

CHAPTER 11: STAYS PENDING REVIEW

A. Introduction.

Once a judgment has been entered against a party, the plaintiff can try to collect on the judgment (if the judgment is for money) or enforce the order. The plaintiff can collect or enforce a judgment, even if the other party appeals. The party who appeals (the “appellant”) may want to try to “stay” enforcement of, or execution on, the order or judgment. A stay prevents the winning party from trying to collect on the judgment or enforce the order during the appeal. The appellant is not required to seek a stay, but a stay can help protect the appellant from collections and other enforcement proceedings until the appellate court decides the appeal. It is important to remember that filing a motion for a stay generally will not stay the case unless or until the court rules on and grants the stay motion. In a mortgage foreclosure action, for example, even if an appeal has been filed, the lower court can still sell the property at a foreclosure sale unless the appellant obtains a stay of the proceedings. In some types of cases, the stay may be automatic if certain requirements and procedures are followed.

B. Lower Tribunal’s Continuing Power to Handle “Stay” Motions.

Usually, a party seeking a stay during an appeal must file a motion in the lower court or administrative agency (lower tribunal) that entered the order or judgment that the party is appealing. Under Florida Rule of Appellate Procedure 9.310 and Section 45.045, Florida Statutes, the lower tribunal has the power to grant, deny, or modify the terms of a stay, even after a notice of appeal has been filed. Sometimes, the appellate court may consider a stay request first, but the party who wants to stay the order or judgment that is being appealed is usually required to first file a motion requesting a stay in the lower tribunal that decided the case. After the lower tribunal has ruled on a motion for a stay, that decision can be reviewed by the appellate court. *See* Florida Rule of Appellate Procedure 9.310(a)&(f).

C. Factors for Imposing a “Stay” Pending Review, Generally.

A lower tribunal must try to protect the party who won. If the order appealed is for something other than a specific amount of money, the lower tribunal will probably require the losing party to post a “bond” for a reasonable amount of money that the judge thinks will protect the winning party until the appeal is finished. *See* Florida Rule of Appellate Procedure 9.310(a). A bond is either cash money deposited in the court registry, or a formal promise to pay a certain amount of money that is guaranteed by a surety company. A surety company is like an insurance company. The clerk’s office of the court where the case is pending can provide the names of Florida approved surety companies, which have their own requirements for obtaining a bond.

D. Money Judgments.

Florida Rule of Appellate Procedure 9.310(b)(1) generally provides that if the order being appealed is solely for the payment of money, a party can obtain an automatic stay pending appeal “by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest.” *See* Florida Rule of Appellate Procedure 9.310(b)(1).

Some Florida courts have ruled that the only way to stay execution (the enforcement of a money judgment) is by posting cash or a surety bond in the amount required by Rule 9.310, and this may remain a subject of disagreement in certain courts. But Section 45.045(2), Florida Statutes, seems to give the lower tribunal the power to reduce the amount of a bond required to stay a money judgment, and/or to set other conditions for the stay with or without requiring a bond. In addition, Section 45.045(1), Florida Statutes, generally states that, except in certified class actions, the amount of a bond needed to obtain a stay pending appeal may not be more than \$50 million for each appellant, regardless of the amount of the judgment being appealed (although this

number may change in the future). If you are asking a court to apply Section 45.045, Florida Statutes, doing additional research will help you determine what your local courts have decided.

According to Section 45.045, Florida Statutes, if the lower tribunal reduces the bond amount or allows a stay on other conditions without requiring a bond, the party who won in the lower tribunal (the “appellee”) is allowed to take discovery to make sure that the appellant has not hidden or spent money in a way that would make collection of a judgment more difficult. If it is discovered that the appellant has hidden or spent money, the lower tribunal may then, upon request from the appellee, change the amount of the bond or require the appellant to post a full bond in the amount required by Florida Rule of Appellate Procedure 9.310.

Unless the lower tribunal allows a bond in a reduced amount or orders a stay on other conditions without requiring a bond under Section 45.045, Florida Statutes, the bond amount required is the total amount stated by the judgment, plus two years of interest at the statutory interest rate. *See* Florida Rule of Appellate Procedure 9.310. The current interest rate can be obtained from the local court clerk, the Florida Department of Financial Services’ website, or an authorized surety company. Posting a bond for the correct amount should automatically stay execution or the enforcement of the judgment. A party posting a bond should send all parties a “Notice of Filing Supersedeas Bond,” so that everyone knows about the stay. In a mortgage foreclosure case, it is especially important for a party who plans to appeal to move for a stay order in the lower court as soon as possible and prior to the judicial foreclosure sale scheduled in the final foreclosure judgment.

