctorate Degree in Law,
University of Florida,
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Memberships:

- Florida Bar Association www.flabar.org
- BV rated by Martindale Hubbell
- Gaucho Association www.gauchoassn.com



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