

## **Importance of Maintaining Original Note Modifications**

As we have [previously discussed](#), under Florida law, in a foreclosure action, a lender must either provide the original promissory note or, if the note was lost, stolen, or destroyed, follow the statutory procedure for reestablishing a lost note. However, as a recent decision from the Fourth District Court of Appeal highlights, **if a note has been modified, it is the original modified promissory note that must be entered into evidence as the operative note.**

In *Rattigan v. Central Mortgage Company*, the bank introduced the original promissory note in connection with its foreclosure action. The original note capped the principal balance owed. However, at trial, the testimony revealed that the loan had been modified, and a modified note had been executed which raised or eliminated the cap. The bank failed to introduce the original modified note into evidence, but, on the basis of trial testimony, obtained a foreclosure judgment for the higher principal balance.

The appellate court reversed the foreclosure judgment, holding that the bank was proceeding under a different note—the modified note—and thus violated the best evidence rule by failing to introduce the original modified note. The court held that testimony regarding the modification should not have been permitted absent the introduction of the modified note itself. Accordingly, the case was remanded for the entry of an involuntary dismissal.

This opinion serves as a reminder to lenders that where a note has been modified, the original modified note, as the operative promissory note, must be introduced or reestablished in order to proceed with foreclosure.