

To: ATTORNEYS WITH CASES IN THE LEXINGTON COUNTY COURT OF EQUITY
FROM: JAMES O. SPENCE, MASTER IN EQUITY

The following information may be helpful to you in handling your cases as efficiently as possible:

1. Documents Needed

- a. Record of Hearing – It should summarize the evidence presented to support the cause(s) of action plead in the complaint. All pertinent exhibits, including Notice of Hearing, should be attached to the Record of Hearing.
- b. Proposed Orders or Judgment of Foreclosure and Sale – It should include the parties who filed an Answer or made an appearance in the action. Please make sure it contains language stating: (1) in the event an agent of Plaintiff does not appear to bid at the time of sale, the property will be withdrawn from sale and sold at the next available sale's date, and (2) Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.
- c. Notice of Sale – Along with the requisite legal requirements, it should also contain language stating that Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale. Along with a self-addressed, stamped envelope
- d. Affidavit of Attorney's Fees – it should address the factors to be considered in awarding reasonable attorney's fees. Attach time sheet, etc. in contested cases.

2. Contested Cases

If a case becomes contested, please bring a copy of any and all responsive pleadings to the hearing. In order to dispose of these cases as efficiently as possible, I may coordinate a pretrial status meeting or telephone conference call with all parties prior to scheduling the hearing date. This will allow the issues to be discussed among all the parties at least once before appearing at the hearing.

Reminder: We do not have a court reporter therefore you will need to obtain one for contested hearings.

3. Installment Contracts

Per my reading of *Cody Discount and Lewis vs. Premium Investment Corporations*, please present testimony so that the proper remedy – termination or 30 day right of redemption and /or judicial sale- may be applied.

4. Summons and Rule to Show Cause must be served in any action against a Non-party occupant.
5. Review Orders and Notices of Sale to ensure **Lexington County Judicial Center** is named as place of sale and not Lexington County Court House.
6. Please review *Williamson v Middleton*, No. 26689 (S.C. Sup. Ct., July 27, 2009) (Shearouse Advance Sheet No. 33) “In Order to recover attorneys’ fees, a party must show that they actually and reasonably incurred the expenses. An award of attorney fees is improper if the party is not obligated to repay his counsel for the costs of litigation.”
7. Please remember that the MIE Office does not receive documents that are filed with the Clerk of Court unless we sign out the file and make a copy. Please cc us with copy of documents sent for filing.

GAL

I want to bring an issue to your attention. As you know we have foreclosures where one of the defendants may be in the military. When we examine the affidavit of service which is marked active military, and then a specific branch of service often named, (Army Air Force etc),it is required to have a military GAL appointed.

We've received answers from Military GALS that, in essence, state "I can't admit or deny-please protect rights under military act."

I'm concerned that such a response, when coupled with GAL not attending hearing, places the responsibility of investigation on the Court.

We are not equipped, nor able to perform investigations and searches to determine if a defendant has rights under either the

- (1) SC Code 25-1-2260 or
- (2) SSCRA

If we received an affidavit indicting military service and there is no affirmative investigation by GAL or plaintiff law firm confirming (a) no or (b) non-qualifying military service, then based upon the evidence, I will have to deny request for foreclosure.

Reminder: We have a "List Serve" e-mail group that we send out information to attorneys and their staff. If you would like to be added to this list please e-mail Gail Faircloth at gfaircloth@lex-co.com

We also have MIE Bench Bar meetings 4 times a year (open to all). Please e-mail Gail Faircloth at gfaircloth@lex-co.com if you wish to be added to this list