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**January 2, 2010**

**Crystal Motor Car Co. of Hernando, LLC v. Bailey**, --- So.3d ----, 2009 WL 5150079 (Fla. 5th DCA 2009).
Fla. Stat. § 682.03 requires trial court hold an evidentiary hearing when there is a dispute whether an arbitration agreement was signed.

**Calhoun, Dreggors & Associates v. Volusia County**, --- So.3d ----, 2009 WL 150087 (Fla. 5th DCA 2009).
Attorneys' fees are not awardable to landowner in eminent domain case unless the case is settled or suit is filed; a condemning authority can withdraw a demand for condemnation before suit is filed without incurring fees to the landowner.

**Price v. Kronenberger**, --- So.3d ----, 2009 WL 5150236 (Fla. 5th DCA 2009).
An email which is sent to a group, some of whose members are residents of Florida, confers long arm jurisdiction under Fla. Stat. § 48.193 (1)(b) for a Florida resident to file suit against the sender of the email, even if the sender did not intend to target Florida residents.

**Industrial Affiliates, Ltd. v. Fish**, --- So.3d ----, 2009 WL 5125121 (Fla. 3d DCA 2009).
Employment discrimination case cannot be brought based upon the specific identity of complainant's spouse.

**Fedorov v. Citizens State Bank**, --- So.3d ----, 2009 WL 5125125 (Fla. 3d DCA 2009).
Two causes of action do not have to be identical in order for a later filed action to be stayed; it is sufficient if there is a single set of facts and resolution of the earlier case will resolve many of the issues in the second suit.

**Laquer v. Convergency Plaza Partners**, --- So.3d ----, 2009 WL 5126235 (Fla. 3d DCA 2009).
A party may not re-institute arbitration once it waives the right to arbitration.

**Francis v. Stubbs**, --- So.3d ----, 2009 WL 5126365 (Fla. 4th DCA 2009).
Complaint for boundary by acquiescence may lie even though "unambiguous" deeds demonstrate the boundary line between the properties.

**Westco, Inc. v. Scott Lewis' Gardening & Trimming, Inc.**, --- So.3d ----, 2009 WL 5126369 (Fla. 4th DCA 2009).
A trial court must conduct an *in camera* review of documents claimed to be confidential. Moreover, a non-party need not file a privilege log in order to preserve its claim of privilege; only parties are required to file privilege logs.

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**State v. Bradenton Group, Inc.**, --- So.3d ----, 2010 WL 45558 (Fla. 5th DCA 2010).
Sovereign immunity does not apply to actions of the State of Florida in wrongfully obtaining an injunction without bond.

**Estate of Smith v. Southland Suites of Ormond Beach, LLC**, --- So.3d ----, 2010 WL 45560 (Fla. 5th DCA 2010).
The Fifth District found the following language contained in a durable power of attorney sufficiently broad to allow decedent's daughter to agree to an arbitration clause in a nursing home contract:

> . . .generally to do and perform *all matters and things,* transact all business, make, *execute,* and acknowledge *all contracts, whether involving real property or not,* orders, deeds, writings, assurances, and instruments *which may be requisite or proper to effectuate any matter or thing appertaining to or belonging to me,* and generally to act for me in all matters affecting my business or property.... (e.s.)

**BDO Seidman, LLP v. Bee**, --- So.3d ----, 2010 WL 21068 (Fla. 3d DCA 2010).
The attorney's fee provision of the unpaid wages statute, Fla. Stat. § 448.08, applies to compensation dispute between a partner and his company.

**World Fuel Services Corp. v. Florida Dept. of Revenue**, --- So.3d ----, 2010 WL 21089 (Fla. 3d DCA 2010).
The Third District holds Florida does not discriminate against foreign commerce by taxing dividends paid to Florida companies by their foreign subsidiaries while simultaneously not taxing dividends paid by domestic subsidiaries, and aligns itself with the First and Fourth Districts on this issue.

**Canonico v. Callaway**, --- So.3d ----, 2010 WL 21170 (Fla. 2d DCA 2010).
Florida Rule of Civil Procedure 1.090 (a) applies in computing number of days for purposes of a statute that does not contain its own computation method, even if doing so deprives a party of a cause of action because of the passing of the statute of limitations.

**Premier ATMS, Inc. v. Daisy Fresh, Inc.**, --- So.3d ----, 2010 WL 22689 (Fla. 4th DCA 2010).
It is not speculative to calculate future profits by taking the average profit during months of contract operation (average monthly fees during months of operation of contract subtracted by overhead and operating costs during same time) and applying this number to the remaining number of months in the contract between the parties to arrive at a lost future profits amount.

**Pendergast v. Sprint Nextel Corp.**, --- F.3d ----, 2010 WL 6745 (11th Cir. 2010). The Eleventh Circuit has certified to the Florida Supreme Court the question whether the Florida law of unconscionability requires both prongs (procedural and substantive) to be independently met or whether there is a sliding scale between the two requirements, i.e., a lesser degree in one prong can be overcome by a greater degree of unconscionability in the other prong.

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**17315 Collins Ave., LLC v. Fortune Development Sales Corp.**, --- So.3d ----, 2010 WL 135140 (Fla. 3d DCA 2010).
Piercing the corporate veil between two companies requires that the business entities are, by operation or in fact, the same entity and that there be improper conduct between the entities. Additionally, a temporary injunction regarding assets is proper post-judgment as part of proceedings supplementary.

**Rose v. Steigleman**, --- So.3d ----, 2010 WL 135324 (Fla. 1st DCA 2010).
A contingency fee contract that states 40% is earned from any settlement after an answer is filed does not entitle the attorney to a 40% fee when no answer is filed, even though the time for filing an answer has passed and the attorney granted defendant an extension to file an answer.

**Thompson v. Treiser, Collins & Vernon**, --- So.3d ----, 2010 WL 143448 (Fla. 2d DCA 2010).
Entering into a stipulated judgment and not seeking relief for over two years waives the right to seek to undo the judgment.

**DND Mail Corp. v. Andgen Properties, LLC**, --- So.3d ----, 2010 WL 99120 (Fla. 4th DCA 2010).
Trial court orders vacating default judgments are reviewed under a gross abuse of discretion standard. Additionally, a trial judge has jurisdiction for 10 days from entry of a judgment to reconsider its judgment.

**Golant v. German Shepherd Dog Club Of America, Inc.**, --- So.3d ----, 2010 WL 99124 (Fla. 4th DCA 2010).
The two prongs of the *Venetian Salami* test, i.e., sufficient minimum contacts with Florida and having a reasonable anticipation of being haled into Florida, are satisfied when a non-profit club maintains an "office" in the state through having its officers and directors use their Florida homes as club "offices" and when there are sufficient club members (over 150) in Florida, shows are held and dues are collected in Florida, so that there are significant contacts with Florida.

**Smith v. Florida Healthy Kids Corp.**, --- So.3d ----, 2010 WL 99126 (Fla. 4th DCA 2010).
An inconsistent jury verdict is one that has two sets of facts that are mutually exclusive while a compromise verdict is one that is reached by aggregate or lot that is not approved by majority of the jury. The fact that jurors reached a verdict by "compromise regarding the amount of damages and proportional liability" is acceptable, and does not rise to the level of a "compromise verdict," especially when the jurors are polled and state that is their verdict.

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**Burgess v. Prince**, --- So.3d ----, 2010 WL 199422 (Fla. 2d DCA 2010).
Absent more, a trustee must be compensated for business services provided to a trust when the trust agreement provides parties, including trustees, may be hired to assist the trust accomplish its dutes.

**Grapski v. City of Alachua**, --- So.3d ----, 2010 WL 183998 (Fla. 1st DCA 2010).
The minutes of an election canvassing board are a "public record" as defined by state law, and local government violates the law if it fails to provide timely access to such minutes.

**Ortega v. Engineering Systems Technology, Inc.**, --- So.3d ----, 2010 WL 173558 (Fla. 3d DCA 2001).
A temporal connection, i.e., related in time, between the filing of a workers' compensation claim and the firing of the employee is a sufficient causal connection to allow a jury to conclude Fla. Stat. § 440.205 (retaliatory firing of employee for filing workers compensation claim prohibited) has been violated. However, an employee must prove he or she asked to be returned to duty in order to recover under the statute.

**Delancy v. Tobias**, --- So.3d ----, 2010 WL 173560 (Fla. 3d DCA 2010).
Substitute service on the Secretary of State may be effectuated through Fla. Stat. § 48.081 to acquire jurisdiction over a party who is concealing their whereabouts. A party may satisfy the requirements of the statute by proving a defendant lives in a gated community which does not permit access to process servers, and numerous attempts made to serve at the address.

**Barton v. Oculina Bank**, --- So.3d ----, 2010 WL 174146 (Fla. 4th DCA 2010).
Contrary to the general rule that issues must first be raised in the trial court before they will considered by an appellate court, the issue of whether real property is the homestead of the judgment debtor can be raised for the first time on appeal by a judgment debtor.

**Larkin v. Buranosky**, --- So.3d ----, 2010 WL 174147 (Fla. 1st DCA 2010).
A court is not required to provide a party with a copy of a final judgment if it provides that party's counsel with a copy of the judgment. Moreover, delay in filing a motion for rehearing which causes a party to miss the date by which to file an appeal is not sufficient "excusable neglect" to allow a belatedly filed appeal.

**Business Specialists, Inc. v. Land & Sea Petroleum, Inc**., --- So.3d ----, 2010 WL 174158 (Fla. 4th DCA 2010).
A party's failure to deliver financial information during the due diligence period of a contract is not a breach if the contract fails to come into existence due to lack of agreement on essential terms.

**Rachid v. Perez**, --- So.3d ----, 2010 WL 173776 (Fla. 3d DCA 2010).
Mediated settlement agreements are generally not suitable for liberal application of the rule regarding rescission of contracts due to unilateral mistake. A party seeking rescission of a settlement agreement based on unilateral mistake must prove "(1) the mistake was induced by the party seeking to benefit from the mistake, (2) there is no negligence or want of due care on the part of the party seeking a return to the status quo, (3) denial of release from the agreement would be inequitable, and (4) the position of the opposing party has not so changed that granting the relief would be unjust." A party cannot claim unilateral mistake and inducement into an agreement based upon statements of their own attorney.

**Citizens United v. Federal Election Com'n**, --- S.Ct. ----, 2010 WL 183856 (2010).
Government may not limit free speech based upon the speaker's corporate identity.

**W.D. Sales And Brokerage LLC v. Barnhill's Buffet Of Tenn., Inc.**, Slip Copy, 2010 WL 227586 (11th Cir. 2010).
Only a "stranger" to a business relationship may interfere with the business relationship so as to commit the tort of interference, and a party is not a "stranger" to the relationship if it has any beneficial interest in or control over the relationship.

**Baragona ex rel. Estate of Baragona v. Kuwait Gulf Link Transport Co.**, --- F.3d ----, 2010 WL 188234 (11th Cir. 2010).
Personal jurisdiction depends on the dual questions of whether a party is amenable to jurisdiction and whether there has been proper service of process. A party that is aware of litigation and ignores improper service of process may waive that component of the doctrine, but does not necessarily waive lack of personal jurisdiction due to minimum contacts.

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**Joseph L. Riley Anesthesia Associates v. Stein**, --- So.3d ----, 2010 WL 322156 (Fla. 5th DCA 2010).
Pursuant to Fla. Stat. § 641.3154, health care providers may not "balance bill" subscribers for services not paid by the applicable health maintenance organizations.

**Castellano v. Winthrop**, --- So.3d ----, 2010 WL 322177 (Fla. 5th DCA 2010).
Counsel who achieves an "informational advantage" by receiving (and refusing to return) USB flash drive containing privileged documents disqualified from case, even if the flash drive was obtained by counsel's client and not the attorney.

**Penzer v. Transportation Ins. Co.**, --- So.3d ----, 2010 WL 308043 (Fla. 2010).
The sending of a facsimile in violation of the federal Telephone Consumer Protection Act is covered under the advertising injury portion of a commercial liability policy which generally covers facsimile transmissions (even if no private information is disclosed in the facsimile).

**Flagship Resort Development Corp. v. Interval Intern., Inc.**, --- So.3d ----, 2010 WL 289106 (Fla. 2010).
A contract is not illusory and does not lack consideration, even if the contract gives allows one party to exercise a right in its sole discretion, so long as the party has to fulfill duties under the contract. Additionally, the course of performance of a contract that has been performed by the parties for fifteen years demonstrates the contract is not illusory.

**Dunkin' Donuts Franchised Restaurants, LLC v. 330545 Donuts, Inc.**, --- So.3d ----, 2010 WL 289192 (Fla. 4th DCA 2010).
An individual owner of a corporation is not a "party" for purposes of fee awards under Fla. Stat. § 44.103 (6) (parties who contest non-binding arbitration and loose the trial *de novo* liable for prevailing party's fees) when the individual was dropped from the litigation but the litigation continued with his corporation.

**Rodriguez v. Builders Firstsource-Florida, LLC**, --- So.3d ----, 2010 WL 300364 (Fla. 4th DCA 2010).
Tort claims, including mold infestation claims, are encompassed in an arbitration clause which compels arbitration with regard to all disputes or controversies "arising from or related to the home . . ." in distinction to arbitration clauses which concern disputes or controversies "arising from the contract . . ."

**Hemi Group, LLC v. City of New York, N.Y.**, --- S.Ct. ----, 2010 WL 246151 (2010).
A RICO plaintiff must show the predicate offense was both the "but for" and the proximate cause of plaintiff's injury in order recover damages.

**Equity Investment Partners, LP v. Lenz**, --- F.3d ----, 2010 WL 323569 (11th Cir. 2010).
Past consideration is sufficient under Florida law to constitute an obligation which can support a mortgage that primes a federal tax lien, i.e., a mortgage recorded prior to a tax lien is superior over a later filed tax lien even if there was no contemporaneous exchange of consideration at time of mortgage recordation.

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**February 6, 2010**

**Jones-Bishop v. Estate Of Sweeney**, --- So.3d ----, 2010 WL 391245 (Fla. 5th DCA 2010).
A judgment which contains an error in procedure is voidable, not void, and has full force and legal effect unless and until vacated. A Rule 1.540 (b)(4) motion may be brought in probate proceedings to vacate an administration where the situation warrants doing so.

**Stackman v. Pope**, --- So.3d ----, 2010 WL 391248 (Fla. 5th DCA 2010).
A party seeking to impose a prescriptive easement must prove the following by "clear and positive proof: 1) actual, continuous, and uninterrupted use by the claimant or any predecessor in title for the prescribed period of twenty years; 2) that the use was related to a certain, limited and defined area of land; 3) that the use has been either with the actual knowledge of the owner, or so open, notorious, and visible that knowledge of the use must be imputed to the owner; and 4) that the use has been adverse to the owner-that is, without permission (express or implied) from the owner, under some claim of right, inconsistent with the rights of the owner, and such that, for the entire period, the owner could have sued to prevent further use." Furthermore, a party seeking to impose a private prescriptive easement may only rely upon their own use, or the use of their direct predecessors in title, in order to achieve the twenty year period.

**Lopez v. Atlas One Financial Group, LLC**, --- So.3d ----, 2010 WL 363963 (Fla. 3rd DCA 2010).
An introducing broker is not an intended third party beneficiary of a contract between an account holder and the account broker, so the account holder is not subject to the arbitration provision in one account agreement when suing on the account agreement that did not contain an arbitration provision.

**Aikin v. WCI Communities, Inc.,** --- So.3d ----, 2010 WL 366584 (Fla. 2d DCA 2010).
Upon rehearing, the Second District clarified its earlier opinion but re-affirmed its prior ruling that Samara's "unconditionally obligate" to construct language is not absolute and must be read considering the circumstances of the case. Moreover, clauses in a contract providing for notice and cure provisions, the provision limiting remedies, and the requirements of a certain number of presales before the contracts became effective did not violate the Interstate Land Sales Act and were not illusory.

**Walter Transport Corp. v. Palm Beach Metro Transp., L.L.C.**, --- So.3d ----, 2010 WL 366596 (Fla. 4th DCA 2010).
A third party cannot sue on a third party beneficiary theory when the main contract contains a clause stating the main contract is not to benefit third parties.

**Robinson v. Tyson Foods, Inc**., --- F.3d ----, 2010 WL 396130 (11th Cir. 2010).
There is no exhaustive list for the conditions under which judicial estoppel will be applied, but generally consists of taking a position in present litigation that is inconsistent with a position taken under oath in prior proceeding, which actions are taken with the intent to make a mockery of the judicial system. A bankruptcy debtor is under an obligation to update her schedules to reflect changes in her financial condition, i.e., the bringing of an employment discrimination suit.

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**February 13, 2010**

**Sea World of Florida, Inc. v. Ace American Ins. Companies, Inc.**, --- So.3d ----, 2010 WL 475132 (Fla. 5th DCA 2010).
Distinguishing both the American Rule regarding the evidence necessary to fee shift and Third District case law on the issue, an independent expert's testimony is not necessary in order to establish attorneys' fees due under a contract of indemnity in the Fifth District.

**In re Amendments To The Florida Rules Of Civil Procedure**, --- So.3d ----, 2010 WL 455295 (Fla. 2010).
Specific practices regarding mortgage foreclosures are changed, including requiring verification of complaints for foreclosure of residential mortgages, and providing or amending forms for affidavits of diligent search and inquiry, final judgment of foreclosure, and motion to cancel foreclosure sale. The revised forms read as follows:

FORM 1.942. AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, (full legal name) _____ (individually or an Employee of _____), being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the current residence of _____, who is [over 18 years old] [under 18 years old] [age is unknown] (circle one).Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):

[check all that apply]

____ Inquiry of Social Security Information

____ Telephone listings in the last known locations of defendant's residence

____ Statewide directory assistance search

____ Internet people finder search {specify sites searched}

____ Voter Registration in the area where defendant was last known to reside.

____ Nationwide Masterfile Death Search

____ Tax Collector's records in area where defendant was last known to reside.

____ Tax Assessor's records in area where defendant was last known to reside

____ Department of Motor vehicle records in the state of defendant's last known address

____ Driver's License records search in the state of defendant's last known address.

____ Department of Corrections records in the state of defendant's last known address.

____ Federal Prison records search.

____ Regulatory agencies for professional or occupational licensing.

____ Inquiry to determine if defendant is in military service .

____ Last known employment of defendant.

{List all additional efforts made to locate defendant}

_____

Attempts to Serve Process and Results

_____

____ I inquired of the occupant of the premises whether the occupant knows the location of the borrower-defendant, with the following results:

_____

2. _____ current residence

[check one only]

____ a. _____'s current residence is unknown to me

____ b. _____'s current residence is in some state or country

other than Florida and _____'s last known address is:

_____

_____c. _____The _____, having residence in Florida, has been absent from Florida for more than 60 days prior to the date of this affidavit, or conceals him (her) self so that process cannot be served personally upon him or her, and I believe there is no person in the state upon whom service of process would bind this absent or concealed_____.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Plaintiff

Printed Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

Telefacsimile: _____

STATE OF _____

COUNTY OF _____

____Sworn to or affirmed and signed before me on this _____ day of _____, 20 _____ by _____.

_____

NOTARY PUBLIC, STATE OF _____

_____

(Print, Type or Stamp Commissioned Name of

Notary Public)

____Personally known

____Produced identification

____Type of identification produced: _____

FORM 1.996(a). FINAL JUDGMENT OF FORECLOSURE

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff, (name and address)....., is due

Principal $.....

Interest to date of this judgment .....

Title search expense .....

Taxes .....

Attorneys' fees

Finding as to reasonable number of hours: .....

Finding as to reasonable hourly rate: .....

Attorneys' fees total .....

Court costs, now taxed .....

Other: ..... .....

Subtotal $ .....

LESS: Escrow balance .....

LESS: Other ..... .....

TOTAL $ .....

that shall bear interest at the rate of .....% a year.

2. Plaintiff holds a lien for the total sum superior to anyallu claimus [sic] or estates of defendant(s), on the following described property in ..... County, Florida:

(describe property)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on. ....(date). ...., to the highest bidder for cash, except as prescribed in paragraph 45, at the courthouse located at .....(street address of courthouse)..... in ..... County in .....(name of city)....., Florida, in accordance with section 45.031, Florida Statutes, using the following method (CHECK ONE):

[] At. ....(location of sale at courthouse; e.g., north door). ...., beginning at. ....(time of sale). .... on the prescribed date.

[] By electronic sale beginning at .....(time of sale) ..... on the prescribed date at .....(website).....

4. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it as is necessary to pay the bid in full.

5. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

6. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

7. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT,(INSERT INFORMATION FOR APPLICABLE COURT)WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT(INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER)TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT(NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER)FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at ....., Florida, on .....(date).....

_____

Judge

FORM 1.996(b). MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE

Plaintiff moves to cancel and reschedule the mortgage foreclosure sale because:

1. On this Court entered a Final Judgment of Foreclosure pursuant to which a foreclosure sale was scheduled for _____, 20 _____.

2. The sale needs to be canceled for the following reason(s):

a._____ Plaintiff and Defendant are continuing to be involved in loss mitigation;

b._____ Defendant is negotiating for the sale of the property that is the subject of this matter and Plaintiff wants to allow the Defendant an opportunity to sell the property and pay off the debt that is due and owing to Plaintiff.

c._____Defendant has entered into a contract to sell the property that is the subject of this matter and Plaintiff wants to give the Defendant an opportunity to consummate the sale and pay off the debt that is due and owing to Plaintiff.

d._____ Defendant has filed a Chapter _____ Petition under the Federal Bankruptcy Code;

e._____ Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f._____ Plaintiff and Defendant have entered into a Forbearance Agreement;

g._____Other

_____

3. If this Court cancels the foreclosure sale, Plaintiff moves that it be rescheduled.

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to _____ this _____ day _____ of, 20____.

**JPG Enterprises, Inc. v. McLellan**, --- So.3d ----, 2010 WL 445394 (Fla. 4th DCA 2010).
Florida Statute § 501.1375 (developers and contractors who develop and sell real property must place certain deposit monies in escrow) does not apply to contractors who merely construct on land already owned by prospective homeowners as those contractors are not "selling" real property.

**Home Devco/Tivoli Isles LLC v. Silver**, --- So.3d ----, 2010 WL 445400 (Fla. 4th DCA 2010).
*Force majeure* clauses which extend beyond impossibility of performance under Florida law, and in doing so excuse performance for causes beyond a party's control, do not violate the "unconditionally obligate" requirement of the Interstate Land Sales Act.

**Ramle Intern. Corp. v. Greens Condominium Ass'n, Inc.**, --- So.3d ----, 2010 WL 445719 (Fla. 3d DCA 2010).
Rule of Civil Procedure 1.525's requirement that a motion for attorneys' fees be filed within thirty days of judgment is not applicable to those judgments where entitlement to attorneys' fees has already been determined.

