

**CS/SB 1890** by **JU, Latvala**; (Compare to CS/CS/H 0213) Mortgage Foreclosure Proceedings

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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Richter, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Monday, February 27, 2012  
**TIME:** 4:45 —6:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 1890</b> Judiciary / Latvala (Compare CS/CS/H 213, H 1149)	Mortgage Foreclosure Proceedings; Specifying the limitation period for initiating an action to collect a deficiency following the foreclosure of certain dwellings; providing for application to existing causes of action; specifying requirements for a holder of a mortgage to provide an estoppel statement to certain persons requesting the payoff amount for the mortgage; requiring a court to treat a challenge to a final judgment of foreclosure as a claim for monetary damages under certain circumstances; specifying security that may be determined by the court as adequate protection against a loss by another person seeking to enforce the mortgage, etc.  JU     02/20/2012 Fav/CS BI     02/27/2012 Fav/CS	Fav/CS Yeas 6 Nays 4

Other related meeting materials

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1890

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Mortgage Foreclosure Proceedings

DATE: February 23, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Johnson/Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill streamlines the foreclosure litigation process. The bill revises a number of laws affecting foreclosure in an attempt to remove disincentives to moving forward with a foreclosure action. Specifically, the bill streamlines the foreclosure litigation process in the following ways:

- Requires plaintiffs to provide relevant information to support a foreclosure action and file such information at the time of filing a foreclosure.
- Reduces the amount of time within which a lender may pursue a deficiency judgment against a borrower after a foreclosure sale.
- Expands the persons to whom a lender must provide an “estoppel statement” to include a holder of an interest in the mortgaged property. An “estoppel statement” provides information on the unpaid balance of a loan and other relevant information to expedite pay-off.
- Places in provisions of statute that deal with foreclosure, the procedures for a lender to establish a lost note.
- Limits the remedies available in an action to set aside a final judgment of foreclosure to monetary damages under certain circumstances involving negotiable instruments.
- Establishes a mechanism for courts to identify abandoned properties.

- Requires certain persons to execute instruments acknowledging the satisfaction of liens and judgments and to provide a certified copy of the recorded satisfaction to the person who made the full payment.
- Requires a person who receives full payment of a judgment lien to deliver a statement to the judgment debtor specifying that the lien has been satisfied and released.
- Specifies the required contents of a foreclosure complaint.
- Revises procedures and expands the class of persons who seek an expedited foreclosure action.
- Revises procedures for a show cause why payments should not be ordered during the pendency of a foreclosure action to clarify that the second type of proceeding only applies to an action for a mortgage foreclosure on a property other than a homestead.

The bill creates the following sections of the Florida Statutes: 701.045, 702.015, 702.036, 702.11, 702.13, and two undesignated sections of Florida law.

This bill amends the following sections of the Florida Statutes: 95.11, 701.04, 702.06, and 702.10.

## II. Present Situation:

Approximately 14 percent of all Florida mortgage loans<sup>1</sup> were in foreclosure<sup>2</sup> as of December 31, 2011.<sup>3</sup> In contrast, the percentage of all U.S. loans in the foreclosure process at the end of the fourth quarter 2011 was 4.38 percent.

### Litigating a Foreclosure Action

Foreclosure is a remedy that a lender initiates when a borrower defaults or fails to make payments on his or her mortgage. The mortgage is a contract between the borrower and lender.<sup>4</sup> Foreclosure of a mortgage is a civil action in Florida that is filed in the county where the property is located.<sup>5</sup> Typically, the complaint alleges that the plaintiff, as holder of the note and mortgage, seeks to foreclose the mortgage and note on the identified parcel of real property. The plaintiff must serve the complaint on all parties affected by the action. A notice of *lis pendens* is recorded in the records of the county where the property is located to give notice to creditors and others whose interests may be affected by the pending foreclosure litigation. After a *lis pendens* is filed, any subsequently created lien may not be enforced against the property unless the holder of that lien intervenes in the foreclosure proceedings within 30 days.<sup>6</sup>

Litigating a foreclosure action is comparable to litigating any other civil action in Florida.<sup>7</sup> Elements that are essential to pleading a foreclosure complaint include: the execution and date of

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<sup>1</sup> These loans would include prime fixed, prime adjustable rate, subprime fixed, FHA, and VA mortgages.

<sup>2</sup> Also known as the foreclosure inventory rate.

<sup>3</sup> National Delinquency Survey Results Q4 2011, Mortgage Bankers Association, February 16, 2012.

<sup>4</sup> See e.g., *Gulf Life Ins. Co. v. Pringle*, 216 So. 2d 468 (Fla. 2d DCA 1968), and *Guynn v. Brentmoore Farms, Inc.*, 253 So. 2d 136, 138 (Fla. 1st DCA 1971).

<sup>5</sup> *Georgia Casualty Co. v. O'Donnell*, 109 Fla. 290, 291, 147 So. 267, 268 (Fla. 1933).

<sup>6</sup> Section 48.23(1)(d), F.S.

<sup>7</sup> See Kendall Coffey, *Foreclosures in Florida: Remedies, Defenses and Liabilities* (second edition), s. 13.01 (2008).

delivery of the note and mortgage along with their recordation; attachment of the note and mortgage as exhibits to the complaint; a legal description of the property; an allegation that the mortgagee (lender) presently owns and holds the note and mortgage; identification of the person holding title to the property; identification of the person holding possession of the property; a description of the default, along with a statement of the amount of principal due and the date from which interest is due; a statement that the mortgage has been accelerated; and reference to the hiring of an attorney along with any attorney's fees and other costs for the suit.<sup>8</sup>

In Florida, the proper party to commence a foreclosure complaint is the holder of the note and mortgage.<sup>9</sup> The Florida Supreme Court amended the Rules of Civil Procedure in 2010 to require verification of mortgage foreclosure complaints involving residential property.<sup>10</sup> The Court also adopted a new form Affidavit of Diligent Search and Inquiry "to help standardize affidavits of diligent search and inquiry and provide information to the court regarding the methods used to attempt to locate and serve the defendant."<sup>11</sup> After the complaint is filed and served on the borrower, and any other party affected by the foreclosure action such as junior lienholders, under the Florida Rules of Civil Procedure, the borrower has 20 days to serve an answer or respond with a motion.<sup>12</sup> A foreclosure action that is based on defective service may be vacated years after the judgment is entered and the property sold.<sup>13</sup>

The usual rules for discovery and for scheduling the trial and trying the case also apply to foreclosure actions. The action proceeds just like any other civil action. Once the matter is litigated, the court may issue a final judgment of foreclosure that adjudges principal, interest, taxes, costs, and attorney's fees.<sup>14</sup> In an effort to accommodate the increased number of foreclosure filings and improve case processing, the Court adopted a Motion to Cancel and Reschedule Foreclosure Sale form that requires plaintiffs in a foreclosure to explain the reason for cancellation and request that the court reschedule the sale to provide better case management of foreclosure sales.<sup>15</sup> Under s. 45.031(1)(a), F.S., a judicial sale is scheduled following the order of judgment, and the sale is public.<sup>16</sup> Documentary stamps are paid on the sale.<sup>17</sup> If no objections

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<sup>8</sup> *Id.* at s. 11.01 (discussing the use of Fla. R. Civ. P. Form 1.944, relating to mortgage foreclosure). See also Fla. R. Civ. P. 1.130(a), which requires all bonds, notes, bills of exchange, contracts, accounts, or documents upon which an action may be brought or defense made to be incorporated in or attached to the relevant pleading or complaint.

<sup>9</sup> *Chem. Residential Mortgage v. Rector*, 742 So. 2d 300, 300 (Fla. 1st DCA 1998), *rev. denied*, 727 So. 2d 910 (Fla. 1999), and *Philogene v. ABN Amro Mortgage Group, Inc.*, 948 So. 2d 45, 46 (Fla. 4th DCA 2006). Florida Rule of Civil Procedure 1.210(a) permits an action to be prosecuted in the name of the authorized person without joinder of the party for whose benefit the action is brought. See also *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1183-84 (Fla. 3d DCA 1985), *rev. denied*, *S.E.L. Maduro, Inc. v. Kumar Corp.*, 476 So. 2d 675 (Fla. 1985).

<sup>10</sup> See *In re Amendments to Fla. Rules of Civil Pro.*, 44 So. 3d 555, 556 (Fla. 2010). The amendments provide an incentive for the plaintiff in a foreclosure case to appropriately investigate and verify its ownership of the note and the right to enforce the note and ensure that the allegations in the complaint are accurate; conserve and prevent the wasting of judicial resources; and give trial courts greater authority to sanction plaintiffs who make false allegations. *Id.*

<sup>11</sup> *Id.* at 556-57

<sup>12</sup> Fla. R. Civ. P. 1.510(a).

<sup>13</sup> See *Wagner v. Roberts*, 320 So. 2d 408 (Fla. 2d DCA 1975), *cert. denied*, 330 So. 2d 20 (Fla. 1976).

<sup>14</sup> See Fla. R. Civ. P. Form 1.996(a), Final Judgment of Foreclosure. See also *In re Amendments to Fla. Rules of Civil Pro.*, 44 So. 3d at 558 (the form was amended to add notice to lienholders and provide directions to property owners as to how to claim a right to funds remaining after public auction, and to allow the clerk of court to electronically conduct judicial sales).

<sup>15</sup> See Fla. R. Civ. P. Form 1.996(b), Motion to Cancel and Reschedule Foreclosure Sale. See also *In re Amendments to Fla. Rules of Civil Pro.*, 44 So. 3d at 557-58.

<sup>16</sup> See *Heilman v. Suburban Coastal Corp.*, 506 So. 2d 1088 (Fla. 4th DCA 1987), *rev. denied*, 518 So. 2d 1275 (Fla. 1987).

<sup>17</sup> Section 201.02(9), F.S. (the tax assessed is based on the highest and best bid at the foreclosure sale).

arise to the sale, the clerk issues a certificate of title to the purchaser. If the proceeds of the sale fall short of satisfying the judgment, the lender may file a post-foreclosure deficiency claim, and there is a 5-year statute of limitations on pursuing a legal action to enforce the claim.<sup>18</sup>

### **Fast-Track Foreclosure Procedure under s. 702.10, F.S.**

#### **Section 702.10, F.S., involves two types of proceedings.**

##### ***Section 702.10(1), F.S.***

The first proceeding is initiated in a hearing based on an order to show cause why the foreclosure judgment should not be entered at that hearing.<sup>19</sup> The “order to show cause” hearing must be scheduled at least 20 days following service of the order or 30 days after service by publication. Any final judgment of foreclosure entered under s. 702.10(1), F.S., is for in rem relief<sup>20</sup> only, but it does not preclude the entry of a deficiency judgment where otherwise allowed by law.

The judge must verify that the complaint filed pursuant to s. 702.10(1), F.S., states a cause of action. If the judge finds the complaint is verified, the judge must issue an order to the defendant to show cause why a final judgment should not be entered. If the defendant waives the right to be heard, the judge must promptly enter a final judgment of foreclosure.<sup>21</sup> Attorney’s fees may be adjudged no greater than 3 percent of the principal amount owed in a foreclosure in which the defendant waives the right to be heard.<sup>22</sup> If the defendant files any defenses by a motion, or by a verified or sworn answer at or before the hearing, it constitutes cause and precludes the entry of a final judgment and is sufficient to deny summary relief.<sup>23</sup>

##### ***Section 702.10(2), F.S.***

The second type of proceeding, under s. 702.10(2), F.S., specifies a procedure to be used for nonresidential real estate in an action for foreclosure. A defendant must show cause why an order to make payments to the mortgagee (lender) during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered. The order to show cause must detail the requirements of s. 702.10(2), F.S. The “order to show cause” hearing must be scheduled at least 20 days following service of the order or 30 days after service by publication. If service of process has already been made on the defendant, the order may be served in a manner provided in the Florida Rules of Civil Procedure. If the defendant waives the right to be heard on the order, the court may promptly enter an order requiring payment or an order to vacate.<sup>24</sup> At the “order to show cause” hearing, the court may enter an order requiring the defendant to make payments in intervals pending the determination of the action based on the likelihood that the mortgagee will prevail in the foreclosure action.<sup>25</sup> If the court enters an order requiring

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<sup>18</sup> Sections 702.06 and 95.11(2), F.S.

<sup>19</sup> Section 702.10(1), F.S.

<sup>20</sup> “An action in which the named defendant is real or personal property.” BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>21</sup> Section 702.10(1)(d), F.S.

<sup>22</sup> Section 702.10(1)(c), F.S.

<sup>23</sup> Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 31:7 (2007 edition).

<sup>24</sup> Section 702.10(2)(c), F.S. *See also* s. 702.065(2), F.S., which provides for summary adjudication of attorney’s fees in mortgage foreclosure when a default is entered.

<sup>25</sup> Section 702.10(2)(d) and (e), F.S.

payments, the order must also provide that the lender is entitled to possession of the premises if the defendant fails to make payment as required by the order unless the court finds good cause to order some other method of enforcement of the order.

