

Florida Court Confirms Substantial Compliance Standard Concerning Foreclosures

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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.

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