**Lewis v. Fifth Third Mortg. Co.**, --- So.3d ----, 2010 WL 445896 (Fla. 3d DCA 2010).
An affidavit of diligent search and inquiry which reflects searches at an old address of the defendant (together with statement from occupant that defendant had moved to an unknown address in the Bahamas), together with searches for post office, credit, social security, employment, telephone, motor vehicle, license, voter registration and property records, is sufficient to support constructive service.

**Flick v. Charlton**, --- So.3d ----, 2010 WL 446500 (Fla. 2d DCA 2010).
While a trial judge has inherent authority to *sua sponte* amend pleadings to substitute one contract for another, to do so in the final judgment is an abuse of discretion in that doing so in the final judgment not permit one party to respond, plead or defend with regard to the amended pleading containing the new contract.

**BAC Funding Consortium Inc. v. Jean-Jacques**, --- So.3d ----, 2010 WL 476641 (Fla. 2d DCA 2010).
Plaintiff moving for summary judgment before defendant answers must prove Defendant can never file an answer that will contravene motion for summary judgment. Additionally, Plaintiff seeking summary judgment most prove by evidence it is entitled to enforce the note and mortgage, and if it is not the original mortgagee, that it is the owner of the note and mortgage through "valid assignment, proof of purchase of the debt, or evidence of an effective transfer."

**Avatar Properties, Inc. v. Greetham**, --- So.3d ----, 2010 WL 476663 (Fla. 2d DCA 2010).
Dispute under a home sales contract is governed by home warranty incorporated into the contract by reference, even if copy of the home warranty program was not attached to the contract. Accordingly, non-binding arbitration under the home warranty program is ordered.

**Grainger v. Wald**, --- So.3d ----, 2010 WL 479862 (Fla. 1st DCA 2010).
The Florida Probate Code requires service of notice to creditors of the estate, or if the creditor is represented by an attorney, on the attorney for the creditor. The Code does not differentiate between types of attorneys, however, so service of the notice on the creditor's personal injury attorney and not the creditor's probate attorney is good and sufficient service under the Code.

**Southeast Land Developers, Inc. v. All Florida Site and Utilities, Inc**., --- So.3d ----, 2010 WL 480867 (Fla. 1st DCA 2010).
A default final judgment based upon a complaint which fails to state a cause of action is void.

**In re Farris**, Slip Copy, 2010 WL 457428 (11th Cir. 2010).
The rebuttable presumption that an item properly mailed was received by the addressee applies in bankruptcy court.

**S&B/BIBB Hines PB 3 Joint Venture v. Progress Energy Florida, Inc.**, Slip Copy, 2010 WL 457439 (11th Cir. 2010).
A fixed price contract that contains a *force majeure* clause but does not provide for additional compensation for delays, does not entitle a party to additional compensation for delays beyond its control. The covenant of good faith and fair dealing does not allow additional compensation to be inferred from the *force majeure* clause as it only applies to express contractual terms.

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**Murray v. Delta Health Group, Inc**., --- So.3d ----, 2010 WL 565657 (Fla. 2d DCA 2010).
A witness does not have to be declared an expert by the court in order to have their expert opinion testimony admitted into evidence.

**Coral Lakes Community Ass'n, Inc. v. Busey Bank, N.A.**, --- So.3d ----, 2010 WL 567251 (Fla. 2d DCA 2010).
Notwithstanding Florida Statute § 720.3085 (2) (new parcel owner is liable for association dues outstanding at time of transfer to new parcel owner, including if transfer is by foreclosure sale), the following language found in the association documents gives a foreclosing lender immunity from liability for past due association assessments:

> 9.1.6 Subordination of Lien. Where any person obtains title to a LOT pursuant to the foreclosure of a first mortgage of record, or where the holder of a first mortgage accepts a deed to a LOT in lieu of foreclosure of the first mortgage of record of such lender, such acquirer of title, its successors and assigns, shall not be liable for any ASSESSMENTS or for other moneys owed to Coral Lakes which are chargeable to the former OWNER of the LOT and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of such funds is secured by a claim of lien recorded prior to the recording of the foreclosed or underlying mortgage.

**Deauville Hotel Management, LLC v. Atlantic Broadband (Miami), LLC**, --- So.3d ----, 2010 WL 532800 (Fla. 3d DCA 2010).
The failure to return a contract deposit that is not escrowed or otherwise independently identifiable is a breach of contract, not a conversion. Additionally, a party is entitled to a trial by jury on damages, even if its pleadings are struck for discovery violations, if the damages claimed are unliquidated.

**Ross v. Damas**, --- So.3d ----, 2010 WL 532812 (Fla. 3d DCA 2010).
Unless jurisdiction is retained in some manner, a trial court loses jurisdiction in a mortgage foreclosure action when the final judgment becomes “final” (i.e., ten days after date of final judgment if no motion for rehearing is filed, or if one is filed, after the motion is ruled upon), and trial court actions taken after a final judgment becomes final are void. Accordingly, court ruling based upon the issues raised by an attorney ad litem who was appointed two months after a foreclosure judgment became final are of no force or effect.

**Phoenix Holding, LLC v. Martinez**, --- So.3d ----, 2010 WL 53282 (Fla. 3d DCA 2010).
Foreclosure sale cannot be set aside on ground that mortgagors did not receive a copy of the final judgment in that Florida Rule of Civil Procedure 1.080 (h)(3) provides that failure to receive copy of final judgment does not affect the validity of the judgment. Additionally, a foreclosure sale may be set aside due to "gross inadequacy of consideration, surprise, accident, mistake, or irregularity in the conduct of the sale," but may not be set aside on the grounds of sympathy for the mortgagors and their financial plight.

**Biscayne Park, LLC v. Wal-Mart Stores East, LP**, --- So.3d ----, 2010 WL 532873 (Fla. 3d DCA 2010).
Party may not obtain an injunction based upon a future event. Additionally, an injunction may not be granted if the future event can be compensated through an award of money damages. Accordingly, a potential purchaser who drilled monitoring wells as part of its due diligence (but declined to purchase the property) is not entitled to an injunction allowing it to cap the wells because damages arising from the wells is speculative and also because any potential injury can be compensated through an award of money damages.

**6-F Corp. v. BDP Intern. Finance Corp., Ltd.**, --- So.3d ----, 2010 WL 532875 (Fla. 3d DCA 2010).
Civil theft award against all defendants, jointly and severally, is proper even if civil theft count names only one defendant in the title of the count if it is clear from the body of the count that joint and several relief is sought against multiple defendants.

**Utopia Provider Systems, Inc. v. Pro-Med Clinical Systems, L.L.C.**, --- F.3d ----, 2010 WL 569892 (11th Cir. 2010).
There is no blanket rule in the Eleventh Circuit holding that blank forms are not copyrightable, but the blank forms in this case are not original and are not copyrightable.

**Disability Advocates and Counseling Group, inc. v. E.M. Kendall Realty, Inc**., Slip Copy, 2010 WL 548989 (11th Cir. 2010).
District court retains jurisdiction to enforce settlement agreement when the district court's dismissal order either expressly retains jurisdiction to enforce the terms of the settlement agreement or incorporates the terms of the settlement agreement.

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**Hansen v. City of Deland**, --- So.3d ----, 2010 WL 667954 (Fla. 5th DCA 2010).
No compensation awardable to landowner whose land is temporarily flooded, i.e., for 15 months. Compensation is not awardable unless the landowner can demonstrate the flooding is permanent and that landowner is deprived of all beneficial uses of property by the flooding. Likewise, landowner did not demonstrate loss of all beneficial uses of the property since only a low-lying portion of the land was flooded and the landowner continued to be able to use his house.

**Kolsky v. Jackson Square, LLC**, --- So.3d ----, 2010 WL 624122 (Fla. 3d DCA 2010).
Non-signatories to an agreement containing an arbitration provision can be compelled to arbitrate based on principles of equitable estoppel, i.e., interconnectedness between the signatories and the non-signatories.

**Seymour v. Panchita Investment, Inc.**, --- So.3d ----, 2010 WL 624129 (Fla. 3d DCA 2010).
Summons must demonstrate the person against whom the lawsuit seeks redress, e.g., individual or corporaton, and the failure to do so makes the judgment void.

**Eventys Marketing and Products, Inc. v. Comcast Spotlight, Inc**., --- So.3d ----, 2010 WL 624136 (Fla. 3d DCA 2010).
Class action claims may be arbitrated in American Arbitration Association (A.A.A.) proceedings so long as consistent with A.A.A. procedures.

**Hertz Corp. v. Friend**, --- S.Ct. ----, 2010 WL 605601 (2010).
A corporation's principal place of business for diversity purposes is its "nerve center," i.e., where the corporation's officers direct and control the operations of the corporation.

**Danow v. Law Office of David E. Borack, P.A.**, Slip Copy, 2010 WL 597213 (11th Cir. 2010).
Plaintiff is the prevailing party under offer of judgment pursuant to Federal Rule of Civil Procedure 68 even though the amount offered to settle matches the final judgment achieved at trial because plaintiff's offer also contained a "confidential release," i.e., an additional condition which is "worth something."

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**Rameses, Inc. v. Demings**, --- So.3d ----, 2010 WL 742578 (Fla. 5th DCA 2010).
Statutory exemptions to public records disclosures are still applicable even though the records in question were previously disclosed to a criminal defendant.

**Bruce Tansey Custom Carpentry, Inc. v. Goodman**, --- So.3d ----, 2010 WL 743937 (Fla. 2d DCA 2010).
Improper to impose individual fraudulent lien liability on the president of a construction company when the lien was filed by the company and not the individual. Moreover, it is improper to impose punitive damages for a fraudulent lien for both the original and amended lien, even if both were fraudulent.

**Liberty Surplus Ins. Corp., Inc. v. First Indem. Ins Services, Inc**., --- So.3d ---, 2010 WL 711712 (Fla. 4th DCA 2010).
An insurance company can hold a broker liable for his own fraud or negligence for providing information to the insurance company upon which the insurance company relies in issuing a policy, applying Section 552 of the Restatement of Torts.

**Chicago Title Ins. Co. v. Northland Ins. Co.**, --- So.3d ----, 2010 WL 711752 (Fla. 4th DCA 2010).
In a subsequent action by the insured against its insurance company, courts must review the complaint and the insurance policy to determine whether there is coverage. The fact that a judgment was taken against the insured in a previous action is not determinative of the issue of whether there is, in fact, coverage under the insurance policy..

**Everglades Elec. Supply, Inc/ v. Paraiso Granite, LLC**, --- So.3d ----, 2010 WL 711763 (Fla. 4th DCA 2010).
Florida Statute § 713.10 (limitation of landlord's liability for construction contracts entered into by tenants when all leases contain construction lien limitation and a notice specifying same is recorded in the public land records) is clear that all of the leases entered into must contain the specific language contained in the recorded notice. Moreover, the statute section does not operate prospectively, i.e., to those leases entered into after the notice was filed; all leases must contain the notice otherwise the statute section is not applicable.

**Avila v. Miami-Dade County**.--- So.3d ----, 2010 WL 711799 (Fla. 3d DCA 2010).
A hearing on a temporary injunction can be combined with a hearing on a permanent injunction.

**Reed Elsevier, Inc. v. Muchnick**, --- S.Ct. ----, 2010 WL 693679 (2010).
A work does not have to be registered under the Copyright Act in order for a federal court to have jurisdiction over claims of copyright infringement.

**PVC Windoors, Inc. v. Babbitbay Beach Const., N.V.**, --- F.3d ----, 2010 WL 743730 (11th Cir. 2010).
Florida corporation based in Miami-Dade County sued non Florida defendants in Florida for payment for construction work it performed in St. Maarten in the Netherlands Antilles. No jurisdiction exists over the defendants under the Eleventh's Circuit two-step jurisdictional analysis (first determine whether Florida law provides for jurisdiction, and if so, examine whether minimum contacts exist) in that no cause of action for fraud in the inducement exists and the jurisdictional affidavits filed by the parties do not support a finding of contacts with Florida.

**Wood v. Briarwinds Condominium Ass'n Bd. of Directors**, Slip Copy, 2010 WL 724163 (11th Cir. 2010).
Dismissal of Federal Housing Act claims affirmed for person with disabilities in that offer to provide reasonable accommodation to complaining party (at his own expense) was not accepted and the other claims of discrimination (e.g., lack of a pool heater) do not demonstrate disparate treatment for disabled persons as opposed to non-disabled persons.

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**Samuels v. Torres**, --- So.3d ----, 2010 WL 837698 (Fla. 5th DCA 2010).
Jury trial verdict reversed on basis of improper solicitation of sympathy for defendant where defense counsel revealed meager income of defendant to jury during opening statement.

**Miller v. Partin**, --- So.3d ----, 2010 WL 837863 (Fla. 5th DCA 2010).
Constructive service of process cannot be sustained where record contains evidence counsel for Plaintiff spoke to Defendant and knew of Defendant's whereabouts.

**Regions Bank v. Allen**,--- So.3d ----, 2010 WL 838110 (Fla. 5th DCA 2010).
Bank does not have to produce a Suspicious Activity Report (SAR) in response to subpoena although it may have to disclose the circumstances surrounding and the documents supporting the SAR.

**OCR Eds, Inc. v. S & S Enterprises, Inc.**, --- So.3d ----, 2010 WL 838164 (Fla. 5th DCA 2010).
The Fifth District holds the clerk's date filing stamp on a notice of appeal is not conclusive of the date of the filing of the notice; conflict certified with the Fourth District opinion of *Strax Rejuvenation and Aesthetics Institute, Inc. v. Shield*, 24 So.3d 666 (Fla. 4th DCA 2009).

**TRG-Brickell Point NE, LTD v. Wajsblat**, --- So.3d ----, 2010 WL 785854 (Fla. 3d DCA 2010).
There must be some evidence in the record to support a summary judgment, even if it appears that non-movant will not be able to defend against the summary judgment.

**Yacht Club of Americas, LLC v. Namon**, --- So.3d ----, 2010 WL 785857 (Fla. 3d DCA 2010).
Upon a party paying the costs and service charges in the transferee court, the transferee court to which the file was transferred under an order changing venue acquires jurisdiction and the transferor court loses jurisdiction.

**770 PPR, LLC v. TJCV Land Trust**, --- So.3d ----, 2010 WL 785864 (Fla. 4th DCA 2010).
A bank chartered and regulated under the federal banking laws does not need to obtain legal and regulatory authority from the State of Florida to transact business in Florida. Additionally, a borrower contesting the correctness of a lender's calculations of amounts due must do more than merely contend the lender's calculations are incorrect; the borrower must set forth those amounts it believes constitute the correct amount due and owing.

**Walia v. Hodgson Russ LLP**, --- So.3d ----, 2010 WL 785869 (Fla. 4th DCA 2010).
A charging lien may not attach to a case before a final judgment is issued which produces a positive result and to which the lien can attach.

**PMG Collins, LLC v. R and G Enterprises, LLC**, --- So.3d ----, 2010 WL 785870 (Fla. 3d DCA 2010).
Similar to the rule that representation of one member of a corporation in a shareholder derivative suit does not create a lawyer- client relationship between the lawyer and the corporation, representation of one member of a plaintiff LLC in an unrelated matter does not create a conflict with counsel representing the LLC.

**King's Academy, Inc. v. Doe**, --- So.3d ----, 2010 WL 785908 (Fla. 4th DCA 2010).
An expedited evidentiary hearing is required on a motion to compel arbitration if a party contests the circumstances surrounding the making of the arbitration agreement or contends the arbitration agreement is unconscionable.

**Gamez v. First Union Nat. Bank of Florida**, --- So.3d ----, 2010 WL 785936 (Fla. 4th DCA 2010).
Party that purchased real property with a lien on the property is sufficiently protected under Florida Statute § 56.21 (procedure for levying on real property) in that the statute section provides sufficient notice and procedural due process protections to a landowner; third party impleader of landowner not required.

**Columbia Hosp. (Palm Beaches) Ltd. Partnership v. Hasson**, --- So.3d ----, 2010 WL 785950 (Fla. 4th DCA 2010).
Party entitled to opportunity to work out a confidentiality agreement prior to production of trade secrets being compelled by court order.

**Brown v. Nationscredit Financial Services Corp.**, --- So.3d ----, 2010 WL 786246 (Fla. 1st DCA 2010).
Florida Statute § 95.951 (1)(f) (statute of limitations for actions to enforce written instruments for the payment of money is tolled during the time payments are made under the written instrument) does not apply to toll the statute of limitations for all possible causes of action which may exist between the payer and payee.

**Milavetz, Gallop & Milavetz, P.A. v. U.S.**, --- S.Ct. ----, 2010 WL 757616 (2010).
Attorneys are “debt relief agencies” within the definition of the Bankruptcy Abuse, Prevention and Control Act of 2005, and can be restricted in advising clients to incur more debt because the restriction applies only to more unnecessary debt and because the restriction is narrowly drawn.

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**Carlucci v. Demings**, --- So.3d ----, 2010 WL 988512 (Fla. 5th DCA 2010).
A county sheriff's administrative order entitling certain long-serving employees to health insurance coverage does not rise to the level of contract, and can be rescinded by the succeeding county sheriff.

**In re Amendments To Florida Rule Of Judicial Administration 2.420 and Florida Rules of Appellate Procedure**, --- So.3d ----, 2010 WL 958075 (Fla. 2010).
Rule of Judicial Administration 2.420 is amended in order to provide a method for parties to request certain filed materials and information be deemed confidential and to provide a method for sealing confidential information.

**Neiman v. Naseer**, --- So.3d ----, 2010 WL 934080 (Fla. 4th DCA 2010).
A contempt order which does not provide the contemnor the exact dollar amount necessary to purge the contempt is improper.

**Ekonomou v. Glenn Wright Const. & Development, Inc.**, --- So.3d ----, 2010 WL 934098 (Fla. 4th DCA 2010).
A contract wherein a purported purchaser executes contracts with developer to purchase properties in order for developer to obtain construction financing from lenders with the intent the properties would be sold to third parties and purported purchaser would receive the return of his deposits is a scheme to defraud lenders, and the purported contracts are unenforceable as being illegal, i.e., void as against public policy.

**Pajares v. Donahue**, --- So.3d ----, 2010 WL 934101 (Fla. 4th DCA 2010).
If a decedent dies without children, then a specific bequest must be made that decedent's real property pass outside probate as the homestead of the decedent. An instruction in the will that the property be sold and the proceeds pass to the beneficiaries causes the property to lose its homestead character.

**Camino v. Carl's Furniture, Inc**., --- So.3d ----, 2010 WL 934143 (Fla. 3d DCA 2010).
A mandatory forum selection clause placed in the "default" section of a contract is effective only when there is a default in payment, and is ineffective when a purchaser has paid in full but has filed suit for defective product sold.

**Fernandez v. Haber & Ganguzza, LLP**, --- So.3d ----, 2010 WL 934264 (Fla. 3d DCA 2010).
No claim can lie against attorney for intentional interference with business relationship for filing a *lis pendens* which clouds title if the *lis pendens* is filed as a part of a lawsuit because the litigation privilege protects the attorney from suit.

**In re Delco Oil, Inc**., --- F.3d ----, 2010 WL 918058 (11th Cir. 2010).
If so designated pursuant to an enforceable security agreement, cash proceeds constitute “cash collateral” which cannot be used or transferred by bankruptcy debtor without court permission.

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**Sanders v. Gussin**, --- So.3d ----, 2010 WL 1131440 (Fla. 5th DCA 2010).
Dismissal for discovery violations improper unless the trial court makes the required findings under *Kozel v. Ostendorf,* 629 So. 2d 817 (Fla. 1993), specifically,

1. Whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience;
2. Whether the attorney has previously been sanctioned;
3. Whether the client is personally involved in the act of disobedience;
4. Whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;
5. Whether the attorney offered reasonable justification for noncompliance; and
6. Whether the delay created significant problems of judicial administration.

**Unifirst Corp. v. City of Jacksonville, Tax Collector's Office**, --- So.3d ----, 2010 WL 1076234 (Fla. 1st DCA 2010).
Fla. Stat. § 57.105 sanctions will be imposed on appeal for rearguing issues already argued in the briefs and dealt with in the PCA opinion, as well as for seeking certification to the supreme court by arguing that the court's (PCA) opinion conflicts with the opinions of other district courts.

**Tedeschi v. Surf Side Tower Condominium Ass'n, Inc.**, --- So.3d ----, 2010 WL 1049952 (Fla. 2d DCA 2010).
A declaratory action with regard to a limited common element does not require the joinder of all unit owners in the condominium. *Stevens v. Tarpon Bay Moorings Homeowners Ass'n*, 15 So. 3d 753 (Fla. 4th DCA 2009) (party seeking return of dock given to others by HOA must sue the other parties), distinguished because the property in *Stevens* was individually owned and not owned by the association.

**Palmer Trinity Private School, Inc. v. Village of Palmetto Bay**, --- So.3d ----, 2010 WL 1050024 (Fla. 3d DCA 2010).
Refusal of a local government to rezone property so that it has the same zoning as other surrounding properties creates illegal "spot zoning."

**Lawnwood Medical Center, Inc. v. Sadow**, --- So.3d ----, 2010 WL 1066833 (Fla. 4th DCA 2010).
Fla. Stat. § 395.0191 (no liability permissible against a hospital for decisions on staff membership and clinical privileges) does not immunize a hospital from a breach of contract. Moreover, Fla. Stat. § 768.73 (1) (c) eliminates the requirement of mathematical proportionality of punitive damages to compensatory damages "in cases of intentionally malicious harmful conduct," and intentionally malicious defamation satisfies this requirement.

**United Student Aid Funds, Inc. v. Espinosa**, --- S.Ct. ----, 2010 WL 1027825 (2010).
Bankruptcy courts should not confirm Chapter 13 discharges of student loan obligations without an adversary proceeding finding of undue hardship, but student loan creditor who was noticed with confirmation hearing seeking to discharge loan obligation and did not object is without remedy as a finding under such circumstances is not void *ab initio*.

**SFM Holdings, Ltd. v. Banc of America Securities, LLC**, --- F.3d ----, 2010 WL 1068230 (11th Cir. 2010).
Without more, only an introducing broker owes a fiduciary duty to the customer and no fiduciary duty is owed by the clearing or prime broker.

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**T & W Developers, Inc. V. Salmonsen**, --- So.3d ----, 2010 WL 1233481 (Fla. 5th DCA 2010).
Fla. Stat. § 723.07 only provides the method by which developers and residents of mobile home parks may resolve disputes, and does not provide an attorneys' fees provision for the prevailing party in a dispute.

**Poole v. City of Port Orange**, --- So.3d ----, 2010 WL 1233497 (Fla. 5th DCA 2010).
Mandamus is a proper cause of action to compel a local government to produce public records when it refuses to do so upon request.

