

# Florida Court Confirms Substantial Compliance Standard Concerning Foreclosures

September 28, 2015

The Florida Second District Court of Appeal recently issued a long-awaited opinion in *Green Tree Servicing v. Milam*. Until this decision, the district courts in Florida had not spoken directly on the issue of whether strict compliance or substantial compliance applied to evaluating contractual conditions precedent in the mortgage foreclosure context. In *Milam*, the court held that mortgages are to be interpreted and applied just like other contracts. Because contractual conditions precedent are evaluated by a substantial compliance standard, the court held that standard applied equally to mortgages and, particularly, the notice requirements in paragraph 22 of the standard residential mortgage at issue. The court held that the right to reinstate and assert defenses are contingent rights, and that the letter adequately informed the borrowers of those rights by saying they "may" have them. The court also held that notifying the borrowers that their November monthly payment had been missed was sufficiently explicit to comply with paragraph 22. It held that inclusion of a payment that had not yet come due but would come due within the required 30-day notice period was an immaterial variation from the requirement of paragraph 22. Finally, the court rejected the argument that the absence of an address where payment could be sent constituted a failure to provide notice of the action required to cure the default. **The *Milam* opinion brings significant clarity, reason, and cohesion to the line of paragraph 22 cases of which it is the latest to this aspect of the mortgage foreclosure debate.** Once it is final, it will provide a useful tool in effecting the prompt adjudication of foreclosure cases on the merits rather than technicalities, and, importantly, restore to borrowers the important responsibilities of being free and reasonable agents capable of understanding basic notice letters.

# Authored By



Christopher Smart

## Related Practices

[Consumer Finance](#)

[Consumer Finance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.