E. Public Entities and Officers.

In a civil case, if the judgment is against the state, a public officer in an official capacity, a board, commission, or other public entity, and that public entity files a timely appeal, the public entity will get an automatic stay and does not have to post a bond. The lower tribunal does have

the authority, however, to remove or modify this automatic stay, and that decision can be reviewed by the appellate court. If the order being appealed relates to a public records or public meeting issue, and requires the meeting or records to be open to the public, an appeal of that order by a government agency will activate the automatic stay. This stay will only be in effect for 48 hours, unless a court decides otherwise upon request by the government agency. *See* Florida Rule of Appellate Procedure 9.310(b)(2)&(f).

F. Review of a Stay Order.

After the lower tribunal or administrative agency decides a stay issue, the order relating to the stay can be reviewed and changed by the appellate court. A new appeal is not necessary. Instead, the party seeking appellate review files a motion in the appellate court in which the appeal was filed to review the lower tribunal's stay order. The party seeking appellate review of a stay order must identify facts to support an argument that the lower tribunal was wrong ("abused its discretion") when it denied or granted the stay motion. *See* Florida Rule of Appellate Procedure 9.310(f).

G. Administrative Cases.

Generally, filing a notice of appeal of an administrative agency's action or final order does not automatically stay the order or judgment being appealed. In any such administrative case governed by Chapter 120, Florida Statutes (the "Administrative Procedure Act"), a stay pending appeal can usually be granted either by the administrative agency or the appellate court. With certain exceptions, a stay should usually be sought by first filing a motion for a stay in the administrative agency. Either party can file a motion asking the appellate court to review the agency's ruling on a motion for a stay. *See* Florida Rules of Appellate Procedure 9.190 and 9.310.

A party seeking to stay an agency order suspending or revoking a license (other than a driver's license) must file the motion for stay directly in the appellate court. The agency must

respond to the motion for a stay within 10 days. The party seeking a stay can also ask the court to order the administrative agency to respond faster by filing another motion explaining why the court should quickly rule on the motion for a stay. The appellate court must grant the stay if the agency does not respond. If the agency does respond, it must prove to the appellate court that a stay would cause a probable danger to the health, safety, or welfare of the state. Otherwise, the court will grant the stay. *See Florida Rules of Appellate Procedure 9.190 and 9.310.*

Some administrative revocation and suspension orders cannot be stayed. For example, if a driver refuses a blood, breath, or urine test following a traffic stop, this results in an administrative suspension of the driver's license. The driver's license suspension generally cannot be stayed during an appeal of the suspension/revocation order. *See Florida Rule of Appellate Procedure 9.190.*

H. Length of the Stay.

A stay lasts until an appellate court issues its mandate after its decision in the case is final. The stay ends when the appellate court issues its mandate, even if one of the parties asks the Florida Supreme Court to review the appellate court's decision. The only method for obtaining a longer stay once an appellate court decides a case and rules upon any motions for rehearing, certification or clarification, is to file a motion to stay the mandate in the appellate court. Otherwise, the court clerk will usually just send the mandate to the parties and to the lower tribunal 15 days after an opinion is final (which will either be 15 days after the opinion if no post-decision motions are filed, or 15 days after the appellate court decides a timely-filed motion for rehearing, certification, or clarification).

I. Mortgage Foreclosure Stays.

A mortgage foreclosure judgment generally is not viewed as an order solely for the payment of money because it is secured by the mortgage on the real property. Accordingly, an

appellant cannot rely on the automatic stay provisions for money judgments in Florida Rule of Appellate Procedure 9.310(b)(1). To obtain a stay pending appeal in a mortgage foreclosure case, the appellant should file a motion to stay the foreclosure judgment and sale in the lower court as soon as possible and prior to the judicial foreclosure sale scheduled in the final foreclosure judgment. The trial court has broad discretion to decide whether to grant a motion to stay a foreclosure case pending appeal, and will consider, among other factors, the present fair market value of the property, any other liens on the property, and any waste or other damages that could be caused by delaying the foreclosure sale for the appeal. Although a mortgage foreclosure judgment does not fit neatly within the formula for money judgments in Florida Rule of Appellate Procedure 9.310(b)(1), the trial court may use that bond formula as a yardstick for determining the amount of a bond. If the order on appeal is affirmed or appellate review dismissed, the plaintiff generally may also collect any interest that accumulated on the bond during the appeal as damages for the delay in the case.

J. Conclusion.

Because filing an appeal usually does not automatically stay execution or enforcement of most orders and judgments, filing a motion for a stay is a very important way to protect the rights of an appellant while the appeal is pending. In addition to this Chapter of the Handbook, the appellant seeking a stay should also review Florida Rules of Appellate Procedure 9.310 and 9.190, Section 45.045, Florida Statutes, and recent cases that discuss those rules and the statute.

Current through June 2016

Copyright: The contents of this Pro Se Appellate Handbook© 2007, Florida Appellate Practice Section, are not available for sale or commercial exploitation. Electronic copies may be obtained at www.flabarappellate.org