**Attorneys' Title Ins. Fund, Inc. v. Gorka**, --- So.3d ----, 2010 WL 1235268 (Fla. 2010).
A joint offer of settlement that is conditioned upon the acceptance of the offer by all offerees (i.e., recipients of the offer) is invalid; Clements v. Rose, 982 So. 2d 731 (Fla. 1st DCA 2008), is disapproved.

**Van Vorgue v. Rankin**, --- So.3d ----, 2010 WL 1235309 (Fla. 2010).
The propriety of holding funds through an escrow agreement is not to be examined in the context of the equitable principles which determine the propriety of injunctions.

**Vigilant Ins. Co. v. Continental Cas. Co.**, --- So.3d ----, 2010 WL 1222636 (Fla. 4TH DCA 2010).
An insured or an excess insurance company paying an underlying claim in excess of the policy limits of the primary insurance does not release the primary insurance company from a bad faith claim by the insured or excess carrier.

**Johnston v. Hudlett**, --- So.3d ----, 2010 WL 1222643 (Fla. 4th DCA 2010).
A promissory note and mortgage are surrendered and replaced with the final judgment evidencing the obligation, and notwithstanding its customary practice to return all trial exhibits to parties after trial, a clerk's office should not return an original note and mortgage introduced into evidence at trial.

**CIMA Capital Partners, LLC v. PH Cellular, Inc.**, --- So.3d ----, 2010 WL 1222773 (Fla. 3d DCA 2010).
Closely-held corporations can be valued for damages purposes even if no readily accessible market exists for the sale of the shares, and damages for breach of contract for sale of stock should be valued on the date of the breach.

**Hill v. Davis**, --- So.3d ----, 2010 WL 1347314 (Fla. 1st DCA 2010).
A motion to disqualify an out of state personal representative must be made within three (3) months of the service of the notice of administration; conflict certified with the Third District's opinion of *Angelus v. Pass*, 868 So. 2d 571 (Fla. 3rd DCA 2004).

**Jones v. Harris Associates L.P.**, --- S.Ct. ----, 2010 WL 1189560 (2010).
An investment adviser must charge fees so large that the fees bear no reasonable relationship to the services provided and was not the product of arm's length bargaining in order to be held responsible under the Investment Company Act of 1940.

**Latimer v. Roaring Toyz, Inc.**, --- F.3d ----, 2010 WL 1253090 (11th Cir. 2010).
Magazine publisher's republication of press release materials containing photographs was a fair use of the work and consent the photographer gave to the manufacturer for the press release.

**LeBlanc v. Unifund CCR Partners**, --- F.3d ----, 2010 WL 1200691 (11th Cir. 2010).
Out of state debt collector was subject to the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55, and failing to register before taking action on consumer debts is a violation of the Act.

**Double AA Intern. Inv. Group, Inc. v. Swire Pacific Holdings, Inc.**, Slip Copy, 2010 WL 1258086 (S.D. Fla. 2010).
The plain meaning of Fla. Stat. § 718.202 requires a developer of condominiums to establish up to three escrow accounts for pre-construction contract deposits: one for deposits up to ten percent of the purchase price, one for deposits in excess of ten percent of the purchase price, and one for "reservation deposits." Failure to do so permits a prospective buyer to cancel the contract.

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**Addison v. City of Tampa**, --- So.3d ----, 2010 WL 1328939 (Fla. 2d DCA 2010).
The "home venue provision" applies to local governments, both directly as named parties and indirectly as unnamed defendants in a class sought to be certified.

**S & I Investments v. Payless Flea Market, Inc**., --- So.3d ----, 2010 WL 1329057 (Fla. 4th DCA 2010).
Renewal of a lease subject to the Statute of Frauds, i.e., in excess of one year, must comply with the two witness requirement of Fla. Stat. § 689.01.

**McLaughlin, Inc. v. Ric-Man Intern., Inc.**, --- So.3d ----, 2010 WL 1329080 (Fla. 4th DCA 2010).
Prejudgment interest is granted on quantum meruit claims from the date the judgment fixes as the date of breach.

**Elliott v. Aurora Loan Services, LLC**, --- So.3d ----, 2010 WL 1329087 (Fla. 4th DCA 2010).
Moving to vacate default six days after discovering the default demonstrates due diligence.

**DK Arena, Inc. v. EB Acquisitions I, LLC**, --- So.3d ----, 2010 WL 1329371 (Fla. 4th DCA 2010).
An oral agreement may extend the time for closing a real estate transaction, despite the statute of frauds requirement, if a party acted to its detriment on the representation of the extension of the closing date. *Wharfside at Boca Pointe, Inc. v. Superior Bank*, 741 So.2d 542 (Fla.4th DCA 1999) (a statute of frauds contract cannot be orally modified) is distinguished because the item orally discussed in *Wharfside*, i.e. price, is an important element of a real estate transaction and subject to the statute of frauds, and *Shore Holdings, Inc. v. Seagate Beach Quarters, Inc.*, 842 So. 2d 1010 (Fla. 4th DCA 2003), is distinguished because the contract in *Seagate* had already expired and promissory estoppel was sought to be used as the premise for a new enforceable contract.

**Brown v. Nagelhout**, --- So.3d ----, 2010 WL 1329701 (Fla. 4th DCA 2010).
The joint residency rule applies even when all the defendants do not share a county of residence.

**Amaran v. Marath**, --- So.3d ----, 2010 WL 1329801 (Fla. 3d DCA 2010).
Error to dismiss a complaint for failure to serve within the 120 time limit where the defendant failed to produce known discovery information, where the defendant has already been served by the time of the hearing of the motion to dismiss, and where the statute of limitations has already run.

**Quiroga v. Citizens Property Ins. Corp.**, --- So.3d ----, 2010 WL 1329996 (Fla. 3d DCA 2010).
Insurance proceeds arising from hurricane damage on a homestead maintain their homestead character, and are not subject to an attorney's charging lien.

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**La Costa Beach Club Resort Condominium Ass'n, Inc. v. Carioti**, --- So.3d ----, 2010 WL 1460198 (Fla. 4th DCA 2010).
The openness of plaintiff's settlement with one of the defendants prevented the settlement agreement becoming a "Mary Carter" agreement.

**AMEC Civil, LLC v. State, Dept. of Transp.,** --- So.3d ----, 2010 WL 1542634 (Fla. 1st DCA 2010).
A contract is indivisible, and a party cannot split causes of action based on the same contract. The dissent argues that separate breaches of the same contract can be the subject of separate actions so long as the second breach had not occurred at the time of the first breach/first action, citing *U.S. Project Management, Inc. v. Parc Royale East Development, Inc.*, 861 So. 2d 74 (Fla. 4th DCA 2003).

**Holt v. Wells Fargo Bank, N.A.**, --- So.3d ----, 2010 WL 1460260 (Fla. 4th DCA 2010).
The amendment of Fla. Stat. § 48.193 (1) (c) by adding the words "holding a mortgage or other lien on [Florida real property]" did not eliminate ownership of real property as a basis of long arm personal jurisdiction, the change merely adding an additional basis, i.e., holding mortgages or liens on Florida real property.

**Invego Auto Parts, Inc. v. Rodriguez**, --- So.3d ----, 2010 WL 1460292 (Fla. 3d DCA 2010).
Party seeking specific performance proved it was "ready, willing and able" to purchase real property by producing un-rebutted evidence of loan guarantee sufficient to purchase real property, and trial court judgment denying specific performance is reversed.

**Aurora Loan Services LLC v. Senchuk**,--- So.3d ----, 2010 WL 1445185 (Fla. 1st DCA 2010).
A claim for equitable subrogation is available to place a refinancer in the shoes of the first mortgagee so long as doing so does not leave the second lien holder in worse position than it bargained for. Mere negligence, such as failing to properly examine the constructive record for real estate transactions, is not prohibitive of a claim for equitable subrogation.

**Hetrick v. Ideal Image Development Corp**., Slip Copy, 2010 WL 1491947 (11th Cir. 2010).
The "person" who can bring claims under the Florida Franchise Act is the "person" who entered into the contract with the franchisor. Thus, the individual shareholders of a corporate "person" who entered into a franchise agreement cannot bring claims.

**Crimson Yachts v. Blyn II Holding, LLC**, --- F.3d ----, 2010 WL 1434098 (11th Cir. 2010).
A "vessel" for admiralty purposes is one that is capable of travelling over water, and it is still a "vessel" so long as the hull and skeleton are capable of being built upon even though it may be presently unable to travel over water.

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**Singer v. Unibilt Development Co.**, --- So.3d ----, 2010 WL 1626416 (Fla. 5th DCA 2010).
Party must be currently conducting business in Florida in order to invoke the long-arm provisions of Florida law under Fla. Stat. § 48.193 (2) (engaging in business in state subjects foreign parties to jurisdiction in Florida). The fact that the res that is the subject of the litigation arose out of business activities in Florida is not sufficient.

**Riggs v. Aurora Loan Services, LLC**, --- So.3d ----, 2010 WL 1561873 (Fla. 4th DCA 2010).
An unsigned and unauthenticated assignment of mortgage creates a factual issue for summary judgment purposes.

**Inphynet Contracting Services, Inc. v. Soria**, --- So.3d ----, 2010 WL 1562747 (Fla. 4th DCA 2010).
A class action in seeking damages for failing to pay contract vendees from a profit pool fails to meet the predominance of class issues requirement of Florida Rule of Civil Procedure 1.220 (b) (3) in that each contract and the ability of contract vendees to participate in the profit pool depends upon each contract and each contract vendee's individual requirements to participate in the pool.

**Naranja Princeton Community Development Corp. v. Cornerstone Development Group, Inc.**, --- So.3d ----, 2010 WL 1565450 (Fla. 3d DCA 2010).
A later filed motion to dismiss will not result in the striking of an order setting an action for trial if the action was at issue, i.e., all pleadings filed and resolved, at the time the notice for trial was served. Additionally, a notation on a civil cover sheet noting that jury trial is demanded in the complaint is a not a demand for jury trial.

**McCole v. City of Marathon**, --- So.3d ----, 2010 WL 1565466 (Fla. 3d DCA 2010).
The statute of limitations for inverse condemnation claims begins to run from "final determination" by the governmental authority, which presumes "at least one meaningful application" for a development permit.

**Ferguson v. Estate of Campana**, --- So.3d ----, 2010 WL 1565575 (Fla. 3d DCA 2010).
Fla. Stat. § 48.193 (2009) of the Florida long arm statute does not require a causal relationship between the business or business venture and the harm in order to require a foreign defendant to be haled into Florida.

**Empire Ocean Residence Realty, LLC v. CDR Creances, S.A.S**., --- So.3d ----, 2010 WL 1572499 (Fla. 3d DCA 2010).

A *lis pendens* bond must be posted when the *lis pendens* is not based on a duly recorded instrument, and the bond must bear a reasonable relationship to the damages that will be suffered by the landowner by virtue of the *lis pendens*.

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**Baillargeon v. Sewell**, --- So.3d ----, 2010 WL 1727842 (Fla. 2d DCA 2010).
A class cannot file a proof of claim in an estate, and the prompt substitution of a personal representative in the class action does not make the filing of a claim unnecessary under the Florida probate rules.

**Gibney v. Pillifant**, --- So.3d ----, 2010 WL 1728874 (Fla. 2d DCA 2010).
A real estate contract which states it is "conti[n]gent upon this property appraising for no less than $620,000 to be conducted by a local appraiser" is inartful but not ambiguous, and a purchaser is entitled to cancel the contract and the return of his deposit upon the property appraising for less than $620,000, even if the clause did not state the remedies of the parties if the property did not meet the $620,000 price.

**Venezia Lakes Homeowners Ass'n, Inc. v. Precious Homes at Twin Lakes Property Owners Association, Inc.**, --- So.3d ----, 2010 WL 1687632 (Fla. 3d DCA 2010).
A pure bill of discovery is not available to determine whether a party has a cause of action or the extent of damages; such information can be obtained through a declaratory action or through normal discovery procedures.

**Biloki v. Majestic Greeting Card Co., Inc.**, --- So.3d ----, 2010 WL 1687662 (Fla. 4th DCA 2010).
A forum selection clause cannot serve as the only basis under Fla. Stat. § 48.193 (1) (g) (long arm jurisdiction based on breaching contracts in the state) for long arm jurisdiction. Likewise, ordering greeting cards from a Florida warehouse and one visit over the course of several years does not constitute such substantial and continuing contacts sufficient to hale a party into Florida.

**Stolt-Nielsen S.A. v. AnimalFeeds International Corp.**, --- S.Ct. ----, 2010 WL 1655826 (2010).
Even if an arbitration clause is silent on this point, arbitration panel exceeds its powers under the Federal Arbitration Act by arbitrating class action claims.

**Merck & Co., Inc. v. Reynolds**, --- S.Ct. ----, 2010 WL 1655827 (2010).
The statute of limitations for securities fraud begins to run when plaintiff discovers, or should have discovered, the facts (including *scienter*) constituting the fraud.

**Bank of America Nat. Ass'n v. Colonial Bank**, --- F.3d ----, 2010 WL 1644886 (11th Cir. 2010).

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) prohibits district court judge from issuing injunction that prevents the F.D.I.C., as receiver for a failed institution, from possessing and disposing of disputed mortgage loans.

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**Holland v. Barfield**, --- So.3d ----, 2010 WL 1812653 (Fla. 5th DCA 2010).
A discovery request for, in effect, all electronic data of responding party is overbroad unless the requesting party can show destruction of evidence or thwarting of discovery, likelihood of relevant information on the electronic media, and no other source of retrieving the information.

**Thomas v. Hospital Bd. of Directors of Lee County**, --- So.3d ----, 2010 WL 1816251 (Fla. 2d DCA 2010).
The Impact Rule does not apply to actions for fraud, deceit and misrepresentation.

**Sourcetrack, LLC v. Ariba, Inc.**, --- So.3d ----, 2010 WL 1816438 (Fla. 2d DCA 2010).
A court cannot award attorneys' fees in a fee shifting case in excess of those charged in the legal the community unless there is shown a need for to go outside the community for special expertise or some other reason necessitating increased fees.

**Perera v. United States Fidelity and Guar. Co.**, --- So.3d ----, 2010 WL 1791151 (Fla. 2010).
A cause of action for bad faith may not be maintained against an insurer when the insurer's actions were not the cause of the insured's damages or do not result in exposure to the insured in excess of the insured's policy limits.

**Presidents' Council of SD, Inc. v. Walton County**, --- So.3d ----, 2010 WL 1793878 (Fla. 1st DCA 2010).
An appeal of a local government decision on a development order under Fla. Stat. § 163.3215 (3) must be brought within thirty (30) days after rendition of the order by the local government or exhaustion of administrative appeals, whichever is later. "Rendition," for purposes of the statute section, is the filing of the written order with the clerk of the local government agency.

**Rayfield Inv. Co. v. Kreps**, --- So.3d ----, 2010 WL 1779891 (Fla.4th DCA 2010).
A secured lender takes priority in inventory over the owner of a consigned good unless the owner of the consigned good complies with Fla. Stat. § 686.502 (2) by attaching a tag to the consigned good to reflect it is consigned, or unless the consignor can prove the vendor was "generally known" to be the seller of consigned goods.

**17315 Collins Avenue, LLC v. Fortune Development Sales Corp.**, --- So.3d ---, 2010 WL 1779903 (Fla. 3d DCA 2010).
A temporary injunction, which generally may not be used in prejudgment proceedings to preserve assets pending judgment, may be used in proceedings supplementary, i.e., post-judgment.

**Jewelry Repair Enterprises, Inc. v. Ajani**, --- So.3d ----, 2010 WL 1779923 (Fla. 4th DCA 2010).
Party does not have to arbitrate a non-compete issue when the arbitration agreement makes an exception for non-compete disputes.

**A.I.C. Trading Corp. v. Susman**, --- So.3d ----, 2010 WL 1779936 (Fla. 3d DCA 2010).
A lease-option contract which includes the description of the property, the price per square foot to purchase, the increase in purchase price over each year and the manner of financing and is signed by the parties is enforceable; no contract ambiguity is created by the parties agreeing to "ordinary and customary" allocation of closing costs.

**Caliber Automotive Liquidators, Inc. v. Premier Chrysler, Jeep, Dodge, LLC**, --- F.3d ----, 2010 WL 1816170 (11th Cir. 2010).
Actual "consumer" confusion is the best indication of trademark infringement, and "customer" is the user of the trademarked product or service and not necessarily the end consumer. The quantum of evidence necessary to demonstrate actual confusion under Eleventh Circuit precedent is relatively small, and no hard and fast rule applies.

**S.E.C. v. Pension Fund of America L.C.**, Slip Copy, 2010 WL 1794388 (11th Cir. 2010).
District courts have broad discretion in formulating appropriate mechanisms and procedures for equity receiverships, and do not have to provide all the incidents of due process in the receivership such as hearings on claims.

**Ledford v. Peeples**, --- F.3d ----, 2010 WL 1796568 (11th Cir. 2010).
Sanctions are imposed under the Private Securities Litigation Reform Act against counsel when counsel violates Rule 11 (b).

**Coventry First, LLC v. McCarty**, --- F.3d ----, 2010 WL 1782144 (11th Cir. 2010).
The Florida Viatical Act regulates insurance, and as a result, the McCarron-Ferguson Act protects state regulators from dormant Commerce Clause claims, and regulators are entitled to review out of state insurance transactions.

**Old West Annuity and Life Ins. Co. v. Apollo Group**, --- F.3d ----, 2010 WL 1753362 (11th Cir. 2010).

Florida alter ego law, and the federal alter ego test, is applied in bankruptcy proceedings. Moreover, a post-petition lien on real estate is not subject to the bankruptcy trustee's avoidance powers.

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**Superior Fence & Rail of North Florida v. Lucas**, --- So.3d ----, 2010 WL 1923975 (Fla. 5th DCA 2010).
An order denying a motion to intervene is a final order with respect to the party seeking to intervene, and that party has a right to direct appeal as a result of the denial.

**Goldberg v. Merrill Lynch Credit Corp.**, --- So.3d ----, 2010 WL 1904535 (Fla. 2010).
A finding by the Florida Supreme Court that certain conduct constitutes the unlicensed practice of law is a prerequisite to civil actions seeking damages for the unlicensed practice of law.

**Capital One, N.A. v. Forbes**, --- So.3d ----, 2010 WL 1874377 (Fla. 2d DCA 2010).
Disclosure of confidential trade secret information, bank training manuals in this case, may be disclosed based on a "eyes only" form of disclosure that is limited in terms of scope of persons entitled to view the information, the use of the materials, and the length of time the requesting party may have the materials.

**Smith v. Loews Miami Beach Hotel Operating Co., Inc.**, --- So.3d ----, 2010 WL 1875614 (Fla. 3d DCA 2010).
A voluntary dismissal of an action does not entitle a party to attorneys' fees under Fla. Stat. § 768.79 as the "prevailing party" unless the dismissal is with prejudice, operates as an adjudication on the merits, or is not the first voluntary dismissal.

**Cullen v. Marsh**, --- So.3d ----, 2010 WL 1875638 (Fla. 3d DCA 2010).
Merely losing a case, either on the merits or through summary judgment, cannot be the sole basis for an award of Fla. Stat. § 57.015 fees.

**W & W Lumber of Palm Beach, Inc. v. Town & Country Builders, Inc**., --- So.3d ----, 2010 WL 1879270 (Fla. 4th DCA 2010).
A voluntary dismissal with prejudice acts as a final determination for purposes of res judicata.

**Columbia Hosp. (Palm Beaches) Ltd. Partnership v. Hasson**, --- So.3d ----, 2010 WL 1879469 (Fla. 4th DCA 2010).
Court ordered production of confidential material must, under Fla. Stat. § 90.506, employ protective measures, and trial court erred by requiring disclosure of material without permitting the parties the opportunity to negotiate a confidentiality agreement.

**Yawt v. Carlisle**, --- So.3d ----, 2010 WL 1879697 (Fla. 4th DCA 2010).
A default only entitles a party to the relief stated in the complaint upon which the default is entered, and a complaining party that seeks additional relief must file supplemental pleadings under Fla. R. Civ. P. 1.110 (h) and re-serve the defending party in the same manner as original process.

**Gilbert v. Eckerd Corp. of Florida, Inc.**, --- So.3d ----, 2010 WL 1881071 (Fla. 4th DCA 2010).
There is no rule or statute which requires a trial court to hold an evidentiary hearing on motion to dismiss for fraud on the court, but holding such a hearing is the better practice. Dismissal for fraud on the court can only be entered when there is clear and unequivocal evidence of fraud.

**Martin County v. Polivka Paving, Inc.**, --- So.3d ----, 2010 WL 1881089 (Fla. 4th DCA 2010).
A contractor seeking to recover home office overhead damages from the government must prove the government imposed such a delay on the contractor that the contractor could not take on additional work as the result of the involuntarily imposed delay.

**S.E.C. v. Pension Fund of America L.C.**, Slip Copy, 2010 WL 1915161 (11th Cir. 2010).
*Pro se* status does not excuse misrepresentations to the court, and sanctions are properly imposed.

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**FL-Carrollwood Care Center, LLC v. Estate of Gordon ex rel. Gordon**, --- So.3d ----, 2010 WL 2010797 (Fla. 2d DCA 2010).
The determination of whether a party has the capacity to enter into a contract containing an arbitration provision requires an evidentiary hearing.

**Sullivan v. Kanarek**, --- So.3d ----, 2010 WL 2010839 (Fla. 2d DCA 2010).
A successor judge may rule on a motion for rehearing in a trial conducted by the predecessor judge, but the successor judge's ruling is not afforded the same level of deference on appeal as the predecessor's ruling would have been.

**Ramirez v. McCravy**, --- So.3d ----, 2010 WL 1994654 (Fla. 2010).
Weather induced administrative tolling orders may not, in some circumstances, extend the statute of limitations set forth in the Florida Statutes.

**In re Amendments to Florida Rule of Judicial Admin. 2.540**, --- So.3d ----, 2010 WL 1994662 (Fla. 2010).
Florida Rule of Judicial Administration 2.540 is amended to provide those with disabilities better access to the courts.

**James Crystal Licenses, LLC v. Infinity Radio Inc.**, --- So.3d ----, 2010 WL 1979139 (Fla. 4th DCA 2010).
Damages for future profits based on breach of contract must be the direct result of the defendant's actions and must be proven with reasonable certainty, and furthermore, must be reduced by the cost of overhead. Unlike fraud claims, punitive damages for intentional interference must be based on an award of actual damages.

**Welde v. Top Video & Productions USA, Inc.**, --- So.3d ----, 2010 WL 1979282 (Fla. 3d DCA 2010).
The following language entitles a tenant to exercise a purchase-option at any time during the lease term that the tenant is not in default: ""Lessor hereby grants to Lessee, during the term of this Lease, and provided that the Lessee is not in default of any part of this Lease Agreement, an option to purchase the property for the following prices...."