### **Statute of Limitations for Filing Deficiency Judgments**

In Florida, the statute of limitations for the right to enforce a claim of a deficiency judgment following foreclosure is 5 years. Some states,<sup>26</sup> such as Idaho, Nebraska, New Jersey, Oklahoma, and Utah have a three-month limitation period for filing mortgage deficiency claims with a court.<sup>27</sup> If the mortgage holder does not initiate legal action within this period, the deficiency claim is permanently barred. Other states,<sup>28</sup> such as Montana, Nevada, and New York, require the mortgage holder to seek a deficiency when it forecloses or in the confirmation of sale proceedings.<sup>29</sup> Ohio, a judicial foreclosure state, allows the enforcement of a deficiency judgment up to 2 years from the date of the confirmation of any judicial sale.<sup>30</sup> North Carolina, which allows judicial and nonjudicial foreclosures, provides for the enforcement of a deficiency judgment within one year after the foreclosure.<sup>31</sup> Texas, a judicial and nonjudicial foreclosure state, limits the enforcement of a deficiency judgment within 2 years of the foreclosure sale.<sup>32</sup>

### **Release of Mortgage Information**

Chapter 701, F.S., allows the person who has a mortgage (the mortgagor) to obtain from the mortgage holder (the mortgagee) information about the unpaid balance of the loan secured by the mortgage within 14 days after a written request.<sup>33</sup> The information requested is returned in a document known as an estoppel letter. Generally, only the mortgagor is able to receive this information from the mortgagee.

Current law does not require the mortgagee to provide information relating to the mortgagor's loan to anyone other than the mortgagor of the encumbered property. However, persons who may have a legitimate interest in knowing the loan information include, an heir or devisee through probate, homestead laws, a surviving spouse that was not on the note, or a junior lienholder that has foreclosed on the property against the mortgagor.

### **Privacy Laws Related to the Release of Mortgage Information**

According to advocates of the bill, some mortgagees are not furnishing the mortgage information citing the privacy requirements of the federal Gramm-Leach-Bliley Act. The federal Gramm-Leach-Bliley Act, 15 USC ss. 6801-6809, addresses privacy requirements and disclosure or

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<sup>26</sup> John Rao and Geoff Walsh, *Foreclosing a Dream—State Laws Deprive Homeowners of Basic Protections*. National Consumer Law Center, Inc., February 2009.

<sup>27</sup> *Id.* Idaho, Nebraska, and Utah are nonjudicial foreclosure states. New Jersey is a judicial foreclosure state. Oklahoma has judicial and nonjudicial foreclosure.

<sup>28</sup> John Rao and Geoff Walsh, *Foreclosing a Dream—State Laws Deprive Homeowners of Basic Protections*. National Consumer Law Center, Inc., February 2009.

<sup>29</sup> *Id.* Montana and Nevada are a nonjudicial foreclosure state. New York is a judicial foreclosure state.

<sup>30</sup> Ohio Rev. Code Ann. ss. 2329.17 and 2329.20.

<sup>31</sup> NCGSA s. 1-54.

<sup>32</sup> Tex. Popr. Code Ann s. 51.003.

<sup>33</sup> Section 701.04, F.S.

nonpublic personal information. Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice disclosing the institution's privacy policy that complies with applicable federal law.<sup>34</sup> Under the Gramm-Leach-Bliley Act, states may enact laws to require financial institutions to disclose loan information to persons other than the mortgagor.<sup>35</sup>

Pursuant to s. 655.059, F.S., the records of a financial institution<sup>36</sup> are confidential and are made available for inspection and examination only in specifically enumerated circumstances or to specifically listed individuals or entities. Under current law, if the mortgagee is a financial institution, the mortgagee may violate privacy laws and face penalties for releasing the mortgagor's mortgage information.

### III. Effect of Proposed Changes:

**Section 1. Limitation on Deficiency Claims.--** Amends s. 95.11, F.S., to limit the right to enforce a claim for a deficiency judgment, following the foreclosure of an owner-occupied, one-family to four-family dwelling unit, from 5 years to 1 year.

**Section 2. Applicability of Limitation on Deficiency Claims.--** Creates an undesignated section of law. The section states that the amendments to s. 95.11, F.S., made by the bill, which limit the right to enforce a claim of a deficiency judgment, following the foreclosure of an owner-occupied, one-family to four-family dwelling unit, from 5 years to 1 year, apply to any action commenced on or after July 1, 2012, regardless of when the cause of action accrues. Any action that would have been barred before the bill's changes to the statutes of limitations applicable to deficiency judgments may be commenced no later than 5 years after the action accrues and no later than July 1, 2014. If the action is not commenced by July 1, 2014, it is barred.

**Section 3. Estoppel Statement.--** Amends s. 701.04, F.S., to modify and update the current requirement for a lender to provide the mortgagor (borrower) with an estoppel statement setting forth the unpaid balance of a mortgage in order to facilitate sales and refinancing by expanding the parties who can request the estoppel statement to include others who hold an interest in the property (e.g., the purchaser upon foreclosure of a subordinate lien).<sup>37</sup>

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<sup>34</sup> See 15 U.S.C.A. § 6803 which provides requirements for the disclosure of a financial institution's privacy policy.

<sup>35</sup> "[T]o comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law." 15 U.S.C. § 6802(e)(8).

<sup>36</sup> Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."

<sup>37</sup> The lender has a separate obligation to provide certain information free of charge to the borrower. Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 and the Federal Truth in Lending Act, 15 U.S.C. § 1641. The provision of such information is without restriction as to the number of requests. *Id.*

The estoppel letter must include the following detail:

- Unpaid amounts due as of the date specified in the request;
- A minimum of 20 days of per diem interest after that date;
- Certification that the party providing the estoppel statement is the holder of the original promissory note securing the property or is the entity entitled to enforce the note under s. 673.3011, F.S.; and
- A commitment that upon receipt of funds, the entity will return a recorded mortgage satisfaction and the original promissory note marked “paid in full” or a lost note affidavit and adequate protections as required by s. 702.11, F.S., which is created by the bill.

If the person or party executing the satisfaction is not shown as the owner of the mortgage in the official records, the satisfaction must be supplemented by an affidavit that the person executing the satisfaction is in physical possession of the original promissory note. If the party providing the estoppel statement was entitled only to enforce the note, but was not in possession of the note, the person must provide in the affidavit the specific factual basis for such authority.

The lender may not charge a fee for the preparation or delivery of the first two estoppel statements requested for any one mortgage in any calendar month. Subsequent owners of the property, creditors, and lienholders may rely on and enforce the estoppel statement.

The payor of the mortgage may designate in writing where the original note should be returned. If the satisfaction of the mortgage, the original promissory note, the lost note affidavit along with evidence of adequate protections are not delivered within 60 days, the party who received payment on the note or mortgage is subject to a penalty. The penalty is \$100 per day until the documents are delivered up to \$5,000.

**Section 4. Cancellation of Liens and Judgments.--** Creates s. 701.045, F.S., to provide requirements for liens other than a mortgage or judgment, which are comparable to the requirements in section 3 of the bill when such liens are fully paid. The creditor or assignee to whom payment has been made must execute a written instrument acknowledging satisfaction of the lien or judgment, have the instrument acknowledged or proven and recorded in the official records in the proper county. Within 60 days after receipt of payment of the lien or judgment, the person required to acknowledge satisfaction must send a certified copy of the recorded satisfaction to the person who made the full payment. Whenever a writ of execution has been issued and the judgment upon which it was issued has been fully paid, the party receiving payment must request, in writing and addressed to the sheriff, return of the writ of execution as fully satisfied. Additionally, the party receiving payment of any judgment must comply with s. 55.206, relating to statements releasing a judgment lien.

**Section 5. Elements of Complaint; Lost, Destroyed, or Stolen Note Affidavit.--** Creates s. 702.015, F.S., to reschedule the timing of aspects of the foreclosure process, for such actions involving residential real property. The complaint must contain express allegations at the commencement of the proceeding that the plaintiff is the holder of the original note secured by the mortgage or allege with specificity the factual basis by which the plaintiff may enforce the note. The complaint must describe the authority of the plaintiff with specificity. The plaintiff must file the original promissory note with the court as a condition precedent to filing the

complaint for foreclosure, certifying under penalty of perjury that the plaintiff is in physical possession of the original promissory note. The certification must set forth the physical location of the note, name, and title of the individual giving the certification, the name of the person who personally verified physical possession, and the time and date on which possession was verified.

If the plaintiff seeks to enforce a lost, destroyed, or stolen instrument, an affidavit executed under penalty of perjury must be attached to the complaint. The affidavit must:

- Detail a clear chain of all assignments for the promissory note that is the subject of the action;
- Set forth all facts showing the plaintiff is entitled to enforce the note; and
- Include pertinent exhibits.

**Section 6. Finality of Mortgage Foreclosure Judgment.**--Creates s. 702.036, F.S., to provide for monetary damages or other appropriate relief in an action or proceeding in which a party seeks to set aside, invalidate, or challenge the validity of a final judgment of foreclosure of a mortgage, or to reestablish a lien or encumbrance on the property in abrogation of the final judgment of foreclosure of a mortgage. In such case, the court must treat the request for relief solely as a claim for monetary damages and may not grant relief that adversely affects the quality or character of the title to the property if the following circumstances exist:

- A final judgment of foreclosure of a mortgage has been entered as to a property;
- All applicable appeal periods have run as to the final judgment of foreclosure and an appeal has not been filed or, if an appeal has been filed, it has been finally resolved; and
- The party seeking relief from the final judgment of foreclosure has been properly served.

A person who is not a party to the foreclosure but who claims to be the actual holder of the promissory note secured by the foreclosed mortgage does not have a claim against the foreclosed property after it has been conveyed for valuable consideration to a person not affiliated with the foreclosed owner or the foreclosing lender.

The actual holder of the note is not precluded from pursuing recovery from any adequate protection given under s. 673.3091, F.S., by the person who enforced the note or from the party who wrongfully claimed to be the owner or holder of the promissory note or maker of the note or from any other person against whom the actual holder of the note may have a claim relating to the note.

**Section 7. Deficiency Decrees.**-- Amends s. 702.06, F.S., to bar a party from pursuing a deficiency judgment if not commenced within 1 year after the sale date of mortgaged property pursuant to a court foreclosure sale or short sale. The amount of the deficiency judgment may not exceed the difference between the judgment amount or, in the case of a short sale, the outstanding debt and the fair market value of the property on the date of the sale. The amount of the deficiency judgment may be set off by the amount collected by the servicer or lender pursuant to any mortgage insurance held on the property purchased by the borrower.

With respect to an owner-occupied, one-family to four-family dwelling unit, the party to whom a deficiency is owing may move for the entry of a deficiency judgment in the foreclosure action or

file a separate action for collection of the deficiency. If a separate action is pursued, it must be filed within 1 year after the property has vested in the foreclosing lender or purchaser at the foreclosure sale. The separate action must be filed within 1 year after the property has vested in the foreclosing lender or other purchaser at the foreclosure sale.

The complainant has the right to recover the deficiency unless the court in the foreclosure action has granted or denied a claim for a deficiency judgment. If a deficiency is not pursued within 1 year after the property has vested in the foreclosing lender or other purchaser at the foreclosure sale, the vesting of the property or proceeds of sale must be to be in full satisfaction of the judgment debt. Under these circumstances, the right to recover any deficiency is extinguished. The authority of the court to determine the entitlement to any assets held by a receiver or assignee of rents is not restricted.

**Section 8. Order to Show cause hearings.--** Amends s. 702.10, F.S., to revise the requirements for a fast-track mechanism to litigate mortgage foreclosure involving two types of proceedings.

**Foreclosure on an Expedited Basis Under s. 702.10(1), F.S. by a Lienholder**

The first type of proceeding involves a order to show cause why a final judgment should not be issued in a foreclosure case on an expedited basis.

Under the revised procedure, any lienholder, not just the senior mortgagee, may initiate the procedure. A “lienholder” includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or homeowners’ association, may file a lien against the real property subject to foreclosure.

Under the modified procedure, a filing of a request for review may be filed with the court in chambers and without a hearing. If the court finds the request for review is verified and complies with the requirements for a foreclosure complaint, the court must promptly issue an order directed to the other parties named in the foreclosure complaint to show cause why a final judgment of foreclosure should not be entered.

The order must set the date and time for a hearing on the order to show cause. The date of the hearing may not be sooner than 20 days after the service of the order. The hearing must be held within 90 days after the date of service. The order must:

- State that the filing of defenses by a motion, responsive pleading, affidavits, or other papers before the hearing to show cause may constitute cause for the court not to enter final judgment.
- State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.
- State that if a defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing will be used to consider and such evidence and argument as may be presented by the defendant.
- State that the court may enter an order of final judgment of foreclosure, which must be based on clear and convincing evidence and the arguments presented.
- State that if defendant fails to appear at the hearing to show cause or fails to file defenses or an answer not contesting the foreclosure, the defendant may be considered to have waived the right to a hearing, and the court may enter a default against the defendant, and if appropriate, a final judgment of foreclosure ordering the clerk to conduct a foreclosure sale.
- Attach the form of the proposed final judgment of foreclosure, which the movant requests the court to enter at the hearing on the order to show cause. The form may contain blanks for the court to enter the amounts due.
- Require the party seeking final judgment to serve a copy of the order to show cause on the other parties as specified in the bill.

