

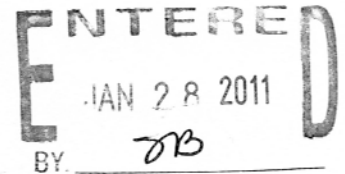
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER, COUNTY, FLORIDA

BANK OF AMERICA, NA,  
Plaintiff,

CASE NO. 10-CA-3882

v.

NEBRASKA INVESTMENTS, et al  
Defendants.



**FINAL ORDER OF DISMISSAL**

THIS CASE came before the Court as a result of the Plaintiff's filing of a residential foreclosure complaint with the Clerk of Court and after being otherwise duly advised in the premises, the Court finds that Florida Rule of Civil Procedure 1.110(b) requires that a complaint to foreclose a mortgage on residential property be verified. *See In re Amendments To The Florida Rules Of Civil Procedure*, 44 So.3d 555 (Fla. 2010) (issued February 11, 2010, modified June 3, 2010). The rule provides, in relevant part:

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the *document filed shall include* an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

The Supreme Court addressed the purposes of the rule change:

First, rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

The verification must be included *in the complaint itself* for the Court to be certain that the affiant has read the actual allegations and to make it clear what is being verified. The purpose of the verification is to create accuracy and accountability. There is no provision in the rule for the filing of a separate verification in a separate document. Common sense dictates that

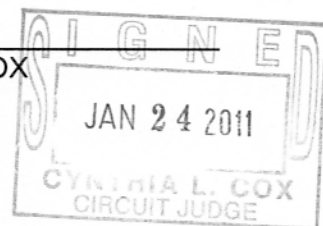
without verification in the complaint itself, it would never be clear what the affiant reviewed and what allegations they verified. The rule does not permit qualifying or limiting language. The complaint needs to be verified by an employee or officer of the plaintiff, by an employee or officer of its loan servicer, or by the attorney who files the case. Designations such as "authorized agent", "authorized signatory", "authorized officer", "representative of the plaintiff's servicer", "representative of the plaintiff" and the like are meaningless, insufficient and tell the reader nothing. *The rule requires a clean, plain statement of accuracy by a person who actually verifies the truth of the claims made, and who is identified as being in a position to actually do so.* This case seeks to foreclose a residential mortgage and was filed after the effective date of the rule amendment.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

1. This case is DISMISSED without prejudice. No other pleadings by the plaintiff will be permitted in this case, other than a request for rehearing if appropriate. If the plaintiff elects to file a new action to foreclose on the same property, *it must be filed under a new case number and a new filing fee will be required.*
2. The plaintiff may move for reconsideration within ten days, on the sole ground that the subject property is not residential property. A copy of the motion and any supporting memorandum must be provided to the undersigned. The Court may rule on the motion without a hearing. No hearing will be set unless determined by the Court to be necessary.
3. It is confiscatory of the Court's time to have to address this matter. Repeat violations by the same firm, or by the same attorney, may result in imposition of personal sanctions, and issuance of an order directed to the attorney or firm to show cause why that attorney or firm should not be prohibited from filing further foreclosure cases in this Court.
4. The Court reserves jurisdiction for all legal and proper purposes.

DONE AND ORDERED in Indian River County, Florida, on January 24, 2011.

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CYNTHIA L. COX  
Circuit Judge



Copies Furnished to:

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