**Rodriguez v. Recovery Performance & Marine, LLC**, --- So.3d ----, 2010 WL 1979286 (Fla. 3d DCA 2010).
Damages under the Florida Deceptive and Unfair Trade Practices Act is limited to the difference between the market value of the good as delivered and as the goods should have been delivered. Furthermore, the statute does not provide for consequential damages.

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**Gaccione v. Damiano**, --- So.3d ----, 2010 WL 2131652 (Fla. 5th DCA 2010).
Chapter 83 of the Florida Statutes, the Florida Landlord Tenant Act, provides a basis for attorneys' fees whether or not a contract exists between the parties.

**Black Diamond Properties, Inc. v. Haines**, --- So.3d ----, 2010 WL 2131712 (Fla. 5th DCA 2010).
A party that files a Notice of Voluntary Dismissal is a "losing party" for purposes of prevailing party fee statutes under Fifth District precedent, so a defendant under these circumstances is the prevailing party and entitled to fees under Fla. Stat. § 817.41 (misleading advertising) and § 501.204 (unfair and deceptive trade practices). All plaintiffs need not dismiss in order for a defendant to recover prevailing party costs against the one dismissing plaintiff.

**KA Properties, LLC v. USA Const., Inc.**, --- So.3d ----, 2010 WL 2132024 (Fla. 5th DCA 2010).
A construction lien claimant served with a show cause summons under Fla. Stat. § 713.21 (4) must initiate a construction lien foreclosure within twenty days after service of the summons or show good cause why the lien should not be discharged. The filing of a counterclaim and the defenses that a lien is valid and not exaggerated are not sufficient "good cause" to avoid discharge of the lien.

**Howell v. Ed Bebb, Inc.**, --- So.3d ----, 2010 WL 2134130 (Fla. 2d DCA 2010).
Plaintiff that moves for summary judgment before an answer is filed must prove that no answer raising an issue of material fact could ever be filed.

**West Villages Imp. Dist. v. North Port Road and Drainage Dist.**, --- So.3d ----, 2010 WL 145479 (Fla. 2d DCA 2010).
The broad home rule powers of municipalities do not permit municipalities to impose special assessments on (state) public property.

**FCD Development, LLC v. South Florida Sports Committee, Inc.**, --- So.3d ---, 2010 WL 2076954 (Fla. 4th DCA 2010).
Damages for a wrongfully *lis pendens* is the difference in the market value of the property between the date of the filing and the date of dissolution of the *lis pendens*. A property owner who seeks consequential damages as the result of the wrongfully filed *lis pendens* must demonstrate a bona, fide effort to resell the property which results in a binding contract with a buyer who is ready, willing and able to buy.

**Park Adult Residential Facility, Inc. v. Dan Designs, Inc.**, --- So.3d ----, 2010 WL 2076985 (Fla. 3d DCA 2010).
A landlord is entitled to immediate default and an order of eviction if the tenant fails to pay the required rent into the registry of the court, even if the tenant has good reason for not paying the rent, e.g., the seizure of tenant's law firm by federal law enforcement authorities.

**Sims v. New Falls Corp.**, --- So.3d ----, 2010 WL 2077145 (Fla. 3d DCA 2010).
The choice of law provision in the standard FNMA/FHLMC mortgage governs only the mortgage and not the promissory note upon which the mortgage is based. Florida follows the doctrine of *lex loci contractu* for promissory notes executed in Florida, even if the note and mortgage are executed simultaneously as part of the same transaction and the real property and mortgage are subject to a different, out of state law.

**American Needle, Inc. v. National Football League**, --- S.Ct. ----, 2010 WL 2025207 (2010).
The National Football League is considered one entity even though it is comprised of individual teams, and accordingly, the League is not exempt from the Sherman Antitrust Act.

**Miccosukee Tribe Of Indians Of Fla. v. Kraus-Anderson Const. Co.**, --- F.3d ----, 2010 WL 2138957 (11th Cir. 2010).
The federal courts do not have jurisdiction to enforce judgments arising from tribal courts.

**Tiara Condominium Ass', Inc. v. Marsh & McLennan Companies, Inc**., --- F.3d ----, 2010 WL 2105923 (11th Cir. 2010).
Florida law is unclear whether insurance brokers provide "professional services" such that the Economic Loss Rule applies to insurance brokerage contracts; question certified to the Florida Supreme Court.

**In re Davis**, Slip Copy, 2010 WL 2079687 (11th Cir. 2010).
11 U.S.C. § 525 (b) (person may not be fired from employment based upon filing bankruptcy) only applies if the wrongful termination takes place after the bankruptcy petition is filed.

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**Hadden v. State Farm Fire & Cas. Co.**, --- So.3d ----, 2010 WL 2216636 (Fla. 5th DCA 2010).
Judicial estoppel does not apply in state court proceedings against bankruptcy debtor who lists claim, but not a lawsuit, in bankruptcy papers when the debtor does not know the suit has been filed.

**Timmons v. Ingraham**, --- So.3d ----, 2010 WL 2217637 (Fla. 5th DCA 2010).
The term "lineal descendents" does not typically include stepchildren, and the use of the term "lineal descendents" simultaneously with the term "children" in estate planning instruments does not expand "lineal descendents" to include stepchildren.

**Townsend v. Morton**, --- So.3d ----, 2010 WL 2218327 (Fla. 5th DCA 2010).
A deed procured by fraud can be rescinded.

**Wells Fargo Bank, N.A. v. Lupica**, --- So.3d ----, 2010 WL 2218584 (Fla. 5th DCA 2010).
A motion to cancel a foreclosure sale based on a settlement does not need to have the settlement agreement attached.

**FL-Carrollwood Care Center, LLC v. Jaramillo**, --- So.3d ----, 2010 WL 2218654 (Fla. 2d DCA 2010).
Upon a motion to compel arbitration of a nursing home dispute, the trial court must examine both the procedural and substantive unconscionability issues arising out of the arbitration agreement.

**Underwood Anderson & Associates, Inc/ v. Lillo's Italian Restaurant, Inc.**, --- So.3d ----, 2010 WL 2219727 (Fla. 1st DCA 2010).
An insurance agent cannot be liable for attorneys' fees under Fla. Stat. § 627.428.

**Royal Palm Collection, Inc. v. Lewis**, --- So.3d ----, 2010 WL 2178757 (Fla. 4th DCA 2010).
A trial court has the authority to order foreclosure relief on an arbitration award arising out of a construction lien claim even if the arbitration award does not order foreclosure.

**Nedd v. Gary**, --- So.3d ----, 2010 WL 2178762 (Fla. 4th DCA 2010).
A trial court may award attorneys' fees under the "inequitable conduct doctrine" only in extreme and extraordinary circumstances.

**Jones v. DirecTV, Inc.**, Slip Copy, 2010 WL 2232265 (11th Cir. 2010).
Under Eleventh Circuit precedent, plaintiffs are not required to arbitrate an individual claim in lieu of litigating class action claims when their individual claims are so small that doing so would effectively deprive them of their claims.

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**Perez v. Rivas**, --- So.3d ----, 2010 WL 2292000 (Fla. 4th DCA 2000).
Evidence to re-establish a lost deed must be "clear, strong and unequivocal." Moreover, it is error to not apply Fla. Stat. § 695.01 (Statute of Frauds for real estate transactions) if the deed in question is dated subsequent to 1985 as Fla. Stat. § 695.01 (3) (subsection exemption for prior deeds) was repealed in 1985.

**S&I Investments v. Payless Flea Market, Inc**., --- So.3d ----, 2010 WL 2292016 (Fla. 4th DCA 2010).
A "renewal lease" must comply with Fla. Stat. § 689.01 and contain two subscribing witnesses. Estoppel is not applicable to defeat the requirements of the statute unless the party seeking estoppel changes their position "in a not insubstantial way."

**Witt v. La Gorce Country Club, Inc**., --- So.3d ----, 2010 WL 2292104 (Fla. 3d DCA 2010).
Negligence action against an individual exists independent of, and is not limited to, contractual provisions which attempt to limit liability.

**Beyer v. City of Marathon**, --- So.3d ----, 2010 WL 2292118 (Fla. 3d DCA 2010).
A facial, or *per se*, takings claims is ripe (and the statute of limitations begins to run) only when the taking has deprived the owner of all beneficial use of the property. An as applied takings claim is ripe (and the statute of limitations begins to run) when all governmental applications, including appeals, have been denied.

**Lazuran v. Citimortgage, Inc.**, --- So.3d ----, 2010 WL 2292132 (Fla. 4th DCA 2010).
A conclusory allegation in a mortgage foreclosure that plaintiff has complied with all conditions precedent is not sufficient to overcome a specific affirmative defense that insufficient notice to accelerate has been given, even if the affidavit in support of summary judgment repeats the (conclusory) allegations of the complai**nt.**

**Farley v. Chase Bank, U.S.A., N.A.**, --- So.3d ----, 2010 WL 2292169 (Fla. 4th DCA 2010).
A cause of action for an account stated is based on an implied agreement for a fixed amount and to pay the amount. Unlike a cause of action for open account, an action for account stated does not require attachment of an itemized statement of charges.

**Princeton Homes, Inc. v. Morgan**, --- So.3d ----, 2010 WL 2292198 (Fla. 4th DCA 2010).
A prospective buyer who is not given the homeowners' association disclosure under Fla. Stat. § 720.401 is entitled to cancel the sales contract, irrespective of whether the "seller" is the owner, builder, or developer, or is not even the owner of the real property at the time of contract.

**Barreto v. Wray**, --- So.3d ----, 2010 WL 2292420 (Fla. 3d DCA 2010).
A party faced with an inconsistent verdict must object and request the matter be re-submitted to the jury; it is not enough for counsel to tell the trial court he "thought" the verdict was inconsistent.

**Hamilton v. Lanning**, --- S.Ct. ----, 2010 WL 2243704 (2010).
A bankruptcy judge may take into account known changes in a bankruptcy debtor's income when calculating the Bankruptcy Code's "projected disposable income."

**Krupski v. Costa Crociere S. p. A.**, --- S.Ct. ----, 2010 WL 2243705 (2010).
Federal Rule of Civil Procedure 15 (c)(1)(C) (relation back of amendment when changing the name of the defendant against whom a claim is sought) focuses on what the prospective defendant, not the plaintiff, knew or should have known during the relevant time period.

**Pretka v. Kolter City Plaza II, Inc.**, --- F.3d ----, 2010 WL 2278358 (11th Cir. 2010).
A party removing under the Class Action Fairness Act, 28 U.S.C. § 1 *et seq.*, must prove by a preponderance of evidence the removed action meets federal court jurisdictional amounts for damages.

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**Shepheard v. Deutsche Bank Trust Company Americas, f/k/a Bankers Trust Company**, --- So.3d ----, 2010 WL 2425918 (Fla. 5th DCA 2010).
Voluntary dismissal of an action and refilling the same action, even if solely for strategic purposes, renders the opposing party a prevailing party in the first action for applicable fees and costs statutes. Costs must be paid under Fla. R. Civ. P. 1.420 before the second action can proceed, subject to adjustment at conclusion of second action.

**Snow v. Jim Rathman Chevrolet, Inc.**, --- So.3d ----, 2010 WL 2425944 (Fla.5th DCA 2010).
Fla. Stat. § 627.428 does not apply to provide attorneys fees for parties prevailing in suits against motor vehicle dealer bonds issued under Fla. Stat. § 320.27 (10).

**Rayner v. Aircraft Spruce-Advantage Inc**., --- So.3d ----, 2010 WL 2425958 (Fla. 5th DCA 2010).
Amended pleadings relate back to the original complaint when a newly added party was aware of the misnaming of the defendant and has an identity of interest with the old party.

**Hannah v. Olivo**, --- So.3d ----, 2010 WL 2425983 (Fla. 5th DCA 2010).
Defective service of process (as opposed to no service of process whatsoever) satisfies the 120 day requirement of Fla. R. Civ. P. 1.070 (j). The proper remedy in this case is to quash the service but permit the action to remain pending.

**Curd v. Mosaic Fertilizer, LLC**, --- So.3d ----, 2010 WL 2400384 (Fla. 2010).
Commercial fisherman can recover damages for pollution which affects their businesses even though they do not own the "property," i.e., the fish, harmed by the pollution.

**Internet Solutions Corp. v. Marshall**, --- So.3d ----, 2010 WL 2400390 (Fla. 2010).
The posting of defamatory material by a non-resident on a website that is both accessible and actually accessed in Florida subjects the poster to jurisdiction in Florida under Fla. Stat. 48.193 (1) (b) (long arm jurisdiction for torts committed in Florida).

**DelMonico v. Traynor**, --- So.3d ----, 2010 WL 2382570 (Fla. 4th DCA 2010).
The questioning of witnesses by an attorney in preparation of her case is protected by the litigation privilege.

**Riggs v. Aurora Loan Services, LLC**, --- So.3d ----, 2010 WL 2382584 (Fla. 4th DCA 2010).
A promissory note indorsed in blank is payable to bearer.

**Gonzalez v. Chase Home Finance LLC**, --- So.3d ----, 2010 WL 2382599 (Fla. 3d DCA 2010).
Parties holding interests superior to that of the mortgage being foreclosed are not proper parties to the foreclosure. Additionally, papers and affidavits in opposition to a motion for summary judgment are interpreted more leniently than the papers and affidavits in support of the motion for summary judgment.

**Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection**, --- S.Ct. ----, 2010 WL 2400086 (2010).
A Florida beach renourishment project does not result in a taking of the littoral rights of beachfront property owners since the State of Florida has a greater right to fill in (renourish) its submerged lands than the littoral rights of the property owners to connect directly to the water. The Court split 4 to 4 on the issue of whether courts, in distinction to legislatures and executive branches, can effectuate takings as the result of their decisions.

**City of Ontario, Cal. v. Quon**, --- S.Ct. ----, 2010 WL 2400087 (2010).
Workplace searches of text messages are an exception of the Fourth Amendment's right to be free from unreasonable search and seizure.

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**Olmstead v. F.T.C.**, --- So.3d ----, 2010 WL 2518106 (Fla. 2010).
Florida law permits a court to order a judgment debtor to surrender all right and interest the judgment debtor holds in a single member LLC; Fla. Stat. § 608.433 (4) (charging liens on LLCs) is not the exclusive remedy for levy on LLCs.

**In re Amendments to Florida Rules of Appellate Procedure**, --- So.3d ----, 2010 WL 2518252 (Fla. 2010).
Florida Rule of Appellate Procedure 9.300 is amended to allow a procedure for a party to seek Fla. Stat. § 57.105 sanctions in appellate proceedings.

**LPP Mtg. Ltd. v. Tucker**, --- So.3d ----, 2010 WL 2507048 (Fla. 3d DCA 2010).
The federal six year statute of limitations applies to actions to foreclose a federal mortgage; the unlimited time frame under 28 U.S.C. § 2415 to bring actions to establish title to property does not apply because mortgages are not interests in real estate under Florida law.

**BDO Seidman, LLP v. Banco Espirito Santo Intern.**, --- So.3d ----, 2010 WL 2507051 (Fla. 3d DCA 2010).
Bifurcation of liability and damages is not appropriate in a complex case in which liability is premised on issues of knowledge, intent and reliance that are inextricably intertwined with defenses of comparative fault, causation and gross negligence.

**Mims ex rel. Mims v. American Sr. Living of Dade City, FL, LLC**, --- So.3d ----, 2010 WL 2508856 (Fla. 2d DCA 2010).
Substitution of parties under Fla. R. Civ. P. 1.260 (a)(1) is liberally interpreted, and need not be strictly done within the ninety (90) days set forth under the Rule.

**Parc Royale East Development, Inc. v. U.S. Project Management, Inc.**, --- So.3d ----, 2010 WL 2508918 (Fla. 4th DCA 2010).
Expert testimony regarding future damages must be based on evidence in the record.

**Hollywood Towers Condominium Ass'n, Inc. v. Hampton**, --- So.3d ----, 2010 WL 2509178 (Fla. 4th DCA 2010).
Departing from traditional business judgment rule analysis of condominium association board decisions, the Fourth District rules that courts must give deference to an association's decision if the decision is within the scope of the association's authority and is reasonable, i.e., not arbitrary, capricious or in bad faith.

**Taurus Stornoway Investments, LLC v. Kerley**, --- So.3d ----, 2010 WL 2472487 (Fla. 1st DCA 2010).
Forum selection clauses dictating a foreign state for resolution of disputes controls despite the dispute being dissolution of a Florida LLC and Fla. Stat. § 608.4491 stating venue for LLC dissolution actions lies in the circuit where the principal office of the LLC is located.

**Palm Lake Partners II, LLC v. C & C Powerline, Inc.**, --- So.3d ----, 2010 WL 2472490 (Fla. 1st DCA 2010).
A purported third party beneficiary of a contract which contemplates the building of an access road cannot compel construction of the access road by specific performance when other remedies exist.

**Rent-A-Center, West, Inc. v. Jackson**, --- S.Ct. ----, 2010 WL 2471058 (2010).
Under the Federal Arbitration Act, an arbitration clause in employment agreement which provides the arbitrator will decide if the agreement is enforceable or unconscionable is enforceable. However, a judge decides whether the clause if unconscionable if party challenges only the clause and not the entire agreement.

**Real Property and Business Litigation Report**
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**July 3rd, 2010**

**Carillon Community Residential v. Seminole County**, --- So.3d ----, 2010 WL 2628692 (Fla. 5th DCA 2010).
Due process is a flexible concept, and participants (not parties) in a quasi-judicial proceeding are not automatically entitled to cross examine witnesses, i.e., adjoining landowners in a PUD modification process are not entitled to cross examine witnesses.

**Medley Warehouses, LC v. Scottsdale Ins. Co.**, --- So.3d ----, 2010 WL 2594822 (Fla. 3d DCA 2010).
An insurance agent is no longer the agent for the insured once the insurance policy is issued.

**Bilski v. Kappos**, --- S.Ct. ----, 2010 WL 2555192 (2010).
The machine or transformation test is not the only test for determining whether something is patentable, but mathematical calculation which claims to protect commodities market investors is an abstract idea which cannot be patented.

**Neumont v. Florida**, --- F.3d ----, 2010 WL 2629483 (11th Cir. 2010).
Changes to a proposed ordinance during the enactment process are permissible so long as the changes do not change the ordinance's general purpose.

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**Volume III, Issue 28**
**July 10th, 2010**

**Mastropietro v. Harbour Phase I Owners, LLC**, --- So.3d ----, 2010 WL 2696521 (Fla. 2d DCA 2010).
A buyer in a contract governed by the Interstate Land Sales Act has two years to cancel pursuant to 11 U.S.C. § 1703 (c), and if the seller refuses to cancel, an additional year under 11 U.S.C. § 1711 (b) to institute suit for rescission of the contract.

**Gomez v. Village of Pinecrest**, --- So.3d ----, 2010 WL 2680276 (Fla. 2010).
Forfeiture of property for criminal conduct is a two step process accomplished pursuant to Fla. Stat. § 932.701 *et seq.*, and the agency seeking forfeiture need establish only probable cause at the first (seizure) stage of the process; whether or not the owner has knowledge (actual or constructive) that the property is being used for criminal purposes is only important at the forfeiture (second) stage of the process.

**Sky Development, Inc. v. Vistaview Development, Inc.**, --- So.3d ----, 2010 WL 2670869 (Fla. 3d DCA 2010).
Texting a witness to offer information to the witness regarding the witness's testimony during a break in the proceedings constitutes a fraud on the court, and may result in a mistrial and dismissal/default against the party with whom the witness is affiliated.

**Murtagh v. Hurley**, --- So.3d ----, 2010 WL 2671282 (Fla. 2d DCA 2010).
Defamation does not support injunctive relief, unless the defamation constitutes an independent tort of interference with a business relationship. Notwithstanding same, the requirements for an injunction must still be met.

**Donovan Marine, Inc. v. Delmonico**, --- So.3d ----, 2010 WL 2675236 (Fla. 4th DCA 2010).
The following language in a proposal for settlement is not ambiguous and does not render the proposal void: " . . . [t]he writing evidencing acceptance of this proposal must include the explicit acknowledgement by the plaintiff that by making this proposal, defendants are not admitting that they have said or done anything improper referable to the plaintiff, and that the defendants are attempting to purchase their peace from this plaintiff."

**Bank of America, N.A. v. Bornstein**, --- So.3d ----, 2010 WL 2675238 (Fla. 4th DCA 2010).
Pursuant to the hierarchy set forth in Fla. Stat. § 48.081, service must first be attempted on higher-ranking employees of a business entity before serving a lower ranking employee.

**McDaniel Reserve Realty Holdings, LLC v. B.S.E. Consultants, Inc**., --- So.3d ----, 2010 WL 2675239 (Fla. 4th DCA 2010).
Venue is proper in the county where the last element of the cause of action accrues, and if the cause of action concerns the real estate transaction itself (as opposed to the real property), venue is proper where the last act of the transaction (typically the closing) occurs.

**In re Mouzon Enterprises, Inc**., --- F.3d ----, 2010 WL 2680908 (11th Cir. 2010).
An order on an objected bankruptcy claim is subject to Federal Rule of Civil Procedure 60 (c)'s one year rehearing limitation.

**Real Property and Business Litigation Report**
**Volume III, Issue 29**
**July 17th, 2010**

**Naftzger v. Elam**, --- So.3d ----, 2010 WL 2788383 (Fla. 2d DCA 2010).
Dismissal of premises liability action with prejudice and no reservation to determine attorneys' fees divests trial court of jurisdiction to enter charging lien for unpaid attorneys' fees.

**In re Tennyson**, --- F.3d ----, 2010 WL 2793941 (11th Cir. 2010).
11 U.S.C. § 1325 requires a Chapter 13 debtor with above median income to remain in bankruptcy for a minimum of 5 years unless all creditors are paid in full.

**Tana v. Dantanna's**, --- F.3d ----, 2010 WL 2773447 (11th Cir. 2010).
There is no likelihood of confusion regarding two restaurants with the same name when one restaurant is located in Atlanta, Georgia and the other is located in Los Angeles, California, and there is no evidence the owner of the second restaurant intentionally misappropriated the name of the first restaurant.

**Real Property and Business Litigation Report**
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**July 24th, 2010**

**Brennan v. Estate of Brennan**, --- So.3d ----, 2010 WL 2866987 (Fla. 5th DCA 2010).
Establishment of a lost will pursuant to Fla. Stat. § 737.207 requires the testimony of at least one disinterested witness.

**Zumpf v. Countrywide Home Loans, Inc.**, --- So.3d ----, 2010 WL 2867863 (Fla. 2d DCA 2010).
Unpaid interest and principal are "liquidated" damages in a mortgage foreclosure action, and a defaulted party is not entitled to hearing on these amounts.

**Legakis v. Loumpos**, --- So.3d ----, 2010 WL 2867895 (Fla. 2d DCA 2010).
Mandatory injunctions in settlement agreements are disfavored, but if violated, a circuit court must enforce the settlement agreement and injunction.