If a party has been served with the complaint and the original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure. If a defendant has not been served with the complaint or original process, the order to show cause, together with the summons and a copy of the complaint, must be served on the party in the same manner as the original process.

The modified “order to show cause” procedure may run simultaneously with other court procedures. If the court determines, based upon clear and convincing evidence and the arguments presented, to support entry of a final judgment of foreclosure, the court must enter a final judgment of foreclosure ordering the clerk to conduct a foreclosure sale.

### **Order to Show Cause Payments During Pendency of Foreclosure Action Under s. 702.10(2), F.S.**

The second type of proceeding under s. 702.10(2), F.S., deals with the issuance of an order to show cause why payments should not be entered during the pendency of a foreclosure action.

Section 702.10(2), F.S., is amended to clarify that the second type of proceeding does not apply to an owner-occupied residence. Subsection 702.10(2), F.S., creates a rebuttable presumption that a residential property for which a homestead exemption for taxation was granted according to the certified rolls of the latest assessment by the county property appraiser, before the filing of the foreclosure action, is an owner-occupied residential property.

**Forms for Order to Show Cause as Modified in the Bill** The bill creates s. 702.10(3), F.S., and requests that the Florida Supreme Court amend the Florida Rules of Civil Procedure to provide for expedited foreclosure proceedings in conformity with the changes to s. 702.10, F.S. The bill also requests that the Court develop and publish forms for use under s. 702.10, F.S., as amended by the bill.

**Section 9. Adequate Protections for Lost, Destroyed, or Stolen Notes in Mortgage Foreclosure.--** Creates s 702.11, F.S., to codify the requirements for adequate protection outlined in s. 673.3091, F.S., relating to negotiable instruments, when a note is alleged to be lost, destroyed, or stolen in connection with proceedings for a mortgage foreclosure. Under s. 673.3091(2), F.S., in a foreclosure the court must ensure that the borrower required to pay the instrument is adequately protected against any loss that might occur if another person makes a claim to enforce the instrument. The court may find that the person required to pay the note securing the mortgage is adequately protected against a loss that may occur because of a claim by another person to enforce the mortgage if the person seeking to enforce the mortgage provides:

- A written indemnification agreement by a person reasonably believed sufficiently solvent to honor such obligation;
- A surety bond;
- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of court; or
- Such other security as the court may deem appropriate under the circumstances.

Any person who wrongfully claimed to be the holder of or wrongfully claimed to be entitled to enforce a lost, stolen, or destroyed note and caused the mortgage secured by the note to be foreclosed is liable to the actual holder of the note for actual damages suffered, together with attorneys fees and costs of the actual holder of the note in his or her enforcing rights under this section. The extent of liability is not limited to any adequate protections given under s. 673.3091, F.S. The actual holder of the note may pursue any other claims or remedies it may have against the maker, the person who wrongfully claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement of the note.

**Section 10. Expedited Foreclosure of Abandoned Residential Real Property.--** Creates s. 702.13, F.S., to establish a procedure to determine whether residential real property is abandoned. Residential real property is deemed abandoned upon a showing that a duly licensed process server has made at least three attempts to locate an occupant of the residential real property. The process server must not be affiliated with the owner or servicer of any mortgage on the residential real property or with the attorney or law firm representing such owner or servicer. The attempts must be made at least 72 hours apart, and at least one each of such attempts must have been made before 12 p.m., between 12 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt must include physically knocking or ringing at the door of the residential real property and such other efforts as are sufficient to obtain a response from an occupant. Two or more of these conditions must exist:

- Windows or entrances to the premises are boarded up or closed off or multiple windowpanes are broken and unrepaired.

- Doors to the premises are smashed through, broken off, unhinged, or continuously unlocked.
- Rubbish, trash, or debris has accumulated on the mortgaged premises.
- The premises are deteriorating and are below or in imminent danger of falling below minimum community standards for public safety and sanitation.
- If the premises are a part of a condominium or are governed by a mandatory homeowners' association, the manager or other representative of the association has confirmed that assessments for the unit or home are at least 90 days delinquent.
- Interviews with at least two neighbors in different households indicate that the residence has been abandoned. The neighbors must be adjoining, across the street in view of the home, or across the hall or adjacent to the unit in a condominium or cooperative.

The process server may provide, by affidavit and photographic or other documentation, evidence of the condition of the residential real property.

The party entitled to enforce the note and mortgage encumbering the real property appearing to be abandoned must file a petition before the court seeking to determine the status of the residential real property and to invoke an expedited foreclosure proceeding relating to the property. Upon the filing of an affidavit of diligent search and inquiry and the affidavit or documentary evidence of property abandonment, the court must, upon request of the petitioner, issue one or more subpoenas to the utility companies serving the residential real property commanding disclosure of the status of utility service and whether any utility payments have been made, and if so by whom. If, after review, the court determines that the property has been abandoned, the party entitled to enforce the note and mortgage encumbering the property shall be entitled to foreclose the mortgage using the expedited mortgage procedures set forth in s. 702.10, F.S., upon service by publication. Service must be made on any condominium, cooperative, or homeowners' associations having a lien interest in the property and all other junior lienholders as required by law.

**Section 11. Remedial Nature of Legislation.--** Creates an undesignated section of law, to provide that the bill is intended to be remedial in nature and applies to any action filed on or after the effective date of this act.

**Section 12. Effective Date.--** This act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

To the extent that the bill streamlines the foreclosure litigation process, it may reduce costs and delays associated with bringing a foreclosure suit.

The expedited foreclosure of abandoned real property would allow such properties to be rehabilitated and sold on the marketplace in a timelier manner, thereby generating additional capital and employment in the local communities and increasing the appreciation of the fair market value of properties in a community.

Entities that fail to meet the deadlines to provide estoppel statements will be subject to a penalty equal to \$100 per day until the documents are delivered up to a maximum of \$5,000.

**C. Government Sector Impact:**

The Office of the State Court Administrator<sup>38</sup> provided comments on the anticipated judicial or court workload impact associated with the bill. A shortened statute of limitations for an action for a deficiency judgment may result in an increase in near-term filings and a temporary increase in court workload. This effect will be mitigated, however, by a grandfathering provision extending the limitations period in some cases to a date no later than July 1, 2014. The overall impact on the courts may be offset, in part, by provisions limiting the size of deficiencies, which may render further litigation a less attractive option. Expedited foreclosure of abandoned residential properties will potentially reduce the continuing backlog of foreclosure cases likely exerting a positive impact on court operations.

**VI. Technical Deficiencies:**

In s. 702.11(1)(b) 5., F.S. as amended in the bill, a reference should be corrected from “unit” to “parcel or unit.”

**VII. Related Issues:**

None.

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<sup>38</sup> Office of the State Courts Administrator, *2012 Judicial Impact Statement on CS/SB 1890*, dated February 20, 2012.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on February 20, 2012**

The bill no longer:

- Designates the bill as the “Florida Fair Foreclosure Act.”
- Requires the foreclosing party in a mortgage foreclosure action to provide notice to the mortgagor and record title owners of the property and all tenants of a dwelling unit on the property if foreclosing the interest of the tenants.
- Includes provisions relating to foreclosing mortgages and liens on lands in more than one county.
- Provides that the amount of the deficiency judgment may be set off by the amount collected by the servicer or lender pursuant to any mortgage insurance held on the property purchased by the borrower.
- Revises the manner in which fees are adjudged reasonable in uncontested foreclosure cases.
- Requires at the time of serving the initial complaint, the plaintiff to give notice to the borrower or owner that he or she has a right to request a conciliation conference or mediation before the entry of final judgment in the case in order to facilitate a loan modification or settlement with the lender.
- Authorizes attorney fees and sanctions for raising unsupported claims or defenses or for causing an unreasonable delay in mortgage foreclosure actions.
- Prohibits the owner or landlord of property subject to the Florida Residential Landlord and Tenant Act that is in the foreclosure process from renting the property without giving full notice and disclosure to the tenants or prospective tenants that the property is in the legal process of foreclosure.
- Requires the plaintiff in a mortgage foreclosure action to file, contemporaneously with the filing of the initial complaint for foreclosure, the necessary documents to support an entry of summary judgment.

Additionally, the committee substitute revises the requirements for an order to show cause why a final judgment should not be issued in a foreclosure case on an expedited basis. The bill revises the requirements for an order to show cause why payments should not be entered during the pendency of a foreclosure action. The bill modifies provisions to expedite foreclosure of abandoned residential real property to add two additional conditions that a court may consider in determining whether a property is abandoned.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2012	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (5) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation,



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13 or liability founded on a written instrument, except for an  
14 action to enforce a claim against a payment bond, which shall be  
15 governed by the applicable provisions of ss. 255.05(10) and  
16 713.23(1)(e), and except for actions for a deficiency judgment  
17 governed by paragraph (5)(h).

18 (5) WITHIN ONE YEAR.—

19 (h) An action to enforce a claim of a deficiency related to  
20 a note secured by a mortgage against a residential property that  
21 is a one-family to four-family dwelling unit. The limitations  
22 period shall commence on the 11th day after the foreclosure sale  
23 or the day after the mortgagee accepts a deed in lieu of  
24 foreclosure.

25 Section 2. The amendment to s. 95.11, Florida Statutes,  
26 made by this act shall apply to any action commenced on or after  
27 July 1, 2012, regardless of when the cause of action accrued,  
28 except that any action that would not have been barred under s.  
29 95.11(2)(b), Florida Statutes, prior to the amendments made by  
30 this act may be commenced no later than 5 years after the action  
31 accrued and in no event later than July 1, 2013, and if the  
32 action is not commenced by that date, it is barred by the  
33 amendments made by this act.

34 Section 3. Section 702.015, Florida Statutes, is created to  
35 read:

36 702.015 Elements of complaint; lost, destroyed, or stolen  
37 note affidavit.—

38 (1) The Legislature intends that the requirements of this  
39 section are to expedite the foreclosure process by ensuring  
40 initial disclosure of a plaintiff's status and the facts  
41 supporting that status and thereby ensuring the availability of



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42 documents necessary to the prosecution of the case. This section  
43 is not intended to modify existing law regarding standing or  
44 real parties in interest.

45 (2) A complaint that seeks to foreclose a mortgage or other  
46 lien on residential real property, including individual units of  
47 condominiums and cooperatives, designed principally for  
48 occupation by from one to four families, but not including an  
49 interest in a timeshare property, which secures a promissory  
50 note must:

51 (a) Contain affirmative allegations expressly made by the  
52 plaintiff at the time the proceeding is commenced that the  
53 plaintiff is the holder of the original note secured by the  
54 mortgage; or

55 (b) Allege with specificity the factual basis by which the  
56 plaintiff is a person entitled to enforce the note under s.  
57 673.3011.

58 (3) If a party has been delegated the authority to  
59 institute a mortgage foreclosure action on behalf of the holder  
60 of the note, the complaint shall describe the authority of the  
61 plaintiff and identify, with specificity, the document that  
62 grants the plaintiff the authority to act on behalf of the  
63 holder of the note. This subsection is intended to require  
64 initial disclosure of status and pertinent facts and not to  
65 modify law regarding standing or real parties in interest.

66 (4) If the plaintiff is in physical possession of the  
67 original promissory note, the plaintiff must file with the  
68 court, contemporaneously with and as a condition precedent to  
69 the filing of the complaint for foreclosure, certification,  
70 under penalty of perjury, that the plaintiff is in physical



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71 possession of the original promissory note. The certification  
72 must set forth the physical location of the note, the name and  
73 title of the individual giving the certification, the name of  
74 the person who personally verified such physical possession, and  
75 the time and date on which the possession was verified. Correct  
76 copies of the note and all allonges to the note must be attached  
77 to the certification. The original note and the allonges must be  
78 filed with the court before the entry of any judgment of  
79 foreclosure or judgment on the note.

80 (5) If the plaintiff seeks to enforce a lost, destroyed, or  
81 stolen instrument, an affidavit executed under penalty of  
82 perjury must be attached to the complaint. The affidavit must:

83 (a) Detail a clear chain of all endorsements or assignments  
84 of the promissory note that is the subject of the action.

85 (b) Set forth facts showing that the plaintiff is entitled  
86 to enforce a lost, destroyed, or stolen instrument pursuant to  
87 s. 673.3091.

88 (c) Include as exhibits to the affidavit such copies of the  
89 note and the allonges to the note, audit reports showing  
90 physical receipt of the original note, or other evidence of the  
91 acquisition, ownership, and possession of the note as may be  
92 available to the plaintiff.

93 (6) The court may sanction the plaintiff for failure to  
94 comply with this section, but any noncompliance with this  
95 section does not affect the validity of a foreclosure sale or  
96 title to real property subsequent to a foreclosure sale.

