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July 3, 2018

**MEMORANDUM**

To: Board of County Commissioners

From: Frances J. Moss, Chief Assistant County Attorney 

Re: Report and recommendation regarding civil action against Clay County (*Bank of America, N.A. v. William R. Terrell a/k/a William Reid Terrell, et al.*, Clay County Circuit Court Case No. 18-CA-401)

The County was served on June 21, 2018, as a defendant in the above-referenced case (the Foreclosure Proceeding) in which Bank of America, N.A. (the Foreclosure Plaintiff), seeks to foreclose a mortgage on certain real property located in Clay County, Florida. In the complaint, the Foreclosure Plaintiff seeks to foreclose a mortgage (the Mortgage) dated October 31, 2006, and recorded on November 30, 2006, in Official Records Book 2824, page 2046, public records of Clay County, Florida (the Public Records). Copies of the summons and complaint are available for inspection in the County Attorney's Office. The Foreclosure Plaintiff asserts that it is owed in excess of \$73,262.60 on the note secured by the Mortgage, representing the principal balance, interest and sums advanced to protect the security thereof.

The Property, according to the internet records of the Property Appraiser, is a single family dwelling with a metes and bounds legal description, the parcel being situated in Government Lot 3, Section 7, Township 7 South, Range 27 East, and having a street address of 5316 County Road 209 South, Green Cove Springs, Florida. According to the Property Appraiser's records, the Property has an assessed value of \$66,155.00, and is not homestead exempt.

The County has been named as a defendant in the Foreclosure Proceeding by virtue of two Orders entered by the Clay County Code Enforcement Magistrate against William Reid Terrell, both under Case No. CE-08-030, being the following:

(1) Order for Compliance dated February 7, 2008, and recorded on February 7, 2008, in Official Records Book 2989, page 327, of the Public Records; and

(2) Order Imposing Fine and Costs dated March 6, 2008, and recorded March 6, 2008, in Official Records Book 2997, page 1185, of the Public Records. This Order Imposing Fine states that Mr. Terrell is "ordered

to pay a fine in the amount of \$50.00 a day beginning February 22, 2008, and said fine shall continue to accrue until the Respondent comes into compliance or until judgment is rendered...."

The Foreclosure Plaintiff seeks to have the liens of the above-described Orders foreclosed in favor of the Mortgage. I have examined the Complaint and have concluded that it states a cause of action, meaning that if the Foreclosure Plaintiff proves up everything alleged and no one offers contrary evidence or asserts and proves a defense of some kind, then the Foreclosure Plaintiff is entitled to judgment as a matter of law. I have also examined the Mortgage itself, and do not find that on its face there is any basis to question its validity. Because these Orders were recorded after the Mortgage was recorded, and assuming that the Mortgage is valid and enforceable and that the Foreclosure Plaintiff can prove up the allegations of the Complaint, then the liens of these Orders appear to be inferior to the lien of the Mortgage.

Because it appears that the County has no legitimate claim to priority over the Mortgage, the liens will likely be foreclosed as against the Property. In that a defense would be pointless and a waste of resources, I recommend that no responsive pleading be filed on behalf of the County, and that the County allow a default judgment to be entered against it foreclosing the liens as to the Property. This would not have any effect on the validity of the liens except as they relate to the Property that is the subject of the Foreclosure Proceeding. The approval of the Consent Agenda upon which this item has been placed shall be deemed the approval of the foregoing recommendation.<sup>1</sup>

FJM/dpr

cc: Chereese Stewart, Economic Development Services Director  
Tonya George, Code Enforcement Department

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<sup>1</sup> Other possible courses of action for the handling of foreclosure actions in which the County is a defendant have been described at some length to the Board in the County Attorney's memorandum dated October 3, 1996, and considered by the Board at its October 10, 1996, meeting. If the Board desires to pursue another course of action in this particular case than has been recommended herein, then this item should be pulled from the Consent Agenda for further discussion and direction.