**Coleman v. 688 Skate Park, Inc.**, --- So.3d ----, 2010 WL 2836138 (Fla. 2d DCA 2010).
A clear statement of guaranty on a lease creates liability; an admonition or a joint several liability statement is not necessary in order to obligate the signer on a lease to personal liability.

**Florida Farm, LLC v. 360 Developers, LLC**, --- So.3d ----, 2010 WL 2836324 (Fla. 3d DCA 2010).
Fla. Stat. § 720.401 (contracting party must deliver HOA disclosure notice at time of contract otherwise the contract can be rescinded) applies only to sale of real property governed by a homeowner's association, and does not apply to sales of condominium units.

**Zayas-Bazan v. Marcelin**, --- So.3d ----, 2010 WL 2836599 (Fla. 3d DCA 2010).
Party waives the ability to seek to disqualify opposing counsel if it waits too long to seek disqualification, and a period to two and one-half (2 ½) years from receipt of information of purported conflict to motion seeking disqualification is too long.

**Brown v. R.J. Reynolds Tobacco Co.**, --- F.3d ----, 2010 WL 2866923 (11th Cir. 2010).
The Rooker-Feldman doctrine is jurisdictional and prevents a federal court from reviewing a case filed by a party who lost the same or similar case in state court; the doctrine does not apply when a winning state court party seeks review in federal court.

**Citibank, N.A. v. Stok & Associates, P.A.**, Slip Copy, 2010 WL 2825491 (11th Cir. 2010).
A plaintiff claiming waiver of arbitration by defendant's participation in litigation (such as filing answer, etc.) must show prejudice by as a result of defendant's delay in seeking to enforce arbitration rights.

**Cappuccitti v. DirecTV. Inc.**, --- F.3d ----, 2010 WL 2803093 (11th Cir. 2010).
The Class Action in Fairness Act (CAFA) requires class action damages of at least Five Million Dollars ($5,000,000) and individual damages meeting traditional diversity jurisdiction requirements; district court lacks jurisdiction when complaint fails to allege individual damages of at least Seventy-Five Thousand Dollars ($75,000).

**Real Property and Business Litigation Report**
**Volume III, Issue 31**
**July 31st, 2010**

**Sink v. East Coast Public Adjusters, Inc.**, --- So.3d ----, 2010 WL 2925177 (Fla. 3d DCA 2010).
The home venue privilege of government agencies has an exception for the "sword wielder doctrine," i.e., home venue may be waived by the government if it has instituted or is about to institute action outside of its home venue.

**Canal Ins. Co. v. Gilbraltar Budget Plan, Inc.**, --- So.3d ----, 2010 WL 2925378 (Fla. 4th DCA 2010).
A court may change the definition of the class set forth in the complaint, but the class as amended must still meet the numerosity requirement.

**Velazquez v. Serrano,** --- So.3d ----, 2010 WL 2925402 (Fla. 3d DCA 2010).
Equitable subrogation is not proper when doing so harms an innocent third party such as a second mortgagee who is properly recorded but not paid off when the property is sold and the first mortgage is paid off.

**Real Property and Business Litigation Report**
**Volume III, Issue 32**
**August 7, 2010**

**Singer v. Unibilt Development Co.**, --- So.3d ----, 2010 WL 3056030 (Fla.5th DCA 2010).
Florida's general long arm statute, Fla. Stat. § 48.193 (2), requires continuous and systematic contacts with the forum state such that the party can expect to be haled into the jurisdiction, but does not require contact at the immediate time suit is filed.

**Taylor v. Deutsche Bank Nat. Trust Co.**, --- So.3d ----, 2010 WL 3056612 (Fla. 5th DCA 2010).
A party who is not the owner and holder of a note and mortgage, and who does not have a beneficial interest in the note and mortgage, may still be entitled to enforce the note and mortgage under appropriate circumstances.

**Eagle's Crest, LLC v. Republic Bank**, --- So.3d ----, 2010 WL 3059529 (Fla. 2d DCA 2010).
Once a real estate appraiser is qualified as an expert, admission of his expert opinion report is not error even if the report contains questionable conclusions and methodology. The party opposing the expert and report may still argue the credibility of the expert and the report.

**Taylor v. Morrison Homes, Inc**., --- So.3d ----, 2010 WL 3061384 (Fla. 2d DCA 2010).
A real estate sales contract which contains the following language renders the builder's obligation under the contract illusory, and thus not entitled to the Interstate Land Sales Act exemption for promising to build within two years:

> *At any time* during the pendency of this Contract and prior to Closing, and *for any reason whatsoever or no reason,* [Morrison Homes] may elect to terminate this Contract by providing written notice of such termination to [Taylor], together with a full refund of [Taylor's] Earnest Money Deposit and payment of the sum of [$500.00] as a termination fee and/or liquidated damages, and both parties shall be relieved of any further obligation and liability. This clause shall not be deemed mutual and by signing the Contract, [Taylor] hereby acknowledges, agrees, [and] understands the right of [Morrison Homes] granted by this provision, and agrees that this liquidated damage amount is reasonable and that the ascertainment of any actual damage would be difficult or impossible.
>
> (emphasis added by the court in its opinion)

**DeSilva v. First Community Bank of America**, --- So.3d ----, 2010 WL 3022849 (Fla. 2d DCA 2010).
A court must still cautiously exercise its discretion to appoint a receiver, even if the loan instruments unequivocally provide such right to the lender.

**McAllister v. Breakers Seville Ass'n, Inc**., --- So.3d ----, 2010 WL 3023298 (Fla. 4th DCA 2010).

Supplemental relief is obtained in declaratory actions by the prevailing party filing a motion after the declaration has been granted asking the court for the supplemental relief.

**Venezia Lakes Homeowners Ass'n, Inc. v. CSX Transp., Inc**., --- So.3d ----, 2010 WL 3023343 (Fla, 3d DCA 2010).

Only intended third party beneficiaries can enforce contracts they are not parties to, and a real estate development cannot enforce a railroad crossing agreement between the railroad company and an adjoining real estate development.

**Winkler v. Lawyers Title Ins. Corp.**, --- So.3d ----, 2010 WL 3023370 (Fla. 3d DCA 2010).

Pursuant to Fla. Stat. § 627.792, a title insurance company is responsible for monetary defalcation by its agents only with regard to monies used in connection with title insurance arising from a real estate closing. Accordingly, a title insurer is not responsible for defalcation by an agent of preconstruction “reservation deposits” for a condominium.

**Vidal v. Suntrust Bank**, --- So.3d ----, 2010 WL 3023386 (Fla. 4th DCA 2010).

Service of process statutes are strictly construed, so failure to write on the date and time of service and the identification number of the process server on the service return renders the service void.

**Real Property and Business Litigation Report**
**Volume III, Issue 33**
**August 14, 2010**

**Stalley v. Transitional Hospitals Corp. of Tampa, Inc.**, --- So.3d ----, 2010 WL 3154574 (Fla. 2d DCA 2010).
A spouse, unless given specific authority to do so, cannot bind a non-signing spouse to an arbitration agreement.

**Bock v. Marchese Services, Inc.**, --- So.3d ----, 2010 WL 3154835 (Fla. 4th DCA 2010).
A court must hold an evidentiary hearing if a party sufficiently alleges fraud in response to a motion to enforce a settlement agreement.

**Dorestin v. Hollywood Imports, Inc.**, --- So.3d ----, 2010 WL 3154848 (Fla. 4th DCA 2010).
In a case of first impression under Florida law, the Fourth District holds that car dealerships that assist customers in obtaining financing are not subject to the Credit Service Organizations Act.

**Clark Well Drilling, Inc. v. North-South Supply, Inc**., --- So.3d ----, 2010 WL 3155006 (Fla. 4th DCA 2010).
Hand written lists that are against company policy are not admissible under the Business Records Exception to the hearsay rule even if made at or near the time of the transaction and if made by a person with knowledge of the information as it is transmitted to him or her. Items that are against company policy are not records "kept in the ordinary course and scope" and it cannot be the business's "regular practice" to make such lists.

**Nudel v. Flagstar Bank, FSB**, --- So.3d ----, 2010 WL 3155028 (Fla. 4th DCA 2010).
Routine, administrative contact with court staff on scheduling matters may be *ex parte.* Additionally, courts are not required to hear oral argument on a pretrial, non-evidentiary matter or motion.

**Kilpatrick v. Breg, Inc**., --- F.3d ----, 2010 WL 3168655 (11th Cir. 2010).
Under *Daubert v. Merrel Dow Pharmaceuticals*, 509 U.S. 579 (1993), federal district court judge must examine the methodology used by an expert to reach her conclusions even if the methodology is not new or novel.

**In re The Celotex Corp**., --- F.3d ----, 2010 WL 3155493 (11th Cir. 2010).
A bankruptcy claim that achieves "allowed status" is not equivalent to a judgment and is not entitled to interest at the judgment rate if the plan does not provide for interest on allowed claims.

**Real Property and Business Litigation Report**
**Volume III, Issue 34**
**August 21, 2010**

**Pakalski v. CFC Pasadena Golf, LLC**, --- So.3d ----, 2010 WL 3239002 (Fla. 2d DCA 2010).
Retention of a good faith deposit is not an election of remedies that prohibits a seller from suing a defaulting buyer for specific performance.

**MMII, Inc. v. Silvester**, --- So.3d ----, 2010 WL 3239066 (Fla. 4th DCA 2010).
An installer of home entertainment systems does not need to be licensed as a contractor under Fla. Stat. §§ 489.105 and 489.505.

**Trinity Quadrille, LLC v. Opera Place, LLC**, --- So.3d ----, 2010 WL 3239092 (Fla. 4th DCA 2010).
A *lis pendens* that remains of record even though its corresponding lawsuit has been dismissed and a Notice of Cancellation of *Lis Pendens* has been filed is not a cloud on title entitling buyer to not close on a real estate sales contract. Additionally, seller is excused from further performance once it attends closing and buyer fails to attend.

**Bender v. Caregivers Of America, Inc.**, --- So.3d ----, 2010 WL 3239150 (Fla. 4th DCA 2010).
A pre-incident release must specifically clearly and specifically mention "negligence" in order to release for such acts.

**Real Property and Business Litigation Report**
**Volume III, Issue 35**
**August 28, 2010**

**Earth Trades, Inc. v. T & G Corp.**, --- So.3d ----, 2010 WL 3359412 (Fla. 5th DCA 2010).
Fla. Stat. § 489.128 provides that only unlicensed contractors are unable to enforce the construction contracts they entered into; the contracts are enforceable by parties to the contract other than the unlicensed contractor.

**Kuvin v. City of Coral Gables**, --- So.3d ----, 2010 WL 3324938 (Fla. 3d DCA 2010).
The right to park a certain type of vehicle (a pickup truck in this case) on a street is not a fundamental right, thus analysis of an ordinance prohibiting truck street parking is examined under the "rational relationship" as opposed to the "strict scrutiny" test. The ordinance does not impact a fundamental right because parking a certain type of the vehicle on a street does not impact the right of association, merely the manner in which parties associate. Moreover, municipalities have the right under Florida law to control the aesthetics of the municipality by ordinance.

**Wells Fargo Bank, N.A. v. Jidy**, --- So.3d ----, 2010 WL 3324273 (Fla. 3d DCA 2010).
A party seeking to vacate a default final judgment must show three things: the failure to file a pleading is the result of excusable neglect, the defendant has a meritorious defense, and the defendant acted with due diligence in seeking to vacate the default.

**Diaz v. Bell MicroProducts-Future Tech, Inc**., --- So.3d ----, 2010 WL 3324440 (Fla. 3d DCA 2010).
A party must attach an English translation of foreign language documents, as well as the foreign language documents themselves, in order to comply with Florida Rule of Civil Procedure 1.130.

**Real Property and Business Litigation Report**
**Volume III, Issue 36**
**September 4, 2010**

**U.S. Bank Nat. Ass'n v. Bjeljac**, --- So.3d ----, 2010 WL 3446871 (Fla. 5th DCA 2010). A foreclosure sale may be set aside if there is gross inadequacy of sales price and the inadequate sale price is the result of "mistake, accident, surprise, fraud, misconduct or irregularity upon the part of either the purchaser or other person connected with the sale, with resulting injustice to the complaining party." Determination of whether there has been mistake, accident, surprise, fraud, misconduct or irregularity requires an evidentiary hearing.

**Achord v. Osceola Farms Co**., --- So.3d ----, 2010 WL 3418381 (Fla. 4th DCA 2010). The requirement of a one hundred dollar ($100) non-resident plaintiff's cost bond under Fla. Stat. § 57.011 is not an unconstitutional denial of access to the courts.

**Real Property and Business Litigation Report**
**Volume III, Issue 37**
**September 11, 2010**

**Godfrey v. Precision Airmotive Corp.**, --- So.3d ----, 2010 WL 3515464 (Fla. 5th DCA 2010).
Evidence that other airplanes using the same carburetor as that of defendant likewise crashed is not admissible when the other crashes are not sufficiently linked to the crash at trial, e.g., the other engines were in larger airplanes and using engines built by a different manufacturer.

**Atomic Tattoos, LLC v. Morgan**, --- So.3d ----, 2010 WL 3515668 (Fla. 2d DCA 2010).
The right to solicit existing customers is "legitimate business interest" under Fla. Stat. § 542.335 and a restrictive covenant can properly prohibit solicitation of existing customers, including prohibiting a tattoo artist from soliciting customers of his former employer.

**Velletri v. Dixon**, --- So.3d ----, 2010 WL 3515674 (Fla. 2d DCA 2010).
Whether a loan is usurious is determined on date of inception of the loan. Moreover, construction loans which place funds in escrow and charge interest on the entire amount outstanding, and not just the funds disbursed, may be usurious.

**Florida Hurricane Protection and Awning, Inc. v. Pastina**, --- So.3d ----, 2010 WL 3488714 (Fla. 4th DCA 2010) (en banc).
The Fourth District holds 6 to 5 that Fla. Stat. § 57.105 (7) (one-sided attorneys' fees provisions are mutually enforceable) is narrowly construed, and a homeowner who prevails against a contractor in a breach of contract action is not entitled to contractual attorneys' fees since the attorneys' fees provision is for collection actions only.

**Saichek v. Cab Builders, LLC**, --- So.3d ----, 2010 WL 3488976 (Fla. 3d DCA 2010).
The appointment of a receiver vests the receiver with custody of the res and the appointing court with power to adjudicate all assets of the receivership. Accordingly, a non-appointing court cannot compel a receiver to distribute portions of the res.

**Butler v. Yusem**, --- So.3d ----, 2010 WL 3488979 (Fla. 2010).
Justifiable reliance is an element of a claim for negligent misrepresentation, but not an element of a claim for fraudulent misrepresentation. Moreover, "lack of due diligence" is not synonymous with not having justifiably relied on a statement or representation.

**In re Amendments to Florida Rules of Civil Procedure**, --- So.3d ----, 2010 WL 3488983 (Fla. 2010).
The Florida Rules of Civil Procedure are amended effective January 1, 2011 with several changes. Especially of note is that hand deliver under Rule 1.080 is effective the date of the delivery and new rule 1.285, Inadvertent Disclosure of Privileged Materials, is added. The complete changes are as follows:

RULE 1.071. CONSTITUTIONAL CHALLENGE TO STATE STATUTE OR COUNTY OR MUNICIPAL CHARTER, ORDINANCE, OR FRANCHISE; NOTICE BY PARTY

A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise must promptly

(a) file a notice of constitutional question stating the question and identifying the paper that raises it; and

(b) serve the notice and the pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise on the Attorney General or the state attorney of the judicial circuit in which the action is pending, by either certified or registered mail.

Service of the notice and pleading, written motion, or other paper does not require joinder of the Attorney General or the state attorney as a party to the action.

Committee Notes

2010 Adoption. This rule clarifies that, with respect to challenges to a state statute or municipal charter, ordinance, or franchise, service of the notice does not require joinder of the Attorney General or the state attorney as a party to the action; however, consistent with section 86.091, Florida Statutes, the Florida Attorney General or applicable state attorney has the discretion to participate and be heard on matters affecting the constitutionality of a statute. See, *e.g.*, *Mayo v. National Truck Brokers, Inc.*, 220 So.2d 11 (Fla.1969); *State ex rel. Shevin v. Kerwin,* 279 So.2d 836 (Fla.1973) (Attorney General may choose to participate in appeal even though he was not required to be a party at the trial court). The rule imposes a new requirement that the party challenging the statute, charter, ordinance, or franchise file verification with the court of compliance with section 86.091, Florida Statutes. See form 1.975.

RULE 1.080. SERVICE OF PLEADINGS AND PAPERS

(a) [No change]

(b) Service; How Made. When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy or mailing it to the attorney or the party at the last known address or, if no address is known, by leaving it with the clerk of the court. Service by mail shall be complete upon mailing. Delivery of a copy within this rule shall be complete upon: (1) handing it to the attorney or to the party, (2) leaving it at the attorney's or party's office with a clerk or other person in charge thereof, (3) if there is no one in charge, leaving it in a conspicuous place therein, (4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing such person of the contents, or (5) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and

facsimile number, and the number of pages transmitted. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete. Service by delivery after ~~5:00 p.m.~~ shall be deemed ~~to have been made on the next day that is not a Saturday, Sunday, or legal holiday~~ complete on the date of the delivery.

(c) [No change]

(d) Filing. All original papers shall be filed with the court either before service or immediately thereafter, unless otherwise provided for by general law or other rules. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk.

(e)-(h) [No change]

Committee Notes
[No change]

Court Commentary

[No change]

RULE 1.100. PLEADINGS AND MOTIONS

(a)-(b) [No change]

(c) Caption.

(1) Every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, and except for in rem proceedings, including forfeiture proceedings, the name of the first party on each side with an appropriate indication of other parties, and a designation identifying the party filing it and its nature or the nature of the order, as the case may be. In any in rem proceeding, every pleading, motion, order, judgment, or other paper shall have a caption containing the name of the court, the file number, the style “In re” (followed by the name or general description of the property), and a designation of the person or entity filing it and its nature or the nature of the order, as the case may be. In an in rem forfeiture proceeding, the style shall be “In re forfeiture of” (followed by the name or general description of the property). All papers filed in the action shall be styled in such a manner as to indicate clearly the subject matter of the paper and the party requesting or obtaining relief.

(2)-(3) [No change]

(d) [No change]

Committee Notes

1971 Amendment. [No change]

1972 Amendment. [No change]

1992 Amendment. [No change]

2010 Amendment. Subdivision (c) is amended to address separately the caption for in rem proceedings, including in rem forfeiture proceedings.

RULE 1.285. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS

(a) Assertion of Privilege as to Inadvertently Disclosed Materials. Any party, person, or entity, after inadvertent disclosure of any materials pursuant to these rules, may thereafter assert any privilege recognized by law as to those materials. This right exists without regard to whether the disclosure was made pursuant to formal demand or informal request. In order to assert the privilege, the party, person, or entity shall, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice shall specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered.

(b) Duty of the Party Receiving Notice of an Assertion of Privilege. A party receiving notice of an assertion of privilege under subdivision (a) shall promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice shall also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party shall also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation pursuant to R. Regulating Fla. Bar 4-4.4(b).

(c) Right to Challenge Assertion of Privilege. Any party receiving a notice made under subdivision (a) has the right to challenge the assertion of privilege. The grounds for the challenge may include, but are not limited to, the following:

(1) The materials in question are not privileged.

(2) The disclosing party, person, or entity lacks standing to assert the privilege.

(3) The disclosing party, person, or entity has failed to serve timely notice under this rule.

(4) The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege.

Any party seeking to challenge the assertion of privilege shall do so by serving notice of its challenge on the party, person, or entity asserting the privilege. Notice of the challenge shall be served within 20 days of service of the original notice given by the disclosing party, person, or entity. The notice of the recipient's challenge shall specify the grounds for the challenge. Failure to serve timely notice of challenge is a waiver of the right to challenge.

(d) Effect of Determination that Privilege Applies. When an order is entered determining that materials are privileged or that the right to challenge the privilege has been waived, the court shall direct what shall be done with the materials and any copies so as to preserve all rights of appellate review. The recipient of the materials shall also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.

RULE 1.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) [No change]

(b) Notice; Method of Taking; Production at Deposition.

(1)-(3) [No change]

(4) Any deposition may be recorded by videotape without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. A party intending to videotape a deposition shall state in the notice that the deposition is to be videotaped and shall give the name and address of the operator. Any subpoena served on the person to be examined shall state the method or methods for recording the testimony.

(B)-(E) [No change]

(5) The notice to a party deponent may be accompanied by a request made in compliance with rule 1.350 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 1.350 shall apply to the request. Rule 1.351 provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents.

(6)-(8) [No change]

(c)-(h) [No change]

Committee Notes

1972 Amendment. [No change]

1976 Amendment. [No change]

1988 Amendment. [No change]

1992 Amendment. [No change]

1996 Amendment. [No change]

2010 Amendment. Subdivision (b)(5) is amended to clarify that the procedure set forth in rule 1.351 must be followed when requesting or receiving documents or things without testimony, from nonparties pursuant to a subpoena. The amendment is intended to prevent the use of rules 1.310 and 1.410 to request documents from nonparties pursuant to a subpoena without giving the opposing party the opportunity to object to the subpoena before it is served on the nonparty as required by rule 1.351.

Court Commentary
[No change]

RULE 1.340. INTERROGATORIES TO PARTIES

(a) Procedure for Use. Without leave of court, any party may serve upon any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish the information available to that party. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the process and initial pleading upon that party. The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause. If the supreme court has approved a form of interrogatories for the type of action, the initial interrogatories on a subject included therein shall be ~~in~~ from the form approved by the court. A party may serve fewer than all of the approved interrogatories within a form. Other interrogatories may be added to the approved forms without leave of court, so long as the total of approved and additional interrogatories does not exceed 30. Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the attorney making it. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the process and initial pleading upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 1.380(a) on any objection to or other failure to answer an interrogatory.

(b)-(e) [No change]

Committee Notes
[No change]

Court Commentary

[No change]

RULE 1.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

(a) Request; Scope. A party may seek inspection and copying of any documents or things within the scope of rule 1.350(a) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things. This rule provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents or things pursuant to rule 1.310.

(b) [No change]

(c) Subpoena. If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena together with a certificate of counsel or pro se party that no timely objection has been received from any party, and the clerk shall issue the subpoena and deliver it to the party desiring production. Service within the state of Florida of a nonparty subpoena shall be deemed sufficient if it complies with rule 1.410(d) or if (1) service is accomplished by mail or hand delivery by a commercial delivery service, and (2) written confirmation of delivery, with the date of service and the name and signature of the person accepting the subpoena, is obtained and filed by the party seeking production. The subpoena shall be identical to the copy attached to the notice and shall specify that no testimony may be taken and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person upon whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained pursuant to rule 1.310.