97 Section 4. Section 702.06, Florida Statutes, is amended to  
98 read:

99 702.06 Deficiency decree; common-law suit to recover



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100 deficiency.-In all suits for the foreclosure of mortgages  
101 heretofore or hereafter executed the entry of a deficiency  
102 decree for any portion of a deficiency, should one exist, may  
103 not exceed the difference between the judgment amount or, in the  
104 case of a short sale, the outstanding debt and the fair market  
105 value of the property on the date of sale., ~~shall be within the~~  
106 ~~sound judicial discretion of the court, but~~ The complainant  
107 shall also have the right to sue at common law to recover such  
108 deficiency, unless the court in the foreclosure action has  
109 granted or denied a claim for a deficiency judgment ~~provided no~~  
110 ~~suit at law to recover such deficiency shall be maintained~~  
111 ~~against the original mortgagor in cases where the mortgage is~~  
112 ~~for the purchase price of the property involved and where the~~  
113 ~~original mortgagee becomes the purchaser thereof at foreclosure~~  
114 ~~sale and also is granted a deficiency decree against the~~  
115 ~~original mortgagor.~~

116 Section 5. Section 702.10, Florida Statutes, is amended to  
117 read:

118 702.10 Order to show cause; entry of final judgment of  
119 foreclosure; payment during foreclosure.-

120 (1) A lienholder ~~After a complaint in a foreclosure~~  
121 ~~proceeding has been filed, the mortgagee may request an order to~~  
122 show cause for the entry of final judgment in a foreclosure  
123 action. For purposes of this section, the term "lienholder"  
124 includes the plaintiff and a defendant to the action who holds a  
125 lien encumbering the property or a defendant who, by virtue of  
126 its status as a condominium association, cooperative  
127 association, or homeowners' association, may file a lien against  
128 the real property subject to foreclosure. Upon filing, and the



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129 court shall immediately review the request and the court file in  
130 chambers and without a hearing ~~complaint~~. If, upon examination  
131 of the court file ~~complaint~~, the court finds that the complaint  
132 is verified, complies with s. 702.015, and alleges a cause of  
133 action to foreclose on real property, the court shall promptly  
134 issue an order directed to the other parties named in the action  
135 ~~defendant~~ to show cause why a final judgment of foreclosure  
136 should not be entered.

137 (a) The order shall:

138 1. Set the date and time for a hearing ~~on the order~~ to show  
139 cause. ~~However,~~ The date for the hearing may not occur ~~be set~~  
140 sooner than the later of 20 days after the service of the order  
141 to show cause or 45 days after the service of the initial  
142 complaint. When service is obtained by publication, the date for  
143 the hearing may not be set sooner than 55 ~~30~~ days after the  
144 first publication. ~~The hearing must be held within 60 days after~~  
145 ~~the date of service. Failure to hold the hearing within such~~  
146 ~~time does not affect the validity of the order to show cause or~~  
147 ~~the jurisdiction of the court to issue subsequent orders.~~

148 2. Direct the time within which service of the order to  
149 show cause and the complaint must be made upon the defendant.

150 3. State that the filing of defenses by a motion,  
151 responsive pleading, affidavits, or other papers ~~or by a~~  
152 ~~verified or sworn answer at or before the hearing to show cause~~  
153 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~  
154 ~~attached~~ final judgment.

155 4. State that a ~~the~~ defendant has the right to file  
156 affidavits or other papers before ~~at~~ the time of the hearing to  
157 show cause and may appear personally or by way of an attorney at



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158 the hearing.

159 5. State that, if a ~~the~~ defendant files defenses by a  
160 motion, a verified or sworn answer, affidavits, or other papers  
161 or appears personally or by way of an attorney at the time of  
162 the hearing, the hearing time will ~~may~~ be used to hear and  
163 consider the defendant's motion, answer, affidavits, other  
164 papers, and other evidence and argument as may be presented by  
165 the defendant or the defendant's attorney. The order shall also  
166 state that the court may enter an order of final judgment of  
167 foreclosure at the hearing. If such a determination is entered,  
168 the court shall enter a final judgment of foreclosure ordering  
169 the clerk of the court to conduct a foreclosure sale.

170 6. State that, if a ~~the~~ defendant fails to appear at the  
171 hearing to show cause or fails to file defenses by a motion or  
172 by a verified or sworn answer or files an answer not contesting  
173 the foreclosure, such ~~the~~ defendant may be considered to have  
174 waived the right to a hearing, and in such case, the court may  
175 enter a default against such defendant and, if appropriate, a  
176 final judgment of foreclosure ordering the clerk of the court to  
177 conduct a foreclosure sale.

178 7. State that if the mortgage provides for reasonable  
179 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
180 fees do not exceed 3 percent of the principal amount owed at the  
181 time of filing the complaint, it is unnecessary for the court to  
182 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
183 to be reasonable.

184 8. Attach the form of the proposed final judgment of  
185 foreclosure which the movant requests the court to ~~will~~ enter,  
186 ~~if the defendant waives the right to be heard~~ at the hearing on



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187 the order to show cause. The form may contain blanks for the  
188 court to enter the amounts due.

189 9. Require the party seeking final judgment ~~mortgagee~~ to  
190 serve a copy of the order to show cause on the other parties ~~the~~  
191 ~~mortgager~~ in the following manner:

192 a. If a party ~~the mortgager~~ has been personally served with  
193 the complaint and original process, or the other party is the  
194 plaintiff in the action, service of the order to show cause on  
195 that party ~~order~~ may be made in the manner provided in the  
196 Florida Rules of Civil Procedure.

197 b. If a defendant ~~the mortgager~~ has not been personally  
198 served with the complaint and original process, the order to  
199 show cause, together with the summons and a copy of the  
200 complaint, shall be served on the party ~~mortgager~~ in the same  
201 manner as provided by law for original process. Service of the  
202 complaint and original process by mail or publication is not  
203 personal service for purposes of this subparagraph.

204  
205 Any final judgment of foreclosure entered under this subsection  
206 is for in rem relief only. ~~Nothing in~~ This subsection does not  
207 ~~shall~~ preclude the entry of a deficiency judgment where  
208 otherwise allowed by law. It is the intent of the Legislature  
209 that this alternative procedure may run simultaneously with  
210 other court procedures.

211 (b) The right to be heard at the hearing to show cause is  
212 waived if a ~~the~~ defendant, after being served as provided by law  
213 with an order to show cause, engages in conduct that clearly  
214 shows that the defendant has relinquished the right to be heard  
215 on that order. The defendant's failure to file defenses by a



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216 motion or by a sworn or verified answer, affidavits, or other  
217 papers or to appear personally or by way of an attorney at the  
218 hearing duly scheduled on the order to show cause presumptively  
219 constitutes conduct that clearly shows that the defendant has  
220 relinquished the right to be heard. If a defendant files  
221 defenses by a motion, or by a verified or sworn answer,  
222 affidavits, or other papers at or before the hearing, such  
223 action may constitute ~~constitutes~~ cause and may preclude  
224 ~~precludes~~ the entry of a final judgment at the hearing to show  
225 cause.

226 (c) In a mortgage foreclosure proceeding, when a final  
227 ~~default~~ judgment of foreclosure has been entered against the  
228 mortgagor and the note or mortgage provides for the award of  
229 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
230 court to hold a hearing or adjudge the requested attorney  
231 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
232 percent of the principal amount owed on the note or mortgage at  
233 the time of filing, even if the note or mortgage does not  
234 specify the percentage of the original amount that would be paid  
235 as liquidated damages.

236 (d) If the court finds that all defendants have ~~the~~  
237 ~~defendant has~~ waived the right to be heard as provided in  
238 paragraph (b), the court shall promptly enter a final judgment  
239 of foreclosure without the need for further hearing if the  
240 plaintiff has shown entitlement to a final judgment and upon the  
241 filing with the court of the original note, satisfaction of the  
242 conditions for establishment of a lost note, or upon a showing  
243 to the court that the obligation to be foreclosed is not  
244 evidenced by a promissory note or other negotiable instrument.



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245 If the court finds that a ~~the~~ defendant has not waived the right  
246 to be heard on the order to show cause, the court shall ~~then~~  
247 determine whether there is cause not to enter a final judgment  
248 of foreclosure. If the court finds that the defendant has not  
249 shown cause, the court shall promptly enter a judgment of  
250 foreclosure. If the time allotted for the hearing is  
251 insufficient, the court may announce at the hearing a date and  
252 time for the continued hearing. Only the parties who appear,  
253 individually or through an attorney, at the initial hearing must  
254 be notified of the date and time of the continued hearing.

255 (2) This subsection does not apply to foreclosure of an  
256 owner-occupied residence. As part of any other ~~In an~~ action for  
257 foreclosure, and in addition to any other relief that the court  
258 may award ~~other than residential real estate, the plaintiff the~~  
259 ~~mortgagee~~ may request that the court enter an order directing  
260 the mortgagor defendant to show cause why an order to make  
261 payments during the pendency of the foreclosure proceedings or  
262 an order to vacate the premises should not be entered.

263 (a) The order shall:

264 1. Set the date and time for hearing on the order to show  
265 cause. However, the date for the hearing may ~~shall~~ not be set  
266 sooner than 20 days after the service of the order. If ~~where~~  
267 service is obtained by publication, the date for the hearing may  
268 ~~shall~~ not be set sooner than 30 days after the first  
269 publication.

270 2. Direct the time within which service of the order to  
271 show cause and the complaint shall be made upon each ~~the~~  
272 defendant.

273 3. State that a ~~the~~ defendant has the right to file



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274 affidavits or other papers at the time of the hearing and may  
275 appear personally or by way of an attorney at the hearing.

276 4. State that, if a ~~the~~ defendant fails to appear at the  
277 hearing to show cause and fails to file defenses by a motion or  
278 by a verified or sworn answer, the defendant is ~~may be~~ deemed to  
279 have waived the right to a hearing and in such case the court  
280 may enter an order to make payment or vacate the premises.

281 5. Require the movant ~~mortgagee~~ to serve a copy of the  
282 order to show cause on the defendant ~~mortgager~~ in the following  
283 manner:

284 a. If a defendant ~~the mortgager~~ has been served with the  
285 complaint and original process, service of the order may be made  
286 in the manner provided in the Florida Rules of Civil Procedure.

287 b. If a defendant ~~the mortgager~~ has not been served with  
288 the complaint and original process, the order to show cause,  
289 together with the summons and a copy of the complaint, shall be  
290 served on the defendant ~~mortgager~~ in the same manner as provided  
291 by law for original process.

292 (b) The right of a defendant to be heard at the hearing to  
293 show cause is waived if the defendant, after being served as  
294 provided by law with an order to show cause, engages in conduct  
295 that clearly shows that the defendant has relinquished the right  
296 to be heard on that order. A ~~The~~ defendant's failure to file  
297 defenses by a motion or by a sworn or verified answer or to  
298 appear at the hearing duly scheduled on the order to show cause  
299 presumptively constitutes conduct that clearly shows that the  
300 defendant has relinquished the right to be heard.

301 (c) If the court finds that a ~~the~~ defendant has waived the  
302 right to be heard as provided in paragraph (b), the court may



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303 promptly enter an order requiring payment in the amount provided  
304 in paragraph (f) or an order to vacate.

305 (d) If the court finds that the mortgagor has not waived  
306 the right to be heard on the order to show cause, the court  
307 shall, at the hearing on the order to show cause, consider the  
308 affidavits and other showings made by the parties appearing and  
309 make a determination of the probable validity of the underlying  
310 claim alleged against the mortgagor and the mortgagor's  
311 defenses. If the court determines that the plaintiff mortgagee  
312 is likely to prevail in the foreclosure action, the court shall  
313 enter an order requiring the mortgagor to make the payment  
314 described in paragraph (e) to the plaintiff mortgagee and  
315 provide for a remedy as described in paragraph (f). However, the  
316 order shall be stayed pending final adjudication of the claims  
317 of the parties if the mortgagor files with the court a written  
318 undertaking executed by a surety approved by the court in an  
319 amount equal to the unpaid balance of the lien being foreclosed  
320 ~~the mortgage on the property~~, including all principal, interest,  
321 unpaid taxes, and insurance premiums paid by the plaintiff the  
322 ~~mortgagee~~.

323 (e) ~~If in the event~~ the court enters an order requiring the  
324 mortgagor to make payments to the plaintiff mortgagee, payments  
325 shall be payable at such intervals and in such amounts provided  
326 for in the mortgage instrument before acceleration or maturity.  
327 The obligation to make payments pursuant to any order entered  
328 under this subsection shall commence from the date of the motion  
329 filed under this section hereunder. The order shall be served  
330 upon the mortgagor no later than 20 days before the date  
331 specified for the first payment. The order may permit, but may



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332 ~~shall~~ not require, the plaintiff mortgagee to take all  
333 appropriate steps to secure the premises during the pendency of  
334 the foreclosure action.

335 (f) ~~If in the event~~ the court enters an order requiring  
336 payments, the order shall also provide that the plaintiff is  
337 ~~mortgagee shall be~~ entitled to possession of the premises upon  
338 the failure of the mortgagor to make the payment required in the  
339 order unless at the hearing on the order to show cause the court  
340 finds good cause to order some other method of enforcement of  
341 its order.

342 (g) All amounts paid pursuant to this section shall be  
343 credited against the mortgage obligation in accordance with the  
344 terms of the loan documents; ~~provided, however, that any~~  
345 payments made under this section do shall not constitute a cure  
346 of any default or a waiver or any other defense to the mortgage  
347 foreclosure action.

348 (h) Upon the filing of an affidavit with the clerk that the  
349 premises have not been vacated pursuant to the court order, the  
350 clerk shall issue to the sheriff a writ for possession which  
351 shall be governed by the provisions of s. 83.62.

352 (i) For purposes of this subsection, there is a rebuttable  
353 presumption that a residential property for which a homestead  
354 exemption for taxation was granted according to the certified  
355 rolls of the latest assessment by the county property appraiser,  
356 before the filing of the foreclosure action, is an owner-  
357 occupied residential property.

358 (3) The Supreme Court is requested to amend the Florida  
359 Rules of Civil Procedure to provide for expedited foreclosure  
360 proceedings in conformity with this section and is requested to



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361 develop and publish forms for use under this section.

362 Section 6. Section 702.11, Florida Statutes, is created to  
363 read:

364 702.11 Expedited foreclosure of abandoned residential real  
365 property.-

366 (1) As used in this section, the term "abandoned  
367 residential real property" means residential real property that  
368 is deemed abandoned upon a showing that:

369 (a) A duly licensed process server unaffiliated with the  
370 owner or servicer of any mortgage on the residential real  
371 property or with the attorney or law firm representing such  
372 owner or servicer has made at least three attempts to locate an  
373 occupant of the residential real property. The attempts must  
374 have been made at least 72 hours apart, and at least one each of  
375 such attempts must have been made before 12 p.m., between 12  
376 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt  
377 must include physically knocking or ringing at the door of the  
378 residential real property and such other efforts as are normally  
379 sufficient to obtain a response from an occupant.

380 (b) Two or more of the following conditions exist:

381 1. Windows or entrances to the premises are boarded up or  
382 closed off or multiple window panes are broken and unrepaired.

383 2. Doors to the premises are smashed through, broken off,  
384 unhinged, or continuously unlocked.

385 3. Rubbish, trash, or debris has accumulated on the  
386 mortgaged premises.

387 4. The premises are deteriorating and are below or in  
388 imminent danger of falling below minimum community standards for  
389 public safety and sanitation.



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390           5. If the premises are a part of a condominium or are  
391 governed by a mandatory homeowners' association, the manager or  
392 other representative of the association has confirmed that  
393 assessments for the unit are at least 90 days delinquent.

394           6. Interviews with at least two neighbors in different  
395 households indicate that the residence has been abandoned. The  
396 neighbors must be adjoining, across the street in view of the  
397 home, or across the hall or adjacent to the unit in a  
398 condominium or cooperative.

399  
400 The sheriff or process server making attempts to locate an  
401 occupant of the residential real property and to determine the  
402 abandoned status of the residential real property may provide,  
403 by affidavit and photographic or other documentation, evidence  
404 of the condition of the residential real property, and may  
405 charge a reasonable fee for the attempts and for any affidavit  
406 or other documentation evidencing the condition of the  
407 residential real property.

408           (2) (a) The party entitled to enforce the note and mortgage  
409 encumbering the residential real property appearing to be  
410 abandoned may file a petition before the court seeking to  
411 determine the status of the residential real property and to  
412 invoke an expedited foreclosure proceeding relating to the  
413 property. Upon the filing of an affidavit of diligent search and  
414 inquiry and the affidavit or documentary evidence set forth in  
415 subsection (1), the court shall, upon request of the petitioner,  
416 issue one or more subpoenas to the utility companies serving the  
417 residential real property commanding disclosure of the status of  
418 utility service to the subject property, including whether



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419 utilities are currently turned off and whether all outstanding  
420 utility payments have been made and, if so, by whom.

421 (b) If, after review of the response of the utility  
422 companies to the subpoenas and all other matters of record, the  
423 court may deem the property to have been abandoned and the  
424 plaintiff entitled to expedited foreclosure.

425 Section 7. The amendments to s. 702.10, Florida Statutes,  
426 and the creation of s. 702.11, Florida Statutes, by this act are  
427 remedial in nature and shall apply to causes of action pending  
428 on the effective date of this act. Section 702.015, Florida  
429 Statutes, as created by this act, applies to cases filed on or  
430 after July 1, 2012.

431 Section 8. The Legislature finds that this act is remedial  
432 in nature. Accordingly, it is the intent of the Legislature that  
433 this act shall apply to all mortgages encumbering real property  
434 and all promissory notes secured by a mortgage, whether executed  
435 before, on, or after the effective date of this act.

436 Section 9. This act shall take effect upon becoming a law.

437  
438 ===== T I T L E A M E N D M E N T =====

439 And the title is amended as follows:

440  
441 Delete everything before the enacting clause  
442 and insert:

443 A bill to be entitled  
444 An act relating to mortgage foreclosures; amending s.  
445 95.11, F.S.; reducing the limitations period for  
446 commencing an action to enforce a claim of a  
447 deficiency judgment subsequent to a foreclosure



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448 action; providing for application to existing causes  
449 of action; creating s. 702.015, F.S.; providing  
450 legislative intent; specifying required contents of a  
451 complaint seeking to foreclose on certain types of  
452 residential properties with respect to the authority  
453 of the plaintiff to foreclose on the note and the  
454 location of the note; providing that failure to file  
455 such documents does not affect title to property  
456 subsequent to a foreclosure sale; amending s. 702.06,  
457 F.S.; limiting the amount of a deficiency judgment;  
458 amending s. 702.10, F.S.; expanding the class of  
459 persons authorized to move for expedited foreclosure;  
460 defining the term "lienholder"; providing requirements  
461 and procedures with respect to an order directed to  
462 defendants to show cause why a final judgment of  
463 foreclosure should not be entered; providing that  
464 certain failures by a defendant to make certain  
465 filings or to make certain appearances may have  
466 specified legal consequences; requiring the court to  
467 enter a final judgment of foreclosure and order a  
468 foreclosure sale under certain circumstances; revising  
469 a restriction on a mortgagee to request a court to  
470 order a mortgagor defendant to make payments or to  
471 vacate the premises during an action to foreclose on  
472 residential real estate to provide that the  
473 restriction applies to all but owner-occupied  
474 residential property; providing a presumption  
475 regarding owner-occupied residential property;  
476 requesting the Supreme Court to adopt rules and forms



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477 for use in expedited foreclosure proceedings; creating  
478 s. 702.11, F.S.; establishing expedited foreclosure  
479 proceedings for abandoned residential real property  
480 and procedures and requirements with respect thereto;  
481 providing for application of the act; providing an  
482 effective date.



241434

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/27/2012	.	
	.	
	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment to Amendment (462064)**

Delete lines 390 - 393  
and insert:

5. If the premises are a part of a condominium or are governed by a mandatory homeowners' association, the manager or other representative of the association has confirmed that assessments for the unit or parcel are at least 90 days delinquent.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2012	.	
	.	
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	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (5) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—



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13 (b) A legal or equitable action on a contract, obligation,  
14 or liability founded on a written instrument, except for an  
15 action to enforce a claim against a payment bond, which shall be  
16 governed by the applicable provisions of ss. 255.05(10) and  
17 713.23(1) (e), and except for certain actions for a deficiency  
18 judgment governed by paragraph (5) (h).

19 (5) WITHIN ONE YEAR.—

20 (h) An action to enforce a claim of a deficiency related to  
21 a note secured by a mortgage against a residential property that  
22 is a one-family to four-family dwelling unit. The limitations  
23 period shall commence on the 11th day after the foreclosure sale  
24 or the day after the mortgagee accepts a deed in lieu of  
25 foreclosure.

26 Section 2. The amendment to s. 95.11, Florida Statutes,  
27 made by this act shall apply to any action commenced on or after  
28 July 1, 2012, regardless of when the cause of action accrued,  
29 except that any action that would not have been barred under s.  
30 95.11(2) (b), Florida Statutes, prior to the amendments made by  
31 this act may be commenced no later than 5 years after the action  
32 accrued and in no event later than July 1, 2013, and if the  
33 action is not commenced by that date, it is barred by the  
34 amendments made by this act.

35 Section 3. Section 702.015, Florida Statutes, is created to  
36 read:

37 702.015 Elements of complaint; lost, destroyed, or stolen  
38 note affidavit.—

39 (1) A complaint that seeks to foreclose a mortgage or other  
40 lien on residential real property, including individual units of  
41 condominiums and cooperatives, designed principally for



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42 occupation by from one to four families, but not including an  
43 interest in a timeshare property, which secures a promissory  
44 note must:

45 (a) Contain affirmative allegations expressly made by the  
46 plaintiff at the time the proceeding is commenced that the  
47 plaintiff is the holder of the original note secured by the  
48 mortgage; or

49 (b) Allege with specificity the factual basis by which the  
50 plaintiff is a person entitled to enforce the note under s.  
51 673.3011.

52 (2) If a party has been delegated the authority to  
53 institute a mortgage foreclosure action on behalf of the holder  
54 of the note, the complaint shall describe the authority of the  
55 plaintiff and identify, with specificity, the document that  
56 grants the plaintiff the authority to act on behalf of the  
57 holder of the note. This subsection is intended to require  
58 initial disclosure of status and pertinent facts and not to  
59 modify law regarding standing or real parties in interest.

60 (3) If the plaintiff is in physical possession of the  
61 original promissory note, the plaintiff must file with the  
62 court, contemporaneously with and as a condition precedent to  
63 the filing of the complaint for foreclosure, certification,  
64 under penalty of perjury, that the plaintiff is in physical  
65 possession of the original promissory note. The certification  
66 must set forth the physical location of the note, the name and  
67 title of the individual giving the certification, the name of  
68 the person who personally verified such physical possession, and  
69 the time and date on which the possession was verified. Correct  
70 copies of the note and all allonges to the note must be attached



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71 to the certification. The original note and the allonges must be  
72 filed with the court before the entry of any judgment of  
73 foreclosure or judgment on the note.

74 (4) If the plaintiff seeks to enforce a lost, destroyed, or  
75 stolen instrument, an affidavit executed under penalty of  
76 perjury must be attached to the complaint. The affidavit must:

77 (a) Detail a clear chain of all endorsements or assignments  
78 of the promissory note that is the subject of the action.

79 (b) Set forth facts showing that the plaintiff is entitled  
80 to enforce a lost, destroyed, or stolen instrument pursuant to  
81 s. 673.3091.

82 (c) Include as exhibits to the affidavit such copies of the  
83 note and the allonges to the note, audit reports showing  
84 physical receipt of the original note, or other evidence of the  
85 acquisition, ownership, and possession of the note as may be  
86 available to the plaintiff.

87 (5) The Legislature intends that the requirements of this  
88 section are to expedite the foreclosure process by ensuring  
89 initial disclosure of a plaintiff's status and the facts  
90 supporting that status and thereby ensuring the availability of  
91 documents necessary to the prosecution of the case. This section  
92 is not intended to modify existing law regarding standing or  
93 real parties in interest. The court may sanction the plaintiff  
94 for failure to comply with this section, but any noncompliance  
95 with this section does not affect the validity of a foreclosure  
96 sale or title to real property subsequent to a foreclosure sale.

97 Section 4. Section 702.036, Florida Statutes, is created to  
98 read:

99 702.036 Finality of mortgage foreclosure judgment.-



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100           (1) (a) In an action or proceeding in which a party seeks to  
101 set aside, invalidate, or challenge the validity of a final  
102 judgment of foreclosure of a mortgage or to establish or  
103 reestablish a lien or encumbrance on the property in abrogation  
104 of the final judgment of foreclosure of a mortgage, the court  
105 shall treat such request solely as a claim for monetary damages  
106 and may not grant relief that adversely affects the quality or  
107 character of the title to the property if:

108           1. A final judgment of foreclosure of a mortgage has been  
109 entered as to a property;

110           2. All applicable appeals periods have run as to the final  
111 judgment of foreclosure of a mortgage and an appeal has not been  
112 filed or, if an appeal has been filed, it has been finally  
113 resolved;

114           3. The property has been acquired for value by a person not  
115 affiliated with the foreclosing lender or the foreclosed owner,  
116 at a time in which no lis pendens regarding the suit to set  
117 aside, invalidate, or challenge the foreclosure appears in the  
118 official records of the county where the property is located;  
119 and

120           4. The party seeking relief from the final judgment of  
121 foreclosure of a mortgage has been properly served in the  
122 foreclosure lawsuit as provided in chapter 48 or chapter 49.

123           (b) This subsection does not limit the right to pursue any  
124 other relief to which a person may be entitled, including, but  
125 not limited to, compensatory damages, punitive damages,  
126 statutory damages, consequential damages, injunctive relief, or  
127 fees and costs, and which does not adversely affect the  
128 ownership of the title to the property as vested in the



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129 unaffiliated purchaser for value.