(d)-(f) [No change]

Committee Notes

1980 Adoption. [No change]

1996 Amendment. [No change]

2007 Amendment. [No change]

2010 Amendment. Subdivision (a) is amended to clarify that the procedure set forth in rule 1.351, not rule 1.310, shall be followed when requesting or receiving documents or things, without testimony, from nonparties pursuant to a subpoena.

RULE 1.360. EXAMINATION OF PERSONS

(a) Request; Scope.

(1) Any party may request any other party to submit to, or to produce a person in that other party's custody or legal control for, examination by a qualified expert when the condition which is the subject of the requested examination is in controversy.

(A) When the physical condition of a party or other person under subdivision (a)(1) is in controversy, the request may be served on the plaintiff without leave of court after commencement of the action, and on any other person with or after service of the process and initial pleading on that party. The request shall specify a reasonable time, place, manner, conditions, and scope of the examination and the person or persons by whom the examination is to be made. The party to whom the request is directed shall serve a response within 30 days after service of the request, except that a defendant need not serve a response until 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. The response shall state that the examination will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If the examination is to be recorded or observed by others, the request or response shall also include the number of people attending, their role, and the method or methods of recording.

(B)-(C) [No change]

(2)-(3) [No change]

(b)-(c) [No change]

Committee Notes
[No change]

RULE 1.410. SUBPOENA

(a)-(c) [No change]

(d) Service. A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service

except as applicable under rule 1.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer authorized by law to do so.

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 1.310(b) or 1.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena shall state the method for recording the testimony. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 1.280(b), but in that event the subpoena will be subject to the provisions of rule 1.280(c) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition upon notice to the deponent.

(2) [No change]

(f)-(h) [No change]

Committee Notes
[No change]

RULE 1.420. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.

(1) By Parties. Except in actions in which property has been seized or is in the custody of the court, an action, a claim, or any part of an action or claim may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all current parties ~~who have appeared in~~to the action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim.

(2) [No change]

(b)-(c) [No change]

(d) Costs. Costs in any action dismissed under this rule shall be assessed and judgment for costs entered in that action, once the action is concluded as to the party seeking taxation of costs. When one or more other claims remain pending following dismissal of any claim under this rule, taxable costs attributable solely to the dismissed claim may be assessed and judgment for costs in that claim entered in the action, but only when all claims are resolved at the trial court level as to the party seeking taxation of costs. If a party who has once dismissed a claim in any court of this state commences an action based upon or including the same claim against the same adverse party, the court shall make such order for the payment of costs of the claim previously dismissed as it may deem proper and shall stay the proceedings in the action until the party seeking affirmative relief has complied with the order.

(e)-(f) [No change]

Committee Notes
[No change]

Court Commentary

[No change]

RULE 1.442. PROPOSALS FOR SETTLEMENT

(a)-(b) [No change]

(c) Form and Content of Proposal for Settlement.

(1)-(3) [No change]

(4) Notwithstanding subdivision (c)(3), when a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party. Acceptance by any party shall be without prejudice to rights of contribution or indemnity.

(d)-(j) [No change]

Committee Notes
[No change]

RULE 1.470. EXCEPTIONS UNNECESSARY; JURY INSTRUCTIONS

(a) [No change]

(b) Instructions to Jury. The Florida Standard Jury Instructions appearing on the court's website at www.floridasupremecourt.org/ jury-instructions/instructions.shtml shall be used by the trial judges of this state in instructing the jury in civil actions to the extent that the Standard Jury Instructions are applicable, unless the trial judge determines that an applicable Standard Jury Instruction is erroneous or inadequate. If the trial judge modifies a Standard Jury Instruction or gives such other instruction as the judge determines necessary to accurately and sufficiently instruct the jury, upon timely objection to the instruction, the trial judge shall state on the record or in a separate order the legal basis for varying from the Standard Jury Instruction. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge shall follow the recommendation unless the judge determines that the giving of such an instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge shall give such instruction as the judge deems appropriate and necessary. If the trial judge does not follow such a recommendation of the Florida Standard Jury Instructions, upon timely objection to the instruction, the trial judge shall state on the record or in a separate order the legal basis of the determination that such instruction is necessary. Not later than at the close of the evidence, the parties shall file written requests that the court instruct the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the instructions to be given. At such conference, all objections shall be made and ruled upon and the court shall inform counsel of such instructions as it will give. No party may assign as error the giving of any instruction unless that party objects thereto at such time, or the failure to give any instruction unless that party requested the same. The court shall orally instruct the jury before or after the arguments of counsel and may provide appropriate instructions during the trial. If the instructions are given prior to final argument, the presiding judge shall give the jury final procedural instructions after final arguments are concluded and prior to deliberations. The court shall provide each juror with a written set of the instructions for his or her use in deliberations. The court shall file a copy of such instructions.

(c) [No change]

Committee Notes

1988 Amendment. [No change]

2010 Amendment. Portions of form 1.985 were modified and moved to subdivision (b) of rule 1.470 to require the court to use published standard instructions where applicable and necessary, to permit the judge to vary from the published standard jury instructions and notes only when necessary to accurately and sufficiently instruct the jury, and to require the parties to object to preserve error in variance from published standard jury instructions and notes.

RULE 1.480. MOTION FOR A DIRECTED VERDICT

(a) [No change]

(b) Reservation of Decision on Motion. When a motion for a directed verdict ~~made at the close of all of the evidence~~ is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the return of a verdict, a party who has timely moved for a directed verdict may serve a motion to set aside the verdict and any judgment entered thereon and to enter judgment in accordance with the motion for a directed verdict. If a verdict was not returned, a party who has timely moved for a directed verdict may serve a motion for judgment in accordance with the motion for a directed verdict within 10 days after discharge of the jury.

(c) [No change]

Committee Notes

1996 Amendment. [No change]

2010 Amendment. Subdivision (b) is amended to conform to 2006 changes to Federal Rule of Civil Procedure 50(b) eliminating the requirement for renewing at the close of all the evidence a motion for directed verdict already made at the close of an adverse party's evidence.

RULE 1.510. SUMMARY JUDGMENT

(a)-(b) [No change]

(c) Motion and Proceedings Thereon. The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies. The movant shall serve the motion at least 20 days before the time fixed for the hearing, and shall also serve at that time ~~copies~~a copy of any summary judgment evidence on which the movant relies that has not already been filed with the court. The adverse party shall identify, by notice mailed to the movant's attorney at least 5 days prior to the day of the hearing, or delivered no later than 5:00 p.m. 2 business days prior to the day of the hearing, any summary judgment evidence on which the adverse party relies. To the extent ~~such~~that summary judgment evidence has not already been filed with the court, the adverse party shall serve ~~copies~~a copy on the movant by ~~mailing them~~ mail at least 5 days prior to the day of the hearing, or by ~~delivering them~~delivery to the movant's attorney no later than 5:00 p.m. 2 business days prior to the day of hearing. The judgment sought shall be rendered forthwith if the pleadings~~, depositions, answers to interrogatories, and admissions, affidavits, and other materials as would be admissible in~~ and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary

judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d)-(g) [No change]

Committee Notes
[No change]

RULE 1.525. MOTIONS FOR COSTS AND ATTORNEYS' FEES

Any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party.

Committee Notes
[No change]

Court Commentary

[No change]

FORM 1.901. CAPTION

(a) General Form.

(name of court)

A. B., Plaintiff,

vs

No. .....

C. D., Defendant

(designation of pleading)

(b) Petition.

(name of court)

In re the Petition of A.B. for (type of relief)

No. .....

PETITION FOR (type of relief)

(c) In rem proceedings.

(name of court)

In re (name or general)

description of property) )

No. .....

(designation of pleading)

(d) Forfeiture proceedings.

(name of court)

In re (name or general )

description of property) )

No. .....

(designation of pleading)

Committee Notes

1980 Amendment. Subdivision (b) is added to show the form of caption for a petition.

2010 Amendment. Subdivisions (c) and (d) are added to show the form of caption for in rem proceedings, including in rem forfeiture proceedings.

FORM 1.923. EVICTION SUMMONS/ RESIDENTIAL

EVICTION SUMMONS/RESIDENTIAL

TO: .....

Defendant(s)

.....

.....

PLEASE READ CAREFULLY

You are being sued by ..... to require you to move out of the place where you are living for the reasons given in the attached complaint.

You are entitled to a trial to determine whether you can be required to move, but you MUST do ALL of the things listed below. You must do them within 5 days (not including Saturday, Sunday, or any legal holiday) after the date these papers were given to you or to a person who lives with you or were posted at your home.

THE THINGS YOU MUST DO ARE AS FOLLOWS:

(1) Write down the reason(s) why you think you should not be forced to move. The written reason(s) must be given to the clerk of the court at ..... County Courthouse

.....

....., Florida

(2) Mail or give a copy of your written reason(s) to:

.....

Plaintiff/Plaintiff's Attorney

.....

.....

Address

(3) Pay to the clerk of the court the amount of rent that the attached complaint claims to be due and any rent that becomes due until the lawsuit is over. If you believe that the amount claimed in the complaint is incorrect, you should file with the clerk of the court a motion to have the court determine the amount to be paid. If you file a motion, you must attach to the motion any documents supporting your position and mail or give a copy of the motion to the plaintiff/plaintiff's attorney.

(4) If you file a motion to have the court determine the amount of rent to be paid to the clerk of the court, you must immediately contact the office of the judge to whom the case is assigned to schedule a hearing to decide what amount should be paid to the clerk of the court while the lawsuit is pending.

_____

IF YOU DO NOT DO ALL OF THE THINGS SPECIFIED ABOVE WITHIN 5 WORKING DAYS AFTER THE DATE THAT THESE PAPERS WERE GIVEN TO YOU OR TO A PERSON WHO LIVES WITH YOU OR WERE POSTED AT YOUR HOME, YOU MAY BE EVICTED WITHOUT A HEARING OR FURTHER NOTICE

_____

(5) If the attached complaint also contains a claim for money damages (such as unpaid rent), you must respond to that claim separately. You must write down the reasons why you believe that you do not owe the money claimed. The written reasons must be given to the clerk of the court at the address specified in paragraph (1) above, and you must mail or give a copy of your written reasons to the plaintiff/plaintiff's attorney at the address specified in paragraph (2) above. This must be done within 20 days after the date these papers were given to you or to a person who lives with you ~~or were posted at your home~~. This obligation is separate from the requirement of answering the claim for eviction within 5 working days after these papers were given to you or to a person who lives with you or were posted at your home.

THE STATE OF FLORIDA:

To Each Sheriff of the State: You are commanded to serve this summons and a copy of the complaint in this lawsuit on the above-named defendant.

DATED on .....

Clerk of the County Court

By _____

As Deputy Clerk

NOTIFICACION DE DESALOJO/RESIDENCIAL

A: .....

Demandado(s)

.....

.....

SIRVASE LEER CON CUIDADO

Usted esta siendo demandado por ..... para exigirle que desaloje el lugar donde reside por los motivos que se expresan en la demanda adjunta.

Usted tiene derecho a ser sometido a juicio para determinar si se le puede exigir que se mude, pero ES NECESARIO que haga TODO lo que se le pide a continuacion en un plazo de 5 dias (no incluidos los sabados, domingos, ni dias feriados) a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted, o se colocaron en su casa.

USTED DEBERA HACER LO SIGUIENTE:

(1) Escribir el (los) motivo(s) por el (los) cual(es) cree que no se le debe obligar a mudarse. El (Los) motivo(s) debera(n) entregarse por escrito al secretario del tribunal en el ..... County Courthouse

.....

....., Florida

(2) Enviar por correo o darle su(s) motivo(s) por escrito a:

.....

Demandante/Abogado del Demandante

.....

.....

Direccion

(3) Pagarle al secretario del tribunal el monto del alquiler que la demanda adjunta reclama como adeudado, asi como cualquier alquiler pagadero hasta que concluya el litigio. Si usted considera que el monto reclamado en la demanda es incorrecto, debera presentarle al secretario del tribunal una mocion para que el tribunal determine el monto que deba pagarse. Si usted presenta una mocion, debera adjuntarle a esta cualesquiera documentos que respalden su posicion, y enviar por correo o entregar una copia de la misma al demandante/abogado del demandante.

(4) Si usted presenta una mocion para que el tribunal determine el monto del alquiler que deba pagarse al secretario del tribunal, debera comunicarse de inmediato con la oficina del juez al que se le haya asignado el caso para que programe una audiencia con el fin de determinar el monto que deba pagarse al secretario del tribunal mientras el litigio este pendiente.

_____

SI USTED NO LLEVA A CABO LAS ACCIONES QUE SE ESPECIFICAN ANTERIORMENTE EN UN PLAZO DE 5 DIAS LABORABLES A PARTIR DE LA FECHA EN QUE ESTOS DOCUMENTOS SE LE ENTREGARON A USTED O A UNA PERSONA QUE VIVE CON USTED, O SE COLOQUEN EN SU CASA, SE LE PODRA DESALOJAR SIN NECESIDAD DE CELEBRAR UNA AUDIENCIA NI CURSARSELE OTRO AVISO

_____

(5) Si la demanda adjunta tambien incluye una reclamacion por danos y perjuicios pecunarios (tales como el incumplimiento de pago del alquiler), usted debera responder a dicha reclamacion por separado. Debera exponer por escrito los motivos por los cuales considera que usted no debe la suma reclamada, y entregarlos al secretario del tribunal en la direccion que se especifica en el parrafo (1) anterior, asi como enviar por correo o entregar una copia de los mismos al demandante/abogado del demandante en la direccion que se especifica en el parrafo (2) anterior. Esto debera llevarse a cabo en un plazo de 20 dias a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted~~, o se coloquen en su casa~~. Esta obligacion es aparte del requisito de responder a la demanda de desalojo en un plazo de 5 dias a partir de la fecha en que estos documentos se le entregaron a usted o a una persona que vive con usted, o se coloquen en su casa.

CITATION D'EVICTION/RESIDENTIELLE

A: .....

Defendeur(s)

A: .....

A: .....

LISEZ ATTENTIVEMENT

Vous etes poursuivi par ..... pour exiger que vous evacuez les lieux de votre residence pour les raisons enumerees dans la plainte ci-dessous.

Vous avez droit a un proces pour determiner si vous devez demenager, mais vous devez, au prealable, suivre les instructions enumerees ci-dessous, pendant les 5 jours (non compris le samedi, le dimanche, ou un jour ferie) a partir de la date ou ces documents ont ete donnes a vous ou a la personne vivant avec vous, ou ont ete affiches a votre residence.

LISTE DES INSTRUCTIONS A SUIVRE:

(1) Enumerer par ecrit les raisons pour lesquelles vous pensez ne pas avoir a demenager. Elles doivent etre remises au clerc du tribunal a ..... County Courthouse

A: .....

A: ....., Florida

(2) Envoyer ou donner une copie au:

A: .....

Plaignant/Avocat du Plaignant

A: .....

A: .....

Adresse

(3) Payer au clerc du tribunal le montant des loyers dus comme etabli dans la plainte et le montant des loyers dus jusqu'a la fin du proces. Si vous pensez que le montant etabli dans la plainte est incorrect, vous devez presenter au clerc du tribunal une demande en justice pour determiner la somme a payer. Pour cela vous devez attacher a la demande tous les documents soutenant votre position et faire parvenir une copie de la demande au plaignant/avocat du plaignant.

(4) Si vous faites une demande en justice pour determiner la somme a payer au clerc du tribunal, vous devrez immediatement prevenir le bureau de juge qui presidera au proces pour fixer la date de l'audience qui decidera quelle somme doit etre payee au clerc du tribunal pendant que le proces est en cours.

_____

SI VOUS NE SUIVEZ PAS CES INSTRUCTIONS A LA LETTRE DANS LES 5 JOURS QUE SUIVENT LA DATE OU CES DOCUMENTS ONT ETE REMIS A VOUS OU A LA PERSONNE HABITANT AVEC VOUS, OU ONT ETE AFFICHES A VOTRE RESIDENCE, VOUS POUVEZ ETRE EXPULSES SANS AUDIENCE OU SANS AVIS PREALABLE

_____

(5) Si la plainte ci-dessus contient une demande pour dommages pecuniaires, tels des loyers arrieres, vous devez y repondre separement. Vous devez enumerer par ecrit les raisons pour lesquelles vous estimez ne pas devoir le montant demande. Ces raisons ecrites doivent etre donnees au clerc du tribunal a l'adresse specifiee dans le paragraphe (1) et une copie de ces raisons donnee ou envoyee au plaignant/avocat du plaignant a l'adresse specifiee dans le paragraphe (2). Cela doit etre fait dans les 20 jours suivant la date ou ces documents ont ete presentes a vous ou a la personne habitant avec vous~~, ou affiches a votre residence.~~ Cette obligation ne fait pas partie des instructions a suivre en reponse au proces d'eviction dans les 5 jours suivant la date ou ces documents ont ete presentes a vous ou a la personne habitant avec vous, ou affiches a votre residence.

Committee Notes

1988 Adoption. This form was added to inform those sought to be evicted of the procedure they must follow to resist eviction.

1996 Amendment. This is a substantial revision of form 1.923 to comply with the requirements of section 83.60, Florida Statutes, as amended in 1993.

FORM 1.975. NOTICE OF COMPLIANCE WHEN CONSTITUTIONAL CHALLENGE IS BROUGHT

NOTICE OF COMPLIANCE WITH

SECTION 86.091, FLORIDA STATUTES

The undersigned hereby gives notice of compliance with Fla. R. Civ. P. 1.071, with respect to the constitutional challenge brought pursuant to ..... (Florida statute, charter, ordinance, or franchise challenged) ..... The undersigned complied by serving the .....(Attorney General for the state of Florida or State Attorney for the ..... Judicial Circuit) ..... with a copy of the pleading or motion challenging .....(Florida statute, charter, ordinance, or franchise challenged). ...., by .....(certified or registered mail) ..... on .....(date).....

_____

Attorney for .....

Florida Bar No. .....

Address .....

Telephone No. .....

Committee Notes

2010 Adoption. This form is to be used to provide notice of a constitutional challenge as required by section 86.091, Florida Statutes. See rule 1.071. This form is to be used when the Attorney General or the State Attorney is not a named party to the action, but must be served solely in order to comply with the notice requirements set forth in section 86.091.

~~FORM 1.985. STANDARD JURY INSTRUCTIONS~~

~~The forms of Florida Standard Jury Instructions published by The Florida Bar pursuant to authority of the supreme court may be used by the trial judges of this state in charging the jury in civil actions to the extent that the forms are applicable, unless the trial judge determines that an applicable form of instruction is erroneous or inadequate. In that event the trial judge shall modify the form or give such other instruction as the judge determines necessary to accurately and sufficiently instruct the jury in the circumstances of the action. In that event the trial judge shall state on the record or in a separate order the manner in which the judge finds the standard form erroneous or inadequate and the legal basis of that finding. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge may follow the recommendation unless the judge determines that the giving of such an instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge shall give such instruction as the judge deems appropriate and necessary. In that event the trial judge shall state on the record or on a separate order the legal basis of the determination that such instruction is necessary.~~

FORM 1.986. VERDICTS

In all civil actions tried to a jury, the parties should refer to the model verdict forms contained in the Florida Standard Jury Instructions in Civil Cases, as applicable.

~~(a) For Plaintiff: Damages.~~

~~VERDICT~~

~~WE, the jury, find for plaintiff and assess his/her damages at $.....~~

~~DATED on .....~~

~~_____~~

~~as Foreperson~~

~~(b) For Defendant: General Form.~~

~~VERDICT~~

~~WE, the jury, find for defendant.~~

~~DATED on .....~~

~~_____~~

~~as Foreperson~~

**City of Sunny Isles Beach v. Temple B'Nai Zion**, Inc., --- So.3d ----, 2010 WL 3488986 (Fla. 3d DCA 2010).
An order in a mandamus proceeding which puts the underlying proceedings on hold during the pendency of the litigation is a *de facto* injunction and must comply with the requirements for an injunction.

**14th & Heinberg, LLC v. Terhaar And Cronley General Contractors, Inc**., --- So.3d ----, 2010 WL 3464416 (Fla. 1st DCA 2010).
A party claiming a contact implied in law "quasi-contract," i.e., unjust enrichment, must establish that "(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant has knowledge of the benefit; (3) the defendant has accepted or retained the benefit conferred; and (4) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying fair value for it." Thus, a contractor who has an expectation merely of being paid for its work is only entitled to the unpaid value of its work and not to the increase in value of the real estate as the result of its work.

**Alansari v. Tropic Star Seafood Inc**., Slip Copy, 2010 WL 3511021 (11th Cir. 2010).
Attorneys' fees under Fla. Stat. § 768.79 are awardable in actions involving Florida whistleblower and workers' compensation cases only when the actions are frivolous.

**Real Property and Business Litigation Report**
**Volume III, Issue 38**
**September 18, 2010**

**Ramos v. Casey**, --- So.3d ----, 2010 WL 3602811 (Fla. 5th DCA 2010).
Trial judge may not *sua sponte* make his own evidentiary objections during a trial.

**R.H. Donnelley Pub. & Advertising, Inc. v. Law Office of Patricia K. Herman, P.A.**, --- So.3d ----, 2010 3602843 (Fla. 5th DCA 2010).
Mandamus may not be used as a method to appeal a decision if an adequate right of appeal exists under law.

**Whitehead v. Tyndall Federal Credit Union**, --- So.3d ----, 2010 WL 3583981 (Fla. 1st DCA 2010).
A construction lender that decides to stop funding a construction loan has a duty under Fla. Stat. § 713.3471 (2) (a) to notify the contractor of its decision to stop funding the loan.

**Travelers of Florida v. Stormont**, --- So.3d ----, 2010 WL 3564708 (Fla. 3d DCA 2010).
Attorneys' fees may be awarded under Fla. Stat. § 627.428 in connection with portions of appraisal proceedings under an insurance policy.

**Pennsylvania Lumbermens Mut. Ins. Co. v. Indiana Lumbermens Mut. Ins. Co.**, --- So.3d ----, 2010 WL 3564711 (Fla. 4th DCA 2010).
There is no right to subrogation or contribution between two insurers of a common insured for the same policy incident.

**Covenant Trust Co. v. Guardianship of Ihrman**, --- So.3d ----, 2010 WL 3564731 (Fla. 4th DCA 2010).
A court must hold a limited evidentiary hearing to make factual findings if the affidavits filed in support of and in opposition to long arm jurisdiction are conflicting.

**Verneret v. Foreclosure Advisors, LLC**, --- So.3d ----, 2010 WL 3564864 (Fla. 3d DCA 2010).
A foreclosed mortgagor may satisfy the equity of redemption under Fla. Stat. § 45.0315 by tendering the foreclosure judgment amount to the Clerk of the Court or the mortgagee; attorneys' fees amounts not included in the foreclosure judgment need not be tendered.