130 (2) For purposes of this section, the following, without  
131 limitation, shall be considered persons affiliated with the  
132 foreclosing lender:

133 (a) The foreclosing lender or any loan servicer for the  
134 loan being foreclosed;

135 (b) Any past or present owner or holder of the loan being  
136 foreclosed;

137 (c) Any maintenance company, holding company, foreclosure  
138 services company, or law firm under contract to any entity  
139 listed in paragraph (a), paragraph (b), or this paragraph, with  
140 regard to the loan being foreclosed; or

141 (d) Any parent entity, subsidiary, or other person that  
142 directly, or indirectly through one or more intermediaries,  
143 controls or is controlled by, or is under common control with,  
144 any entity listed in paragraph (a), paragraph (b), or paragraph  
145 (c).

146 (3) After foreclosure of a mortgage based upon the  
147 enforcement of a lost, destroyed, or stolen note, a person who  
148 is not a party to the underlying foreclosure action but who  
149 claims to be the actual holder of the promissory note secured by  
150 the foreclosed mortgage does not have a claim against the  
151 foreclosed property after it has been conveyed for valuable  
152 consideration to a person not affiliated with the foreclosing  
153 lender or the foreclosed owner. This section does not preclude  
154 the actual holder of the note from pursuing damages from any  
155 adequate protection given under s. 673.3091 by the person who  
156 enforced the note or from the party who wrongfully claimed to be  
157 the owner or holder of the promissory note or the maker of the



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158 note or from any other person against whom the actual holder of  
159 the note may have a claim relating to the note.

160 Section 4. Section 702.06, Florida Statutes, is amended to  
161 read:

162 702.06 Deficiency decree; common-law suit to recover  
163 deficiency.—In all suits for the foreclosure of mortgages  
164 heretofore or hereafter executed the entry of a deficiency  
165 decree for any portion of a deficiency, should one exist, may  
166 not exceed the difference between the judgment amount or, in the  
167 case of a short sale, the outstanding debt, and the fair market  
168 value of the property on the date of sale., ~~shall be within the~~  
169 ~~sound judicial discretion of the court, but~~ The complainant  
170 shall also have the right to sue at common law to recover such  
171 deficiency, unless the court in the foreclosure action has  
172 granted or denied a claim for a deficiency judgment ~~provided no~~  
173 ~~suit at law to recover such deficiency shall be maintained~~  
174 ~~against the original mortgagor in cases where the mortgage is~~  
175 ~~for the purchase price of the property involved and where the~~  
176 ~~original mortgagee becomes the purchaser thereof at foreclosure~~  
177 ~~sale and also is granted a deficiency decree against the~~  
178 ~~original mortgagor.~~

179 Section 5. Section 702.10, Florida Statutes, is amended to  
180 read:

181 702.10 Order to show cause; entry of final judgment of  
182 foreclosure; payment during foreclosure.—

183 (1) A lienholder ~~After a complaint in a foreclosure~~  
184 ~~proceeding has been filed, the mortgagee may request an order to~~  
185 ~~show cause for the entry of final judgment~~ in a foreclosure  
186 action. For purposes of this section, the term "lienholder"



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187 includes the plaintiff and a defendant to the action who holds a  
188 lien encumbering the property or a defendant who, by virtue of  
189 its status as a condominium association, cooperative  
190 association, or homeowners' association, may file a lien against  
191 the real property subject to foreclosure. Upon filing, and the  
192 court shall immediately review the request and the court file in  
193 chambers and without a hearing ~~complaint~~. If, upon examination  
194 of the court file ~~complaint~~, the court finds that the complaint  
195 is verified, complies with s. 702.015, and alleges a cause of  
196 action to foreclose on real property, the court shall promptly  
197 issue an order directed to the other parties named in the action  
198 ~~defendant~~ to show cause why a final judgment of foreclosure  
199 should not be entered.

200 (a) The order shall:

201 1. Set the date and time for a hearing ~~on the order~~ to show  
202 cause. ~~However,~~ The date for the hearing may not occur ~~be set~~  
203 sooner than the later of 20 days after the service of the order  
204 to show cause or 45 days after the service of the initial  
205 complaint. When service is obtained by publication, the date for  
206 the hearing may not be set sooner than 55 ~~30~~ days after the  
207 first publication. ~~The hearing must be held within 60 days after~~  
208 ~~the date of service. Failure to hold the hearing within such~~  
209 ~~time does not affect the validity of the order to show cause or~~  
210 ~~the jurisdiction of the court to issue subsequent orders.~~

211 2. Direct the time within which service of the order to  
212 show cause and the complaint must be made upon the defendant.

213 3. State that the filing of defenses by a motion,  
214 responsive pleading, affidavits, or other papers ~~or by a~~  
215 ~~verified or sworn answer at or~~ before the hearing to show cause



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216 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~  
217 ~~attached~~ final judgment.

218 4. State that a ~~the~~ defendant has the right to file  
219 affidavits or other papers before ~~at~~ the time of the hearing to  
220 show cause and may appear personally or by way of an attorney at  
221 the hearing.

222 5. State that, if a ~~the~~ defendant files defenses by a  
223 motion, a verified or sworn answer, affidavits, or other papers  
224 or appears personally or by way of an attorney at the time of  
225 the hearing, the hearing time will ~~may~~ be used to hear and  
226 consider the defendant's motion, answer, affidavits, other  
227 papers, and other evidence and argument as may be presented by  
228 the defendant or the defendant's attorney. The order shall also  
229 state that the court may enter an order of final judgment of  
230 foreclosure at the hearing. If such a determination is entered,  
231 the court shall enter a final judgment of foreclosure ordering  
232 the clerk of the court to conduct a foreclosure sale.

233 6. State that, if a ~~the~~ defendant fails to appear at the  
234 hearing to show cause or fails to file defenses by a motion or  
235 by a verified or sworn answer or files an answer not contesting  
236 the foreclosure, such ~~the~~ defendant may be considered to have  
237 waived the right to a hearing, and in such case, the court may  
238 enter a default against such defendant and, if appropriate, a  
239 final judgment of foreclosure ordering the clerk of the court to  
240 conduct a foreclosure sale.

241 7. State that if the mortgage provides for reasonable  
242 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
243 fees do not exceed 3 percent of the principal amount owed at the  
244 time of filing the complaint, it is unnecessary for the court to



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245 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
246 to be reasonable.

247 8. Attach the form of the proposed final judgment of  
248 foreclosure which the movant requests the court to will enter,  
249 ~~if the defendant waives the right to be heard~~ at the hearing on  
250 the order to show cause. The form may contain blanks for the  
251 court to enter the amounts due.

252 9. Require the party seeking final judgment ~~mortgagee~~ to  
253 serve a copy of the order to show cause on the other parties ~~the~~  
254 ~~mortgagor~~ in the following manner:

255 a. If a party ~~the mortgagor~~ has been personally served with  
256 the complaint and original process, or the other party is the  
257 plaintiff in the action, service of the order to show cause on  
258 that party ~~order~~ may be made in the manner provided in the  
259 Florida Rules of Civil Procedure.

260 b. If a defendant ~~the mortgagor~~ has not been personally  
261 served with the complaint and original process, the order to  
262 show cause, together with the summons and a copy of the  
263 complaint, shall be served on the party ~~mortgagor~~ in the same  
264 manner as provided by law for original process.

265  
266 Any final judgment of foreclosure entered under this subsection  
267 is for in rem relief only. ~~Nothing in~~ This subsection does not  
268 ~~shall~~ preclude the entry of a deficiency judgment where  
269 otherwise allowed by law. It is the intent of the Legislature  
270 that this alternative procedure may run simultaneously with  
271 other court procedures.

272 (b) The right to be heard at the hearing to show cause is  
273 waived if a ~~the~~ defendant, after being served as provided by law



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274 with an order to show cause, engages in conduct that clearly  
275 shows that the defendant has relinquished the right to be heard  
276 on that order. The defendant's failure to file defenses by a  
277 motion or by a sworn or verified answer, affidavits, or other  
278 papers or to appear personally or by way of an attorney at the  
279 hearing duly scheduled on the order to show cause presumptively  
280 constitutes conduct that clearly shows that the defendant has  
281 relinquished the right to be heard. If a defendant files  
282 defenses by a motion, ~~or by~~ a verified or sworn answer,  
283 affidavits, or other papers at or before the hearing, such  
284 action may constitute ~~constitutes~~ cause and may preclude  
285 ~~precludes~~ the entry of a final judgment at the hearing to show  
286 cause.

287 (c) In a mortgage foreclosure proceeding, when a final  
288 ~~default~~ judgment of foreclosure has been entered against the  
289 mortgagor and the note or mortgage provides for the award of  
290 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
291 court to hold a hearing or adjudge the requested attorney  
292 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
293 percent of the principal amount owed on the note or mortgage at  
294 the time of filing, even if the note or mortgage does not  
295 specify the percentage of the original amount that would be paid  
296 as liquidated damages.

297 (d) If the court finds that all defendants have ~~the~~  
298 ~~defendant has~~ waived the right to be heard as provided in  
299 paragraph (b), the court shall promptly enter a final judgment  
300 of foreclosure without the need for further hearing if the  
301 plaintiff has shown entitlement to a final judgment and upon the  
302 filing with the court of original note, satisfaction of the



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303 conditions for establishment of a lost note, or upon a showing  
304 to the court that the obligation to be foreclosed is not  
305 evidenced by a promissory note or other negotiable instrument.  
306 If the court finds that a ~~the~~ defendant has not waived the right  
307 to be heard on the order to show cause, the court shall ~~then~~  
308 determine whether there is cause not to enter a final judgment  
309 of foreclosure. If the court finds that the defendant has not  
310 shown cause, the court shall promptly enter a judgment of  
311 foreclosure. If the time allotted for the hearing is  
312 insufficient, the court may announce at the hearing a date and  
313 time for the continued hearing. Only the parties who appear,  
314 individually or through an attorney, at the initial hearing must  
315 be notified of the date and time of the continued hearing.

316 (2) This subsection does not apply to foreclosure of an  
317 owner-occupied residence. As part of any other ~~In an~~ action for  
318 foreclosure, and in addition to any other relief that the court  
319 may award ~~other than residential real estate, the plaintiff the~~  
320 ~~mortgagee~~ may request that the court enter an order directing  
321 the mortgagor defendant to show cause why an order to make  
322 payments during the pendency of the foreclosure proceedings or  
323 an order to vacate the premises should not be entered.

324 (a) The order shall:

325 1. Set the date and time for hearing on the order to show  
326 cause. However, the date for the hearing may ~~shall~~ not be set  
327 sooner than 20 days after the service of the order. If ~~Where~~  
328 service is obtained by publication, the date for the hearing may  
329 ~~shall~~ not be set sooner than 30 days after the first  
330 publication.

331 2. Direct the time within which service of the order to



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332 show cause and the complaint shall be made upon each ~~the~~  
333 defendant.

334 3. State that a ~~the~~ defendant has the right to file  
335 affidavits or other papers at the time of the hearing and may  
336 appear personally or by way of an attorney at the hearing.

337 4. State that, if a ~~the~~ defendant fails to appear at the  
338 hearing to show cause and fails to file defenses by a motion or  
339 by a verified or sworn answer, the defendant is ~~may be~~ deemed to  
340 have waived the right to a hearing and in such case the court  
341 may enter an order to make payment or vacate the premises.

342 5. Require the movant ~~mortgagee~~ to serve a copy of the  
343 order to show cause on the defendant ~~mortgager~~ in the following  
344 manner:

345 a. If a defendant ~~the mortgager~~ has been served with the  
346 complaint and original process, service of the order may be made  
347 in the manner provided in the Florida Rules of Civil Procedure.

348 b. If a defendant ~~the mortgager~~ has not been served with  
349 the complaint and original process, the order to show cause,  
350 together with the summons and a copy of the complaint, shall be  
351 served on the defendant ~~mortgager~~ in the same manner as provided  
352 by law for original process.

353 (b) The right of a defendant to be heard at the hearing to  
354 show cause is waived if the defendant, after being served as  
355 provided by law with an order to show cause, engages in conduct  
356 that clearly shows that the defendant has relinquished the right  
357 to be heard on that order. A ~~The~~ defendant's failure to file  
358 defenses by a motion or by a sworn or verified answer or to  
359 appear at the hearing duly scheduled on the order to show cause  
360 presumptively constitutes conduct that clearly shows that the



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361 defendant has relinquished the right to be heard.

362 (c) If the court finds that a ~~the~~ defendant has waived the  
363 right to be heard as provided in paragraph (b), the court may  
364 promptly enter an order requiring payment in the amount provided  
365 in paragraph (f) or an order to vacate.

366 (d) If the court finds that the mortgagor has not waived  
367 the right to be heard on the order to show cause, the court  
368 shall, at the hearing on the order to show cause, consider the  
369 affidavits and other showings made by the parties appearing and  
370 make a determination of the probable validity of the underlying  
371 claim alleged against the mortgagor and the mortgagor's  
372 defenses. If the court determines that the plaintiff mortgagee  
373 is likely to prevail in the foreclosure action, the court shall  
374 enter an order requiring the mortgagor to make the payment  
375 described in paragraph (e) to the plaintiff mortgagee and  
376 provide for a remedy as described in paragraph (f). However, the  
377 order shall be stayed pending final adjudication of the claims  
378 of the parties if the mortgagor files with the court a written  
379 undertaking executed by a surety approved by the court in an  
380 amount equal to the unpaid balance of the lien being foreclosed  
381 ~~the mortgage on the property~~, including all principal, interest,  
382 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~  
383 ~~mortgagee~~.

384 (e) If ~~In the event~~ the court enters an order requiring the  
385 mortgagor to make payments to the plaintiff mortgagee, payments  
386 shall be payable at such intervals and in such amounts provided  
387 for in the mortgage instrument before acceleration or maturity.  
388 The obligation to make payments pursuant to any order entered  
389 under this subsection shall commence from the date of the motion



136600

390 filed under this section hereunder. The order shall be served  
391 upon the mortgagor no later than 20 days before the date  
392 specified for the first payment. The order may permit, but may  
393 ~~shall~~ not require, the plaintiff mortgagee to take all  
394 appropriate steps to secure the premises during the pendency of  
395 the foreclosure action.

396 (f) ~~If In the event~~ the court enters an order requiring  
397 payments, the order shall also provide that the plaintiff is  
398 ~~mortgagee shall be~~ entitled to possession of the premises upon  
399 the failure of the mortgagor to make the payment required in the  
400 order unless at the hearing on the order to show cause the court  
401 finds good cause to order some other method of enforcement of  
402 its order.

403 (g) All amounts paid pursuant to this section shall be  
404 credited against the mortgage obligation in accordance with the  
405 terms of the loan documents; ~~provided, however, that any~~  
406 payments made under this section do shall not constitute a cure  
407 of any default or a waiver or any other defense to the mortgage  
408 foreclosure action.

409 (h) Upon the filing of an affidavit with the clerk that the  
410 premises have not been vacated pursuant to the court order, the  
411 clerk shall issue to the sheriff a writ for possession which  
412 shall be governed by the provisions of s. 83.62.

413 (i) For purposes of this subsection, there is a rebuttable  
414 presumption that a residential property for which a homestead  
415 exemption for taxation was granted according to the certified  
416 rolls of the latest assessment by the county property appraiser,  
417 before the filing of the foreclosure action, is an owner-  
418 occupied residential property.



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419           (3) The Supreme Court is requested to amend the Florida  
420 Rules of Civil Procedure to provide for expedited foreclosure  
421 proceedings in conformity with this section and is requested to  
422 develop and publish forms for use under this section.

423           Section 6. Section 702.11, Florida Statutes, is created to  
424 read:

425           702.11 Expedited foreclosure of abandoned residential real  
426 property.-

427           (1) As used in this section, the term "abandoned  
428 residential real property" means residential real property that  
429 is deemed abandoned upon a showing that:

430           (a) A duly licensed process server unaffiliated with the  
431 owner or servicer of any mortgage on the residential real  
432 property or with the attorney or law firm representing such  
433 owner or servicer has made at least three attempts to locate an  
434 occupant of the residential real property. The attempts must  
435 have been made at least 72 hours apart, and at least one each of  
436 such attempts must have been made before 12 p.m., between 12  
437 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt  
438 must include physically knocking or ringing at the door of the  
439 residential real property and such other efforts as are normally  
440 sufficient to obtain a response from an occupant.

441           (b) Two or more of the following conditions exist:

442           1. Windows or entrances to the premises are boarded up or  
443 closed off or multiple window panes are broken and unrepaired.

444           2. Doors to the premises are smashed through, broken off,  
445 unhinged, or continuously unlocked.

446           3. Rubbish, trash, or debris has accumulated on the  
447 mortgaged premises.



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448           4. The premises are deteriorating and are below or in  
449 imminent danger of falling below minimum community standards for  
450 public safety and sanitation.

451           5. If the premises are a part of a condominium or are  
452 governed by a mandatory homeowners' association, the manager or  
453 other representative of the association has confirmed that  
454 assessments for the unit are at least 90 days delinquent.

455           6. Interviews with at least two neighbors in different  
456 households indicate that the residence has been abandoned. The  
457 neighbors must be adjoining, across the street in view of the  
458 home, or across the hall or adjacent to the unit in a  
459 condominium or cooperative.

460  
461 The sheriff or process server making attempts to locate an  
462 occupant of the residential real property and to determine the  
463 abandoned status of the residential real property may provide,  
464 by affidavit and photographic or other documentation, evidence  
465 of the condition of the residential real property, and may  
466 charge a reasonable fee for the attempts and for any affidavit  
467 or other documentation evidencing the condition of the  
468 residential real property.

469           (2) (a) The party entitled to enforce the note and mortgage  
470 encumbering the residential real property appearing to be  
471 abandoned may file a petition before the court seeking to  
472 determine the status of the residential real property and to  
473 invoke an expedited foreclosure proceeding relating to the  
474 property. Upon the filing of an affidavit of diligent search and  
475 inquiry and the affidavit or documentary evidence set forth in  
476 subsection (1), the court shall, upon request of the petitioner,



136600

477 issue one or more subpoenas to the utility companies serving the  
478 residential real property commanding disclosure of the status of  
479 utility service to the subject property, including whether  
480 utilities are currently turned off and whether all outstanding  
481 utility payments have been made and, if so, by whom.

482 (b) If, after review of the response of the utility  
483 companies to the subpoenas and all other matters of record, the  
484 court may deem the property to have been abandoned and the  
485 plaintiff entitled to expedited foreclosure.

486 Section 7. The amendments to s. 702.10, Florida Statutes,  
487 and the creation of s. 702.11, Florida Statutes, by this act are  
488 remedial in nature and shall apply to causes of action pending  
489 on the effective date of this act. Section 702.015, Florida  
490 Statutes, as created by this act, applies to cases filed on or  
491 after July 1, 2012.

492 Section 8. The Legislature finds that this act is remedial  
493 in nature. Accordingly, it is the intent of the Legislature that  
494 this act shall apply to all mortgages encumbering real property  
495 and all promissory notes secured by a mortgage, whether executed  
496 before, on, or after the effective date of this act.

497 Section 9. This act shall take effect upon becoming a law.  
498

499 ===== T I T L E A M E N D M E N T =====

500 And the title is amended as follows:

501  
502 Delete everything before the enacting clause  
503 and insert:

504 A bill to be entitled  
505 An act relating to mortgage foreclosures; amending s.



136600

506 95.11, F.S.; reducing the limitations period for  
507 commencing an action to enforce a claim of a  
508 deficiency judgment subsequent to a foreclosure  
509 action; providing for application to existing causes  
510 of action; creating s. 702.015, F.S.; specifying  
511 required contents of a complaint seeking to foreclose  
512 on certain types of residential properties with  
513 respect to the authority of the plaintiff to foreclose  
514 on the note and the location of the note; providing  
515 legislative intent; providing that failure to file  
516 such documents does not affect title to property  
517 subsequent to a foreclosure sale; creating s. 702.036,  
518 F.S.; requiring a court to treat a challenge to a  
519 final judgment of foreclosure as a claim for monetary  
520 damages under certain circumstances; amending s.  
521 702.06, F.S.; limiting the amount of a deficiency  
522 judgment; amending s. 702.10, F.S.; expanding the  
523 class of persons authorized to move for expedited  
524 foreclosure; defining the term "lienholder"; providing  
525 requirements and procedures with respect to an order  
526 directed to defendants to show cause why a final  
527 judgment of foreclosure should not be entered;  
528 providing that certain failures by a defendant to make  
529 certain filings or to make certain appearances may  
530 have specified legal consequences; requiring the court  
531 to enter a final judgment of foreclosure and order a  
532 foreclosure sale under certain circumstances; amending  
533 a restriction on a mortgagee to request a court to  
534 order a mortgagor defendant to make payments or to



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535 vacate the premises during an action to foreclose on  
536 residential real estate to provide that the  
537 restriction applies to all but owner-occupied  
538 residential property; providing a presumption  
539 regarding owner-occupied residential property;  
540 requesting the Supreme Court to adopt rules and forms  
541 for use in expedited foreclosure proceedings; creating  
542 s. 702.11, F.S.; establishing expedited foreclosure  
543 proceedings for abandoned residential real property  
544 and procedures and requirements with respect thereto;  
545 providing for application of the act; providing an  
546 effective date.



921754

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/27/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment to Amendment (136600)**

Delete lines 451 - 454  
and insert:

5. If the premises are a part of a condominium or are governed by a mandatory homeowners' association, the manager or other representative of the association has confirmed that assessments for the unit or parcel are at least 90 days delinquent.

By the Committee on Judiciary; and Senator Latvala

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1 A bill to be entitled  
 2 An act relating to mortgage foreclosure proceedings;  
 3 amending s. 95.11, F.S.; specifying the limitation  
 4 period for initiating an action to collect a  
 5 deficiency following the foreclosure of certain  
 6 dwellings; providing for application to existing  
 7 causes of action; amending s. 701.04, F.S.; specifying  
 8 requirements for a holder of a mortgage to provide an  
 9 estoppel statement to certain persons requesting the  
 10 payoff amount for the mortgage; specifying the  
 11 required contents of the estoppel statement; requiring  
 12 a person who provides a mortgage satisfaction to  
 13 provide supplemental information if the person was not  
 14 the owner of the mortgage; requiring certain persons  
 15 who are not a mortgagor to provide information showing  
 16 the requestor's ownership interest in the property to  
 17 the mortgageholder when making a request for the  
 18 payoff amount of the mortgage; specifying documents  
 19 that the person who provides the mortgage satisfaction  
 20 must provide to the payor of a mortgage note;  
 21 specifying a fee for failing to timely provide the  
 22 required documents to the payor; authorizing the use  
 23 of a summary procedure to compel compliance with  
 24 requirements to provide an estoppel statement or the  
 25 documents that must be provided by the person who  
 26 provides a mortgage satisfaction; creating s. 701.045,  
 27 F.S.; requiring a party who is owed and who is fully  
 28 paid money due on a lien or judgment to execute in  
 29 writing an instrument acknowledging satisfaction of

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30 the lien or judgment, to have the instrument recorded  
 31 in the official records of the appropriate county  
 32 requiring the party, and to send within a specified  
 33 time the recorded instrument to the person who made  
 34 full payment; providing for attorney fees and costs;  
 35 requiring the party receiving full payment for a  
 36 judgment for which a writ of execution has been  
 37 issued, docketed, and indexed with a sheriff to  
 38 request, in writing and addressed to the sheriff, the  
 39 return of the satisfied writ of execution; requiring  
 40 compliance with certain procedures; creating s.  
 41 702.015, F.S.; specifying required contents of a  
 42 complaint seeking to foreclose on certain types of  
 43 residential properties with respect to the authority  
 44 of the plaintiff to foreclose on the note and the  
 45 location of the note; creating s. 702.036, F.S.;  
 46 requiring a court to treat a challenge to a final  
 47 judgment of foreclosure as a claim for monetary  
 48 damages under certain circumstances; amending s.  
 49 702.06, F.S.; providing that a person who forecloses  
 50 on a mortgage may not initiate an action to recover a  
 51 deficiency if the court in the foreclosure action has  
 52 granted or denied a claim for a deficiency judgment;  
 53 limiting the amount of the deficiency judgment;  
 54 requiring a separate action to recover a deficiency be  
 55 initiated within a certain time period; amending s.  
 56 702.10, F.S.; expanding the class of persons  
 57 authorized to move for expedited foreclosure; defining  
 58 the term "lienholder"; providing requirements and

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59 procedures with respect to an order directed to  
 60 defendants to show cause why a final judgment of  
 61 foreclosure should not be entered; providing that  
 62 certain failures by a defendant to make certain  
 63 filings or to make certain appearances may have  
 64 specified legal consequences; requiring the court to  
 65 enter a final judgment of foreclosure and order a  
 66 foreclosure sale under certain circumstances; revising  
 67 a restriction on a mortgagee to request a court to  
 68 order a mortgagor defendant to make payments or to  
 69 vacate the premises during an action to foreclose on  
 70 residential real estate to provide that the  
 71 restriction applies to all but owner-occupied  
 72 residential property; providing a presumption  
 73 regarding owner-occupied residential property;  
 74 requesting the Supreme Court to adopt rules and forms  
 75 for use in expedited foreclosure proceedings; creating  
 76 s. 702.11, F.S.; specifying security that may be  
 77 determined by the court as adequate protection against  
 78 a loss by another person seeking to enforce the  
 79 mortgage; authorizing the holder of a note to initiate  
 80 an action against a person who wrongfully claimed to  
 81 be entitled to enforce the note for damages and  
 82 attorney fees and costs; authorizing the holder of the  
 83 note to pursue the recovery against any adequate  
 84 protections given by the person who wrongfully claimed  
 85 to be entitled to enforce the note; creating s.  
 86 702.13, F.S.; establishing expedited foreclosure  
 87 proceedings for abandoned residential real property

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88 and procedures and requirements with respect thereto;  
 89 providing for application of the act; providing an  
 90 effective date.  
 91  
 92 Be It Enacted by the Legislature of the State of Florida:  
 93  
 94 Section 1. Paragraph (b) of subsection (2) and subsection  
 95 (5) of section 95.11, Florida Statutes, are amended to read:  
 96 95.11 Limitations other than for the recovery of real  
 97 property.—Actions other than for recovery of real property shall  
 98 be commenced as follows:  
 99 (2) WITHIN FIVE YEARS.—  
 100 (b) A legal or equitable action on a contract, obligation,  
 101 or liability founded on a written instrument, except for an  
 102 action to enforce a claim against a payment bond, which shall be  
 103 governed by the applicable provisions of ss. 255.05(10) and  
 104 713.23(1)(e), and except for an action for a deficiency  
 105 judgment, which shall be governed by paragraph (5)(h) and s.  
 106 702.06.  
 107 (5) WITHIN ONE YEAR.—  
 108 (a) An action for specific performance of a contract.  
 109 (b) An action to enforce an equitable lien arising from the  
 110 furnishing of labor, services, or material for the improvement  
 111 of real property.  
 112 (c) An action to enforce rights under the Uniform  
 113 Commercial Code—Letters of Credit, chapter 675.  
 114 (d) An action against any guaranty association and its  
 115 insured, with the period running from the date of the deadline  
 116 for filing claims in the order of liquidation.