**Real Property and Business Litigation Report**
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**Bosem v. Musa Holdings, Inc**., --- So.3d ----, 2010 WL 3701293 (Fla. 2010).
The Florida Supreme Court reaffirms its "loss theory" with regard to prejudgment interest with regard to business and (non-personal injury) tort claims, i.e., wholly pecuniary losses are entitled to prejudgment interest.

**Service Experts, LLC v. Northside Air Conditioning & Elec. Service, Inc.**, --- So.3d ----, 2010 WL 3655497 (Fla. 2d DCA 2010).
Merely filing an offer of judgment or the opposing party allegedly having committed fraud on the court are not sufficiently "significant circumstances" to invoke the common-law exception to a plaintiff's right to voluntarily dismiss an action.

**Palm Beach Polo v. Bagattelle Condominium Ass'n, Inc.**, --- So.3d ----, 2010 WL 3655787 (Fla. 4th DCA 2010).
A condominium association cannot be forced to return improperly assessed monies prior to the conclusion of the case.

**Sanchez v. Lasalle Bank Nat. Ass'n**, --- So.3d ----, 2010 WL 3655790 (Fla. 3d DCA 2010).
Although the Florida Rules of Civil Procedure allow a trial court to strike pleadings on its own volition, a trial court should not *sua sponte* strike a pleading unless the trial court finds the pleading to be redundant, immaterial, impertinent, scandalous or a sham. The fact that a party may not be able to prove the allegations of the pleading is not a basis for striking the pleading.

**Roman v. Atlantic Coast Construction and Development, Inc.**, --- So.3d ----, 2010 WL 3655791 (Fla. 4th DCA 2010).
A non-signatory to a contract containing arbitration as the dispute resolution mechanism can be compelled to arbitrate if the claims relate to the contract and the signatory is relying on the contract to assert its claims against the non-signatory, and also in the situation where there are allegations of concerted action between the signatory and the non-signatory. Moreover, determinations that arbitration impermissibly limits a party's remedy are made by courts, but determinations whether a contract containing an arbitration provision are enforceable are made by the arbitrators.

**Coral Reef Drive Land Development, LLC v. Duke Realty Ltd. Partnership**, --- So.3d ----, 2010 WL 3655812 (Fla. 3d DCA 2010).
Continued efforts to rezone commercial property or find tenants are not sufficient "consideration" that supports modification of an existing loan when the loan documents require the borrower to do so, and promissory estoppel does not nullify written contract terms.

**Florida Ins. Guaranty Ass'n v. B.T. of Sunrise Condominium Ass'n, Inc.**, --- So.3d ----, 2010 WL 3655818 (Fla. 4th DCA 2010).
Insurance policies for seven separate condominium units are not "aggregate" policies covering all the buildings as a whole when each building is separately scheduled.

**Pohlman v. Aqua Condominium Developers, Ltd.**, --- So.3d ----, 2010 WL 3655885 (Fla. 1st DCA 2010).
The following provision is not illusory for purposes of the two year requirement to build under the Interstate Land Sales Act:

> Except as provided in the immediately following sentence, in no event shall the completion date of the Unit be later than two (2) years from the date Buyer executes this Contract. The date for completion may be extended by Seller by reasons of delays incurred by circumstances beyond Seller's reasonable control, such as acts of God, war, civil unrest, imposition by a governmental authority of a moratorium upon construction of the Unit or the Condominium or the providing of utilities or services which are essential to such construction, casualty losses or material or labor shortages or any other grounds cognizable in Florida contract law as impossibility or frustration of performance, including, without limitation, delays occasioned by wind, rain, lightning and storms. It is the intention of the parties that this sale and purchase shall qualify for the exemption provided by the Interstate Land Sales Full Disclosure Act, 15 U.S.S. Section 1702 (a) (2), and nothing contained in this Contract shall be construed or operate, as to any obligations of Seller or Buyer, in a manner which would render the exemption inapplicable.

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**Laizure v. Avante at Leesburg, Inc.**, --- So.3d ----, 2010 WL 3808683 (Fla. 5th DCA 2010).
A broad agreement to arbitrate will encompass wrongful death claims, even if the claims are brought by an estate, i.e., a non-signatory to the arbitration agreement.

**Adhin v. First Horizon Home Loans**, --- So.3d ----, 2010 WL 3808693 (Fla. 5th DCA 2010).
Florida Statute § 48.23 (1)(b), which requires intervention within twenty (20) days of a *lis pendens* being filed, does not interfere with the Florida Supreme Court's rulemaking authority, and operates as a non-claim statute and statute of repose.

**Fidelity Bank of Florida v. Nguyen**, --- So.3d ----, 2010 WL 3808976 (Fla. 5th DCA 2010).
A minor error in a mortgage foreclosure action still affords constructive notice as between the parties to the transaction.

**CTX Mortg. Co., LLC v. Advantage Builders of America, Inc**., --- So.3d ----, 2010 WL 3813166 (Fla. 2d DCA 2010).
A contractor has an equitable lien on undisbursed construction proceeds to the extent the owner has been unjustly enriched.

**Strax Rejuvenation and Aesthetics Institute, Inc. v. Shield**, --- So.3d ----, 2010 WL 3782044 (Fla. 2010).
A clerk's date stamp is not dispositive of the date of filing a Notice of Appeal, reversing *Strax Rejuvenation & Aesthetics Institute, Inc. v. Shield,* 24 So.3d 666 (Fla. 4th DCA 2009).

**Bates v. Betty & Ross Co., Inc.**, --- So.3d ----, 2010 WL 3766787 (Fla. 3d DCA 2010).
Circuit court cannot overrule decision of arbitration panel as to whether an amended claim relates back to original claim and as to jurisdiction of the arbitration panel.

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**Langford v. Paravant, Inc.**, --- So.3d ----, 2010 WL 3927180 (Fla. 5th DCA 2010).
A claim for unpaid commissions is deemed a claim for unpaid wages under Fla. Stat. § 448.08, entitling a prevailing employee to an award of attorneys' fees.

**Countrywide Home Loans, Inc. v. Sotern**, --- So.3d ----, 2010 WL 3929064 (Fla. 2d DCA 2010).
An equitable owner who deeds property to a grantee while maintaining possession is estopped to deny the rights of third parties that rely on the grantee's title, even if grantee obtained title through fraud.

**Advent Oil & Operating, Inc. v. S & E Enterprises, LLC**, --- So.3d ----, 2010 WL 3909624 (Fla. 1st DCA 2010).
Extensive discovery is not necessary when a contractual provision is clear, and when so, summary judgment is also proper.

**ATP Flight School, LLC v. Sax**, --- So.3d ----, 2010 WL 3893911 (Fla. 4th DCA 2010).
The Federal Arbitration Act (FAA) applies to an arbitration agreement if the contract involves interstate commerce. Under the FAA, the arbitrator decides whether the agreement is enforceable or not, and a party is entitled to court review of the agreement only if the arbitration clause itself (not the contract) was induced by fraud.

**Farah v. Iberia Bank**, --- So.3d ----, 2010 WL 3893972 (Fla. 3d DCA 2010).
A mortgagee cannot avoid the requirements of a deficiency judgment by seeking to instead collect on a money judgment contained in a foreclosure judgment.

**Hacienda Villas, Inc. v. MIA Consulting Group, Inc.**, --- So.3d ----, 2010 WL 3894028 (Fla. 3d DCA 2010).
The debtor-creditor rule for venue (creditor may file suit in the county where the debt is due) applies only when the debt is a liquidated sum.

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**Alejandre v. Deutsche Bank Trust Co. Americas**, --- So.3d ----, 2010 WL 3984664 (Fla. 4th DCA 2010).
Failure to refute affirmative defenses requires denial of a motion for summary judgment.

**Deno v. Lifemark Hosp. of Florida, Inc.**, --- So.3d ----, 2010 WL 3984806 (Fla. 3d DCA 2010).
A decision by an arbitration panel convened under Fla. Stat. § 766.207 may be appealed, and the decision of the arbitration panel that Fla. Stat. § 766.207 provides only for non-economic damages totaling $250,000 per claimant is proper.

**American Educational Enterprises, LLC v. Board of Trustees of the Internal Imp. Trust Fund**, --- So.3d ----, 2010 WL 3985076 (Fla. 3d DCA 2010).
In a suit for breach of real estate purchase contract where Plaintiff Buyer seeks out of pocket damages, i.e., the difference between the price paid for a property and its actual value, discovery as to Plaintiff Buyer's general economic condition is improper as that information is not relevant to the issues in the case.

**Real Estate Inv. Group, LLC v. Attorneys' Title Ins. Fund, Inc.**, --- So.3d ----, 2010 WL 3985237 (Fla. 3d DCA 2010).
Forfeiture of a title insurance policy for the insured's failure to cooperate with the title insurance company must be clearly set forth in order to support a summary judgment in favor of the title insurance company.

**Centennial Homeowners Association, Inc. v. Dolomite Co., Inc.**, --- So.3d ----, 2010 WL 3985299 (Fla. 3d DCA 2010).
Removal of a party in possession under an ejectment action should be stayed while the issue of betterment is decided in the action.

**The Michael Titze Co. Inc. v. Simon Property Group, Inc**., Slip Copy, 2010 WL 3995938 (11th Cir. 2010).
A party does not violate the discretionary aspects of a restrictive covenant by refusing to allow a billboard on its property based on "lifestyle components," i.e., the aesthetics of the billboard and how the aesthetics affect an outdoor shopping mall.

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**The Plumbing Service Co. v. Progressive Plumbing, Inc**., --- So.3d ----, 2010 WL 4136037 (Fla. 5th DCA 2010).
Recovery under a construction surety bond is not an election of remedies that forecloses suit on a Chapter 713 claim for damages and lost profit not recovered from the surety.

**I-4 Commerce Ctr., Phase II, Unit I v. Orange County**, --- So.3d ----, 2010 WL 4136047 (Fla. 5th DCA 2010).
A local government may charge a fee for utilities, even if the utilities are not being used.

**Piloto v. Lauria**, --- So.3d ----, 2010 WL 4103017 (Fla. 4th DCA 2010).
Florida courts have jurisdiction to administer Florida real and personal property when estate proceedings in foreign jurisdiction do not administer those assets, and Florida courts will apply the Florida probate code to the ancillary proceedings in this state.

**Moffatt & Nichol, Inc. v. B.E.A. Intern. Corp., Inc**., --- So.3d ----, 2010 WL 4103149 (Fla. 3d DCA 2010).
A creditor does not have the ability to individually pursue derivative proceedings after a statutory assignment for benefit of creditors under Chapter 722 of the Florid Statutes.

**Esposito v. True Color Enterprises Const., Inc.**, --- So.3d ----, 2010 WL 4103170 (Fla. 4th DCA 2010).
A subcontractor which is not an intended third party beneficiary of a prime contract between the owner and the general contractor may not enforce the prime contract.

**Grant v. GHG014, LLC**, --- So.3d ----, 2010 WL 4103356 (Fla. 4th DCA 2010).
A mandatory injunction should rarely be granted before final hearing, and should only be granted where the relief requested is “clear and free from reasonable doubt.” In order the receive the mandatory injunction prior to final hearing, the movant must additionally prove irreparable injury will result if the injunction is not granted, there is no adequate remedy at law, and that the public’s interest will be served by granting the injunction.

**Golden & Cowan, P.A. v. Estate of Kosofsky**, --- So.3d ----, 2010 WL 4103499 (Fla. 3d DCA 2010).
The trial court errs when it allows telephone testimony over objection in violation of Florida Rule of Judicial Administration 2.530 (d) (1), but the error may be harmless if there is other corroborating, properly introduced evidence on the issues covered by the telephone testimony.

**Sorena v. Gerald J. Tobin, P.A.**, --- So.3d ----, 2010 WL 4103522(Fla. 3d DCA 2010).
Comity principles are violated and certiorari is proper when a trial court refuses to stay a second lawsuit involving the same parties and issues as a previously filed lawsuit.

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**Lindon v. Dalton Hotel Corp**., --- So.3d ----, 2010 WL 4257495 (Fla. 5th DCA 2010).
The standard for determining a directed verdict or JNOV is whether the verdict would be or is supported by competent, substantial evidence, while the standard for a motion for new trial is whether the verdict is "against the manifest weight of the evidence." Moreover, shareholders agreements under Fla. Stat. § 607.0732 protect an individual shareholder from personal liability for acts of the corporation, but do not insulate a shareholder from personal liability for their own breach of a shareholder's agreement.

**Lakeview Reserve Homeowners v. Maronda Homes, Inc**., --- So.3d ----, 2010 WL 4257559 (Fla. 5th DCA 2010).
The implied warranties of fitness and merchantability apply to construction of utilities (roadways, drainage systems, retention ponds and underground pipes) in a residential subdivision.

**Walker v. Figarola**, --- So.3d ----, 2010 WL 4226311 (Fla. 3d DCA 2010).
A claim for obtaining money by conduct states a claim for civil theft or fraud in the inducement if the felonious or fraudulent intent is properly pled, notwithstanding the money was not segregated in a separate account or application of the Economic Loss Rule.

**Servedio v. US Bank Nat. Ass'n**, --- So.3d ----, 2010 WL 4226399 (Fla. 4th DCA 2010).
A party seeking foreclosure must present evidence in the trial court that it owns the note and mortgage or that it can re-establish the note pursuant to Fla. Stat. § 673.3091 in order to be entitled to foreclosure. An original note and mortgage filed after a summary judgment does not meet this standard in that the trial court cannot rely on items not yet in the record to grant summary judgment, and items supporting a motion for summary judgment must be filed at least twenty days before the summary judgment hearing.

**First Equitable Realty III, Ltd. v. Grandview Palace Condominium Ass'n**, --- So.3d ----, 2010 WL 4226433 (Fla. 3d DCA 2010).
A warranty deed by a developer to a condominium association which conveys undeveloped condominium property by referring to the recorded declaration of condominium and states the conveyance is "together with all the tenements, hereditaments, and appurtenances thereto belonging or otherwise appertaining" eliminates any future right of the developer in the property notwithstanding the declaration of condominium reserves rights in the developer with regard to the property.

**One 79th Street Estates, Inc. v. American Inv. Services**, --- So.3d ----, 2010 WL 4226438 (Fla. 3d DCA 2010).
Foreclosure of a mortgage merges the mortgage into the judgment, and reinstatement of a mortgage after foreclosure judgment reverses the merger and returns the mortgage to its pre-default status.

**Shubh Hotels Boca, LLC v. Federal Deposit Ins. Corp.**, --- So.3d ----, 2010 WL 4226448 (Fla. 4th DCA 2010).
Appointment of a receiver during mortgage foreclosure proceedings does not confer upon the receiver the owner's inherent authority and right to sell the real property.

**Garcia v. Dumenigo**, --- So.3d ----, 2010 WL 4226469 (Fla. 3d DCA 2010).
The purpose of a preliminary injunction is to preserve the "last peaceable noncontested condition that preceded the controversy," and a mandatory injunction directing the disbursement of monies which are the subject of the dispute does not preserve the status quo.

**Master Tech Satellite, Inc. v. Mastec North America, Inc.**, --- So.3d ----, 2010 WL 4226500 (Fla. 3d DCA 2010).
A party seeking to enforce a contract for installation of digital satellite systems must be a licensed electrical contractor in order to enforce the contract as installation of digital satellite systems requires wiring to an electrical source and grounding the connection, i.e., acts which require a electrical contractor's license.

**Chmura v. Maxson**, --- So.3d ----, 2010 WL 4226543 (Fla. 2d DCA 2010).
The filing of an appellate reply brief is not required under the Florida Rules of Appellate Procedure, and an appeal cannot be dismissed for failure to file a reply brief.

**Southeastern Integrated Medical, P.L. v. North Florida Women's Physicians, P.A.**, --- So.3d ----, 2010 WL 4157225 (Fla. 1st DCA 2010).
An employer who hires an employee with knowledge the employee is subject to restrictive employment covenants is subject to suit for intentional interference with a business relationship. The fact that the employer may have a competitive business defense is an affirmative defense which cannot be considered at the pleadings stage.

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**Gilliand v. Heiderich**, --- So.3d ----, 2010 WL 4365480 (Fla. 5th DCA 2010).
A servient estate holder may erect a gate across an easement so long as doing so does not unreasonably restrict access by the dominant estate holder or the grant of easement specifically provides for free and unencumbered access.

**Allard v. Al-Nayem Intern., Inc.**, --- So.3d ----, 2010 WL 4365591 (Fla. 2d DCA 2010).
The measure of damages for breach of the covenant of seisin is deduction for the value of the excluded or non-delivered land, and is not calculated by determining the proportionate area of the excluded land versus the entire parcel. Additionally, a motion for rehearing is not a second opportunity to prove damages.

**Rivero v. Meister**, --- So.3d ----, 2010 WL 4320425 (Fla. 4th DCA 2010).
The imposition of sanctions against counsel cannot be based on negligent or reckless conduct; question certified to the Florida Supreme Court whether its decision in *Moakley v. Smallwood,* 826 So.2d 221, 226 (Fla.2002) permits the imposition of sanctions for negligent or reckless conduct.

**Berkowitz, Dick, Pollack & Bryant v. Smith,** --- So.3d ----, 2010 WL 4320459 (Fla. 4th DCA 2010).
Arbitration is not compelled when the alleged professional malpractice predated the arbitration agreement.

**Boren v. Suntrust Bank**, --- So.3d ----, 2010 WL 4321579 (Fla. 2d DCA 2010).
Property loses its homestead character upon death of the owner when the owner contracts to transfer property back to a community association upon death while reserving a life estate.

**Two Worlds United v. Zylstra**, --- So.3d ----, 2010 WL 4365658 (Fla. 2d DCA 2010).
A motion for attorneys' fees under Fla. Stat. § 57.105 is a purely defensive motion that does not seek affirmative relief and does not amount to consent to be haled into a foreign jurisdiction on the basis of long arm jurisdiction. Moreover, the corporate shield doctrine can negate the provisions of Fla. Stat. 48.193 (1) (b) (long arm jurisdiction based on personally committing a tort in the state) if the corporate officer provides an affidavit he or she did not personally commit any torts in the state.

**Forum Architects LLC v. Jetton**, Slip Copy, 2010 WL 4358386 (11th Cir. 2010).
Summary judgment is proper against architectural firm that sued zoning official for tortious interference with architectural firm's client for zoning official deny applications prepared by architectural firm.

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**Sun Glow Const., Inc. v. Cypress Recovery Corp.**, --- So.3d ----, 2010 WL 4536803 (Fla. 5th DCA 2010).
The re-recording of a certified copy of a judgment after expiration of the original judgment lien creates a new lien on real property owned by the judgment debtor.

**JVA Enterprises, I, LLC v. Prentice**, --- So.3d ----, 2010 WL 4483383 (Fla. 4th DCA 2010).
A party seeking to prove fraud on the court must prove that there was an attempt to interfere with the ability of the court to adjudicate a matter, and courts should seek to adjudicate cases on the merits as opposed to dismiss cases.

**Denton v. Good Way Oil 902 Corp.**, --- So.3d ----, 2010 WL 4483390 (Fla. 4th DCA 2010).
A closing agent owes a duty to both parties to supervise the closing in a reasonably prudent manner. An agent may not extend the closing date through a representation, even if he is a lawyer, because an agent cannot bind the principal unless the principal has given the agent authority (either express or implied) to bind the principal on that issue, and appointing a person to be closing agent does not clothe the agent with authority as to all acts. Since the contract ended by its own terms if not closed on closing date, there was no intentional interference with a business relationship by a party entering into a new contract after default on the first contract.

**Kolter Signature Homes, Inc. v. Shenton**, --- So.3d ----, 2010 WL 4483402 (Fla. 4th DCA 2010).
There no contractual right of specific performance; only a common law right. The following clause, which imposed conditions precedent on a party's right to enforce its right of specific performance, did not provide a party an unhindered right to enforce a contract in violation of *Samara Development Corp. v. Marlow*, 556 So. 2d 1097 (Fla. 1990), and was not exempt from the Interstate Land Sales Act's requirements:

> In the event SELLER shall fail to perform any of its obligation[s] hereunder, PURCHASER ... at PURCHASER'S option may have the right to specifically enforce this Agreement, if PURCHASER has sent the Proper Notice including: (1) If SELLER states that SELLER'S default is related to the actual physical construction of the Residence then the Proper Notice *must be accompanied by a certificate of either an Architect or Engineer licensed in the State of Florida stating with specificity SELLER'S default,* (2) If the default is other than a physical construction default then the notice *must be accompanied by an Attorney's opinion addressed to SELLER stating with specificity SELLER's default.* If PURCHASER complies with provisions (1) and (2) above relating to Proper Notice and *deposits the Total Purchase Price in escrow ...* then PURCHASER shall move to have SELLER specifically enforce this Agreement.

**Beane v. Suntrust Banks, Inc**., --- So.3d ----, 2010 WL 4483472 (Fla. 4th DCA 2010).
An individual with a durable power of attorney may transfer money from a Totten trust as doing so does not change the disposition effective at death under the Totten trust.

**LPP Mortgage Ltd. v. Tucker**, --- So.3d ----, 2010 WL 4483484 (Fla. 3d DCA 2010).
The federal government, pursuant to 28 U.S.C. § 2415, has an unlimited time to bring actions to establish title to or possession of real or personal property. An assignee of the federal government acquires these same rights, and thus is not bound by state statutes of limitation limiting the time within which to foreclose on real property.

**Freemon v. Deutsche Bank Trust Co. Americas**, --- So.3d ----, 2010 WL 4483488 (Fla. 4th DCA 2010).
A party seeking to vacate a final judgment based on fraud on the court pursuant to Florida Rule of Civil Procedure 1.540 (b) (3) must demonstrate how the fraud affected the judgment. In this particular case of a"robo-signer," the mortgagor did not demonstrate how any purported fraud affected this judgment in that the mortgagor did not contest the allegations of the affidavit that it borrowed the money and defaulted on the repayment obligations of the promissory note. Moreover, the argument of failure to comply with the Business Records Exception to the Hearsay Rule cannot be raised for the first time on appeal.

**In re Cheaves**, --- B.R. ----, 2010 WL 4400048 (Bkrtcy. M.D. Fla. 2010).
Under the "least sophisticated consumer" standard for violating the Fair Debt Collection Practices Act, a letter which referred to the company as "& Associates," stated that it had been "obtained to collect a debt," and was signed by a "subrogation specialist" did not mislead consumer into believing collection agency was a law firm.

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**Moscowitz v. Oldham**, --- So.3d ----, 2010 WL 4669275 (Fla. 5th DCA 2010).
Venue for legal malpractice claims lies where the malpractice occurred.

**Miccosukee Tribe of Indians of Florida v. South Florida Water Management Dist.**,--- So.3d ----, 2010 WL 4643070 (Fla. 2010).
Whether it is fiscally sound for a governmental agency to issue bonds is a political decision left to the issuing agency. Protection of water resources is a sufficient public purpose for a water management agency to issue bonds.

**Village of Pinecrest v. Grec Pinecrest, LLC**, --- So.3d ----, 2010 WL 4628568 (Fla. 3d DCA 2010).
A party seeking a zoning change inconsistent with the comprehensive plan must first amend the comprehensive plan.

**Brotheridge v. Option One Mortgage Corp.**, --- So.3d ----, 2010 WL 4628578 (Fla. 2d DCA 2010).
A claim of equitable subrogation must be based on adequate proof of payment of the prior loans upon which equitable subrogation is claimed.

**St. Tropez II, LLC v. Adlerov**, --- So.3d ----, 2010 WL 4628585 (Fla. 3d DCA 2010).
Pre-judgment order requiring return of pre-construction deposits in excess of a contractually stipulated amount is improper until final judgment is issued determining whether there was breach of contract.

**Citizens Property Ins. Corp. v. Ashe**, --- So.3d ----, 2010 WL 4628915 (Fla. 1st DCA 2010).
The Valued Policy Law (VPL) is a rule of valuation, and does not apply when there are both covered and non-covered insurance claims.

**Estes v. Sassano**, --- So.3d ----, 2010 WL 4628917 (Fla. 1st DCA 2010).
Parting seeking reversal dismissal for sanctions violations must produce record for appellate court to reverse.

**All Real Estate Title Services, Inc. v. Vuu**, --- So.3d ----, 2010 WL 4630842 (Fla. 2d DCA 2010).
A satisfaction of mortgage mistakenly prepared (when the debt has not been satisfied) is null and void.

**Opella v. Bayview Loan Servicing, LLC**, --- So.3d ----, 2010 WL 4740202 (Fla. 3d DCA 2010).
Filing an answer waives defenses to complaint, including insufficient service of process, but a "pro se answer" filed without authorization by one of the attorneys does not constitute a true answer that waives defenses.

**Quintero v. Kenyon**, --- So.3d ----, 2010 WL 4740305 (Fla. 3d DCA 2010).
Losing one's job and your attorney withdrawing for non-payment constitutes a valid reason for a continuance when no prejudice is shown to result from the continuance.

**Turnberry Investments, Inc. v. Streatfield**, --- So.3d ----, 2010 WL 4740313 (Fla. 3d DCA 2010).
Pursuant to Fla. Stat. § 197.602, an owner of property who sets aside a tax deed must pay the taxes paid by the deed purchaser as well as interest on the purchase price of the tax deed.

**Valcarcel v. Chase Bank USA, N.A.**, --- So.3d ----, 2010 WL 4740386 (Fla. 4th DCA 2010).
An order dismissing a complaint without prejudice and without leave to amend is a final, appealable order. Such an order is not an adjudication on the merits, but renders one party the prevailing party for attorneys' fees purposes.

**Bank of America v. Bank of Salem**, --- So.3d ----, 2010 WL 4723028 (Fla. 1st DCA 2010).
A constructive trust is imposed on property where there is "clear and convincing proof of (1) a promise, express or implied, (2) transfer of the property and reliance thereon, (3) a confidential relationship, and (4) unjust enrichment." A future promise, such as one to place a mortgage on real property in the future when unsecured funds are loaned, is an insufficient example of fraud and will not support a constructive trust.

**The Tonnelier Construction Group, Inc. v. Shema**, --- So.3d ----, 2010 WL 4723066 (Fla. 1st DCA 2010).
Badges of fraud, standing alone, do not prove a fraudulent conveyance.

**Wooten v. Quicken Loans, Inc**., --- F.3d ----, 2010 WL 4723054 (11th Cir. 2010).
The payment of points in a mortgage loan transaction is not a "settlement service" within the meaning of RESPA as the payment of points affected the interest rate and goes to the heart of the loan itself. Accordingly, no services need be rendered for the payment of points. The report of the Inspector General of H.U.D. which found differently is not entitled to deference by federal courts as the audit report was not issued after comment.

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**Surna Construction, Inc. v. Morrill**, --- So.3d ----, 2010 WL 4903569 (Fla. 5th DCA 2010).
An adjoining property owner is entitled to notice of a tax deed sale if the property being sold is a "common element" of the homeowners' association. A lot upon which an association holds an easement for the benefit of the association's members is a "common element."

**Mash v. Lugo**, --- So.3d ----, 2010 WL 4903817 (Fla. 5th DCA 2010).
The failure of a party to appear at mediation, even if his counsel and insurance adjuster appear on his behalf, renders the non-appearing party liable for sanctions.

**Duvall v. Fair Lane Acres, Inc.**, --- So.3d ----, 2010 WL 4861495 (Fla. 2d DCA 2010).
Requiring homeowners to agree to an "over 55 only" restriction for their property in order to continue to receive water and sewer services constitutes an unlawful taking of their property rights.

**Alvarez v. Cooper Tire & Rubber Co**., --- So.3d ----, 2010 WL 4861514 (Fla. 4th DCA 2010).
The "substantially similar" test is not the proper standard of discovery of other products with defects.

**Rocks v. McLaughlin Engineering Co.**, --- So.3d ----, 2010 WL 4861684 (Fla. 4th DCA 2010).
Engineers are "professionals" for purposes of the Economic Loss Rule, and may be sued for professional malpractice.

**Rosemont Farms Corporation v. Blueberries, S.A.**, --- So.3d ----, 2010 WL 4861720 (Fla. 4th DCA 2010).
An out of court statement (a letter) attached to an affidavit opposing summary judgment creates a sufficient issue of fact to preclude summary judgment.

**Digiorgio v. Digiorgio**, --- So.3d ----, 2010 WL 4861639 (Fla. 3d DCA 2010).
It is the actual place of residence, and not the filing of an affidavit of homestead, that determines whether a property is homestead. Accordingly, a party may file an affidavit of exemption after execution proceedings have begun and still exclude property from levy.

**Stanley v. Quest Intern. Inv., Inc.**, --- So.3d ----, 2010 WL 4861722 (Fla. 4th DCA 2010).
A tenant defending an eviction on the basis of a defective three day notice must still deposit rent into the registry of the court pursuant to Fla. Stat. § 83.60 (2).

**Addison v. Carballosa**, --- So.3d ----, 2010 WL 4861727 (Fla. 3d DCA 2010).
A party cannot argue fraudulent inducement into a contract if the matter constituting the alleged fraud is apparent on the face of the contract.

**Demos v. Landmark At Hillsboro Condominium Ass'n Inc.**, --- So.3d ----, 2010 WL 4861730 (Fla. 4th DCA 2010).
A party demonstrating that it was never served with process does not need to allege a meritorious defense in order to vacate a final judgment.

**Bennett v. Christiana Bank & Trust Co**., --- So.3d ----, 2010 WL 4861739 (Fla. 3d DCA 2010).
A return of service which reflects the process server saw curtains moved, read aloud the purpose of the summons and complaint, and left the summons and complaint on the doorstep is not sufficient service.

**Lazzaro v. Miller & Solomon General Contractors, Inc**., --- So.3d ----, 2010 WL 4861742 (Fla. 4th DCA 2010).
A party that is a unit owner in a condominium association that is involved in litigation is bound by the settlement of a dispute by the association unless the homeowner opts out of the class.

**Hilb Rogal & Hobbs of Florida, Inc. v. Grimmel**, --- So.3d ----, 2010 WL 4861762 (Fla. 4th DCA 2010).
A business has a legitimate business interest under law in its customers, and a former employee is prohibited from soliciting or accepting (without solicitation) customers of his former employer if the prohibition is set forth in an employment agreement.

**Mims v. Arrow Financial Services, LLC**, Slip Copy, 2010 WL 4840430 (11th Cir. 2010).
There is no private cause of action for violation of the Telephone Consumer Protection Act, 27 U.S.C. § 227 (regulation of telemarketing practices).

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**LR5A-JV v. Little House, LLC**, --- So.3d ----, 2010 WL 5017323 (Fla. 5th DCA 2010).
A foreclosing plaintiff may not control the date a foreclosure sale is set; such is in the discretion of the trial court. The Florida Supreme Court, in issuing new rules for foreclosures, did not contemplate a judicial sale would be left in limbo.

**In re Amendments to Florida Rules of Civil Procedure-Form 1.996 (Final Judgment Of Foreclosure)**, ... --- So.3d ----, 2010 WL 4977484 (Fla. 2010).
A new form of foreclosure final judgment, as follows, is approved:

APPENDIX
FORM 1.996(a). FINAL JUDGMENT OF FORECLOSURE

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff, ..... (name and address) ....., is due

| | |
|---|---|
| Principal | $..... |
| Interest to date of this judgment | ..... |
| Title search expense | ..... |
| Taxes | ..... |
| Attorneys' fees | ..... |
| Finding as to reasonable number of hours: | ..... |
| Finding as to reasonable hourly rate: | ..... |
| Other *: | ..... |

(*The requested attorney's fee is a flat rate fee that the firm's client has agreed to pay in this matter. Given the amount of the fee requested and the labor expended, the Court finds that a lodestar analysis is not necessary and that the flat fee is reasonable.)

| | |
|---|---|
| Attorneys' fees total | ..... |
| Court costs, now taxed | ..... |
| Other: ..... | ..... |
| Subtotal | $..... |
| LESS: Escrow balance | ..... |
| LESS: Other..... | ..... |
| TOTAL | $..... |

that shall bear interest at the rate of .....% a year.

2. Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property in ..... County, Florida:

(describe property)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on .....(date) ....., to the highest bidder for cash, except as prescribed in paragraph 4, at the courthouse located at .....(street address of courthouse) ..... in ..... County in ..... (name of city) ....., Florida, in accordance with section 45.031, Florida Statutes using the following method (CHECK ONE):

[ ] At .....(location of sale at courthouse; *e.g.,* north door). ...., beginning at .....(time of sale) ..... on the prescribed date.

[ ] By electronic sale beginning at .....(time of sale). ..... on the prescribed date at. ....(website).....

4. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's

bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it as is necessary to pay the bid in full.

*3 5. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

6. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. ~~If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.~~

7. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF

THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

*4 ORDERED at ....., Florida, on .....(date).....

_____
Judge

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Florida Statutes; *Hott Interiors, Inc. v. Fostock,* 721 So.2d 1236 (Fla. 4th DCA 1998).

Committee Notes
[No change]

FN1. This form was originally numbered 1.996, but was renumbered as 1.996(a) due to the adoption of a new form 1.996(b) (Motion to Cancel and Reschedule Foreclosure Sale). *See In re Amendments to Fla. Rules of Civil Pro.,* 44 So.3d 555 (Fla.2010).

**Bennett v. Berges**, --- So.3d ----, 2010 WL 4961803 (Fla. 4th DCA 2010).
A trial court has inherent authority to sanction counsel under *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002), by awarding fees against counsel, but the fees awarded as a sanction must directly relate to the sanctionable conduct.

**Schuman v. International Consumer Corp.**, --- So.3d ----, 2010 WL 4962841 (Fla. 4th DCA 2010).
A motion for relief from judgment should not be denied without evidentiary hearing unless there is no colorable entitlement to the relief sought. An allegation that new counsel did not receive notice of the trial is sufficient "colorable entitlement" to require an evidentiary hearing.

**Empire World Towers, LLC v. Cdr Creances, S.A.S.**, --- So.3d ----, 2010 WL 4962849 (Fla. 3d DCA 2010).
Florida Rule of Judicial Administration 2.515 (a) (attorneys are required to produce the address of the defendant and to vouch for the attorney's right to represent the party) does not require counsel to supply names of shareholders or the beneficial owners of corporations.

**Point East Four Condominium Corp., Inc/ v. Zevuloni & Associates, Inc.**, --- So.3d ----, 2010 WL 4962853 (Fla. 4th DCA 2010).
When one party loses in a breach of contract action, the other party is the "prevailing party" in the litigation and a trial court has no discretion to deny an award of attorneys' fees if the contract contains a "prevailing party" attorneys' fees provision.

**Colodny, Fass & Talenfeld, P.A. v. Bal Bay Realty, Ltd.**, --- So.3d ----, 2010 WL 4962856 (Fla. 3d DCA 2010).
Until an action on the validity of a contract is decided, it is improper to proceed on suit for malpractice arising out of the contract.

**Pan American West, Ltd. v. Cardinal Commercial Development, LLC**, --- So.3d ----, 2010 WL 4962886 (Fla. 3d DCA 2010).
A party cannot sustain a claim for negligent misrepresentation arising out of a contract if the basis is a proposed, unrecorded declaration regarding the land use of real property under contract. Allegedly negligent misrepresentations made a part of an owner's contractual obligations are barred by the Economic Loss Rule.

**Price v. Fax Recovery Systems, Inc**., --- So.3d ----, 2010 WL 4962908 (Fla. 4th DCA 2010).
A party that asserts a right to arbitration under a contract before being compelled by the trial court to file an answer and counterclaim does not waive the right to arbitrate.

**Palacio v. Alaska Seaboard Partners Ltd. Partnership**, --- So.3d ----, 2010 WL 4967470 (Fla. 1st DCA 2010).
A party raising a colorable reason to set aside a default judgment is entitled to an evidentiary hearing and discovery. Accordingly, a mortgagor alleging the mortgagee represented an answer need not be filed during the mortgage modification process is entitled to a evidentiary hearing.

**Arbor Properties, Inc. v. Lake Jackson Protection Alliance, Inc**., --- So.3d ----, 2010 WL 4967715 (Fla. 1st DCA 2010).
The standard of review for consistency of a development order with a comprehensive plan is *de novo*, and a land use plan is considered consistent if compatible with the objectives, policies, land uses, densities and intensities in the comprehensive plan, including the reasonableness of the comprehensive plan.

**Revello Medical Management, Inc. v. Med-Data Infotech Usa, Inc.**, --- So.3d ----, 2010 WL 4967968 (Fla. 2d DCA 2010).
Florida's "at issue" rule requires a party that has filed suit upon a claim to reveal the nature of the claim in pretrial discovery, including privileged matters. A party filing suit for theft of trade secrets must identify with sufficient particularity the trade secret allegedly stolen.

**Cdc Builders, Inc. v. Riviera Almeria, LLC**, --- So.3d ----, 2010 WL 4977227 (Fla. 3d DCA 2010).
The filing of inaccurate payment claims during construction contract administration does not invalidate a construction lien as it is not a "false statement" under Fla. Stat. § 713.35.

**Oppenheim v. I.C. System, Inc.**, --- F.3d ----, 2010 WL 4940015 (11th Cir. 2010).
A party that utilizes PayPayl is a "consumer" with the meaning of the Fair Debt Collection Practices Act, and is protected by the Act.

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**Tilton v. Gardner**, --- So.3d ----, 2010 WL 5128092 (Fla. 5th DCA 2010).
A property appraiser may only revisit a previously granted agricultural exemption for real estate, only if the present use materially differs from the prior use (including degree of use) previously found to be agricultural by the Value Adjustment Board.

**1700 Rinehart, LLC v. Advance America**, --- So.3d ----, 2010 WL 5128137 (Fla. 5th DCA 2010).
The lack of consideration principle arises from the frustration of purpose defense, and is not applicable where the parties foresaw the disputed issue and covered it in the contract.

**Weinhold v. Kabe Planungsgellschaft Fur Schlusselfertiges Bauen MBH,** --- So.3d ----, 2010 WL 5129265 (Fla. 2d DCA 2010).
It is reversible error to deny a motion for continuance when a party or her counsel is unavailable for physical or mental reasons. Accordingly, vacation of a judgment confirming an arbitration award is proper when a party is unable to attend hearing due to automobile accident.

**Nodal v. Infinity Auto Ins. Co.**, --- So.3d ----, 2010 WL 5129312 (Fla. 2d DCA 2010).
A party that voluntarily dismisses a claim for civil theft when no record evidence demonstrates the theft is liable for attorneys' fees to the defendant who contested the civil theft claim.

**Companioni v. City of Tampa**, --- So.3d ----, 2010 WL 5110234 (Fla. 2010).
In order to preserve the issue for further review by either the trial or appellate court, a party must move for mistrial even if attorney misconduct during trial is objected to and the objection is sustained.

**Westgate Miami Beach, LTD. v. Newport Operating Corp**., --- So.3d ----, 2010 WL 5110237 (Fla. 2010).
A trial court is permitted to reserve jurisdiction in a final judgment to award prejudgment interest. Furthermore, appeal can be taken from such an order and the trial court is not divested of jurisdiction to award prejudgment interest during the appeal.

**Anthony v. Perez-Abreu & Martin-Lavielle, P.A.**, --- So.3d ----, 2010 WL 5093137 (Fla. 3d DCA 2010).
The cause of action for conspiracy does not accrues until the last, not the first, element of the cause occurs.

**De La Mora v. Andonie**, --- So.3d ----, 2010 WL 5093142 (Fla. 3d DCA 2010).
A non-U.S. citizen who is a legal resident may claim the "natural" homestead exemption under Fla. Const. Art. VII, Sec. 6 (a) for real property upon which his children, who are "naturally dependent" upon him, reside.

**Briarwinds Condominium Ass'n, Inc. v. Rigsby**, --- So.3d ----, 2010 WL 5093149 (Fla. 3d DCA 2010).
A complaint seeking injunctive relief with regard to a condominium association unit does not need to allege irreparable injury if the complaint references Fla. Stat. § 718.303 because the statute section itself authorizes injunctive relief.

**Gonzalez v. Rivero**, --- So.3d ----, 2010 WL 5093210 (Fla. 3d DCA 2010).
Grantee of real property obtained good and marketable title from former wife when Spanish court authorized former wife to dispose of property in Florida.

**Sunseeker Intern. Ltd. v. Devers**, --- So.3d ----, 2010 WL 5093224 (Fla. 4th DCA 2010).
Despite being registered to do business in state and failing to have a current registered agent, service of process on out of state company is defective when served on person who last served as registered agent in 2004.

**Preserve Palm Beach Political Action Committee v. Town of Palm Beach**, --- So.3d ----, 2010 WL 5093247 (Fla. 4th DCA 2010).
Fla. Stat. § 163.3167 (12) prohibits a referendum with regard to a development order on fewer than five (5) parcels. Accordingly, a private agreement that restricts the land use of one (1) parcel cannot be made the basis of a referendum.

**Wallshein v. Shugarman**, --- So.3d ----, 2010 WL 5093260 (Fla. 4th DCA 2010).
A corporate president who signs, as a "guarantor," an agreement containing an arbitration provision is required to arbitrate disputes under the agreement.

**Ballinger v. Bay Gulf Credit Union**, --- So.3d ----, 2010 WL 5113313 (Fla. 2d DCA 2010).
A verified complaint may support a motion for summary judgment in lieu of an affidavit, but the complaint must meet the same requirements as an affidavit, e.g., properly verified and based on personal knowledge.

**Katherine's Bay, LLC v. Fagan**, --- So.3d ----, 2010 WL 5072509 (Fla. 1st DCA 2010).
Environmentally sensitive land may still be developed so long as it is developed in accordance with the applicable comprehensive plan and development codes.

**Flagstar Bank, FSB v. Hochstadt**, Slip Copy, 2010 WL 5064465 (11th Cir. 2010).
Mortgagor who did not sign note is not personally liable for escrow items under the mortgage when the mortgage does not unequivocally obligate mortgagor to the escrow obligation.

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**Garfinkel v. Mager**, --- So.3d ----, 2010 WL 5184564 (Fla. 5th DCA 2010).
Contract prohibiting attorney who previously worked for law firm from representing or assisting others in suing the law firm does not violate public policy and is not void.

**Highwoods DLF EOLA, LLC v. Condo Developer, LLC**, --- So.3d ----, 2010 WL 5184645 (Fla. 5th DCA 2010).
A party affected by a land use decision is entitled to intervene in an appeal involving the decision.

**Siboni v. Allen**, --- So.3d ----, 2010 WL 5184717 (Fla. 5th DCA 2010).
Florida Rule of Civil Procedure 1.525 applies to dropped parties, so a party must file their motion for attorneys' fees within thirty (30) days of being dropped as a party otherwise the motion will be untimely.

**KPMG LLP v. Cocchi**, --- So.3d ----, 2010 WL 5174020 (Fla. 4th DCA 2010).
The fact that all documents and witnesses are in a different forum does not automatically require transfer of an action under *forum non conveniens* if the other *forum non conveniens* factors weigh against transfer.

**Sullivan v. Sullivan**, --- So.3d ----, 2010 WL 5174330 (Fla. 4th DCA 2010).
Sanctions and fees under Fla. Stat. § 57.105 are awardable when a claim or defense lacks sufficient support in law or fact, and are awardable in appellate proceedings as well as trail proceedings.

**Brown v. Chamax, LLC**, --- So.3d ----, 2010 WL 5175128 (Fla. 2d DCA 2010).
A trust which did not exist at time of an alleged fraudulent misrepresentation cannot be fraudulently induced into a contract. The Economic Loss Rule does not bar actions based on a term contained in - as opposed to an act of performance of - the contract.

**Reliance Wholesale, Inc. v. Godfrey**, --- So.3d ----, 2010 WL 5175504 (Fla. 3d DCA 2010).
A computer database of clients that is constantly updated and the company paying for the employee to establish client contacts at trade shows and otherwise are both "legitimate business interests" under Fla. Stat. § 542.335 (1) to support an injunction against violating a restrictive covenant. A prior breach by an employer is a defense to the employer's request for an injunction only if the prior breach involves a dependent covenant. Furthermore, the favored remedy in a suit enforcing a restrictive covenant is an injunction, even though money damages are available, due to the statutory presumption of irreparable harm and the difficulty in establishing harm for violation of a restrictive covenant.

**Gawtrey v. Hayward**, --- So.3d ----, 2010 WL 5175519 (Fla. 2d DCA 2010).
A proposal for settlement does not need to state a certain dollar amount in order to be enforceable, it merely needs to be made "in good faith," i.e., in an amount which reasonably measures the risk at the time of making the offer.

**Bennett v. Society of Lloyd's**, --- So.3d ----, 2010 WL 5184955 (Fla. 3d DCA 2010).
The commingling of exempt funds with non-exempt funds does not automatically render all funds in the account non-exempt; the trial court must investigate and allocate between the exempt and non-exempt funds.

**Duncan v. United Auto. Ins. Co.**, --- So.3d ----, 2010 WL 5185029 (Fla. 3d DCA 2010).
A writ of certiorari requires there be no adequate remedy on full appeal. Thus, an opinion of the circuit court (sitting in its appellate capacity) which reverses a county court grant of summary judgment is not proper for second level certiorari review in that it is not final and any errors can be remedied later by full appeal.

**Young Apartments, Inc. v. Town of Jupiter**, Fla., Slip Copy, 2010 WL 5174956 (11th Cir. 2010).
A party claiming "discriminatory enactment" of a land use ordinance must demonstrate that race was a substantial factor in enactment, and discriminatory impact will be considered if there is specific evidence demonstrating race was a factor in the government's decision to enact the ordinance.