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117 (e) An action to enforce any claim against a payment bond  
 118 on which the principal is a contractor, subcontractor, or sub-  
 119 subcontractor as defined in s. 713.01, for private work as well  
 120 as public work, from the last furnishing of labor, services, or  
 121 materials or from the last furnishing of labor, services, or  
 122 materials by the contractor if the contractor is the principal  
 123 on a bond on the same construction project, whichever is later.

124 (f) Except for actions described in subsection (8), a  
 125 petition for extraordinary writ, other than a petition  
 126 challenging a criminal conviction, filed by or on behalf of a  
 127 prisoner as defined in s. 57.085.

128 (g) Except for actions described in subsection (8), an  
 129 action brought by or on behalf of a prisoner, as defined in s.  
 130 57.085, relating to the conditions of the prisoner's  
 131 confinement.

132 (h) An action under s. 702.06, to collect a deficiency  
 133 following the foreclosure of an owner-occupied, one-family to  
 134 four-family dwelling unit.

135 Section 2. The amendments to s. 95.11, Florida Statutes,  
 136 made by this act shall apply to any action commenced on or after  
 137 July 1, 2012, regardless of when the cause of action accrues,  
 138 except that any action that would not have been barred under s.  
 139 95.11(2)(b), Florida Statutes, before the changes made by this  
 140 act may be commenced no later than 5 years after the action  
 141 accrues and in no event later than July 1, 2014, and if the  
 142 action is not commenced by that date, it is barred by the  
 143 changes made by this act.

144 Section 3. Section 701.04, Florida Statutes, is amended to  
 145 read:

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146 701.04 Cancellation of mortgages, liens, and judgments.—

147 (1) (a) If a mortgagor, a holder of an interest in property  
 148 encumbered by a mortgage, or a designee of either makes a  
 149 written request for the payoff amount of the mortgage as of a  
 150 certain date, the holder of the mortgage shall provide a written  
 151 estoppel statement executed by an officer or authorized agent of  
 152 the holder of the mortgage to the person making the request  
 153 within 15 days after the date the request was received. The  
 154 estoppel statement shall be delivered to the place, facsimile  
 155 number, or e-mail address designated in the written request. The  
 156 estoppel statement shall set ~~Within 14 days after receipt of the~~  
 157 ~~written request of a mortgagor, the holder of a mortgage shall~~  
 158 ~~deliver to the mortgagor at a place designated in the written~~  
 159 ~~request an estoppel letter setting forth:~~

160 1. The unpaid balance of the loan secured by the mortgage,  
 161 including principal, all accrued interest, and any other charges  
 162 properly due under or secured by the mortgage as of the date  
 163 specified in the request. ~~and~~

164 2. Interest on a per-day basis for the unpaid balance for a  
 165 period of at least 20 days after the date specified in the  
 166 request.

167 3. A certification that the party providing the estoppel  
 168 statement is the holder of the original promissory note secured  
 169 thereby, or is the person or agent of the person entitled to  
 170 enforce the note pursuant to s. 673.3011.

171 4. A commitment to comply with paragraph (d) upon timely  
 172 receipt of the amounts set forth in the estoppel statement.

173 (b) The mortgagee may not charge a fee for the preparation  
 174 or delivery of the first two estoppel statements requested for

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175 any one mortgage in any calendar month. This paragraph is not  
 176 intended to limit requirements of federal law.

177 (c) Subsequent owners of the property encumbered by the  
 178 mortgage, and creditors and lienholders taking an interest in  
 179 the property for a valuable consideration, and those claiming  
 180 by, through, and under them, may rely on the estoppel statement  
 181 and are entitled to the benefits of the statement.

182 (d) Whenever the amount of money due on a ~~any~~ mortgage,  
 183 lien, or judgment ~~is shall be~~ fully paid to the person or party  
 184 entitled to the payment thereof, or all obligations secured by  
 185 the mortgage or lien are otherwise satisfied, the mortgagee,  
 186 creditor, or assignee, or the attorney of record in the case of  
 187 a judgment, to whom such payment ~~has shall have~~ been made or  
 188 satisfaction has been given, shall execute in writing an  
 189 instrument acknowledging satisfaction of ~~the said~~ mortgage,  
 190 lien, or judgment and have the same acknowledged, or proven, and  
 191 recorded ~~duly entered of record~~ in the official records ~~book~~  
 192 provided by law for such purposes in the proper county. If the  
 193 person or party executing the satisfaction is not shown as the  
 194 owner of the mortgage in the official records, the instrument  
 195 shall be supplemented by an affidavit that the person executing  
 196 the satisfaction is in physical possession of the original  
 197 promissory note secured by the mortgage or was entitled to  
 198 enforce the note pursuant to s. 673.3011. If the person was  
 199 entitled only to enforce the note, but was not in possession of  
 200 the note, the person shall provide in the affidavit the specific  
 201 factual basis for such authority.

202 (e) If the written request for the payoff amount for the  
 203 mortgage as of a certain date is not from the mortgagor or the

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204 designee of the mortgagor, the request must include a copy of  
 205 the instrument or instruments showing the requestor's ownership  
 206 interest in the property. The mortgageholder, in response to the  
 207 request, is not required to itemize the unpaid balance of the  
 208 loan secured by the mortgage.

209 (2) (a) Within 60 days ~~after~~ of the date of receipt of the  
 210 full payment of the mortgage ~~in accord with the estoppel~~  
 211 statement, ~~lien, or judgment~~, the person required to acknowledge  
 212 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or  
 213 cause to be sent ~~the recorded satisfaction~~ to the maker of the  
 214 promissory note, or such other person as may be designated in  
 215 writing by the payor at or after the final payment, a certified  
 216 copy of the recorded satisfaction. The person shall also send to  
 217 the payor of a mortgage note:

218 1. The original promissory note, marked "paid in full"; or  
 219 2. An affidavit stating that the note was lost, destroyed,  
 220 or stolen, together with exhibits in compliance with s. 702.015  
 221 and evidence of adequate protections as provided in s. 702.11.

222 (b) If the documents required by this subsection are not  
 223 delivered within 60 days, the party who received payment on the  
 224 note or mortgage shall pay to the maker of the promissory note  
 225 or its designee a fee in the amount of \$100 per day for each day  
 226 beyond 60 days that the documents have not been delivered. The  
 227 aggregate fees under this paragraph may not exceed \$5,000.

228 (3) A summary procedure pursuant to s. 51.011 may be  
 229 brought to compel compliance with the requirements of this  
 230 section, and the prevailing party shall recover reasonable  
 231 attorney fees and costs. The court may limit recovery of  
 232 attorney fees and costs if an unreasonable number of requests

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233 ~~for estoppel statements have been made person who has made the~~  
 234 ~~full payment. In the case of a civil action arising out of the~~  
 235 ~~provisions of this section, the prevailing party shall be~~  
 236 ~~entitled to attorney's fees and costs.~~

237 (4)(2) Whenever a writ of execution has been issued,  
 238 docketed, and indexed with a sheriff and the judgment upon which  
 239 it was issued has been fully paid, it shall be the  
 240 responsibility of the party receiving payment to request, in  
 241 writing, addressed to the sheriff, return of the writ of  
 242 execution as fully satisfied.

243 Section 4. Section 701.045, Florida Statutes, is created to  
 244 read:

245 701.045 Cancellation of liens and judgments.-

246 (1) If the amount of money due on any lien, other than a  
 247 mortgage, or any judgment is fully paid to the party entitled to  
 248 such payment or to the creditor or assignee, the party, the  
 249 creditor, or the assignee to whom such payment has been made  
 250 shall execute in writing an instrument acknowledging  
 251 satisfaction of the lien or judgment, have the instrument  
 252 acknowledged or proven, and have the instrument duly entered of  
 253 record in the official records in the appropriate county. Within  
 254 60 days after the date of receipt of the full payment of the  
 255 lien or judgment, the party required to acknowledge satisfaction  
 256 of the lien or judgment shall send or cause to be sent the  
 257 recorded satisfaction instrument to the party who has made the  
 258 full payment. In the case of a civil action arising out of this  
 259 section, the prevailing party is entitled to attorney fees and  
 260 costs.

261 (2) If a writ of execution has been issued, docketed, and

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262 indexed with a sheriff and the judgment upon which it was issued  
 263 has been fully paid, the party receiving payment must request,  
 264 in writing and addressed to the sheriff, return of the writ of  
 265 execution as fully satisfied.

266 (3) The party receiving full payment of any judgment shall  
 267 also comply with s. 55.206, as appropriate.

268 Section 5. Section 702.015, Florida Statutes, is created to  
 269 read:

270 702.015 Elements of complaint; lost, destroyed, or stolen  
 271 note affidavit.-

272 (1) A complaint that seeks to foreclose a mortgage or other  
 273 lien on residential real property, including individual units of  
 274 condominiums and cooperatives, designed principally for  
 275 occupation by from one to four families, but not including an  
 276 interest in a timeshare property, which secures a promissory  
 277 note must:

278 (a) Contain affirmative allegations expressly made by the  
 279 plaintiff at the time the proceeding is commenced that the  
 280 plaintiff is the holder of the original note secured by the  
 281 mortgage; or

282 (b) Allege with specificity the factual basis by which the  
 283 plaintiff is a person entitled to enforce the note under s.  
 284 673.3011.

285 (2) If a party has been delegated the authority to  
 286 institute a mortgage foreclosure action on behalf of the holder  
 287 of the note, the complaint shall describe the authority of the  
 288 plaintiff and identify, with specificity, the document that  
 289 grants the plaintiff the authority to act on behalf of the  
 290 holder of the note. This subsection is intended to require

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291 initial disclosure of status and pertinent facts and not to  
 292 modify law regarding standing or real parties in interest.

293 (3) If the plaintiff is in physical possession of the  
 294 original promissory note, the plaintiff must file with the  
 295 court, contemporaneously with and as a condition precedent to  
 296 the filing of the complaint for foreclosure, certification,  
 297 under penalty of perjury, that the plaintiff is in physical  
 298 possession of the original promissory note. The certification  
 299 must set forth the physical location of the note, the name and  
 300 title of the individual giving the certification, the name of  
 301 the person who personally verified such physical possession, and  
 302 the time and date on which the possession was verified. Correct  
 303 copies of the note and all allonges to the note must be attached  
 304 to the certification. The original note and the allonges must be  
 305 filed with the court before the entry of any judgment of  
 306 foreclosure or judgment on the note.

307 (4) If the plaintiff seeks to enforce a lost, destroyed, or  
 308 stolen instrument, an affidavit executed under penalty of  
 309 perjury must be attached to the complaint. The affidavit must:

310 (a) Detail a clear chain of all assignments for the  
 311 promissory note that is the subject of the action.

312 (b) Set forth facts showing that the plaintiff is entitled  
 313 to enforce a lost, destroyed, or stolen instrument pursuant to  
 314 s. 673.3091.

315 (c) Include as exhibits to the affidavit such copies of the  
 316 note and the allonges to the note, assignments of mortgage,  
 317 audit reports showing physical receipt of the original note, or  
 318 other evidence of the acquisition, ownership, and possession of  
 319 the note as may be available to the plaintiff.

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320 Section 6. Section 702.036, Florida Statutes, is created to  
 321 read:

322 702.036 Finality of mortgage foreclosure judgment.-

323 (1) (a) In an action or proceeding in which a party seeks to  
 324 set aside, invalidate, or challenge the validity of a final  
 325 judgment of foreclosure of a mortgage or to establish or  
 326 reestablish a lien or encumbrance on the property in abrogation  
 327 of the final judgment of foreclosure of a mortgage, the court  
 328 shall treat such request solely as a claim for monetary damages  
 329 and may not grant relief that adversely affects the quality or  
 330 character of the title to the property if:

331 1. A final judgment of foreclosure of a mortgage has been  
 332 entered as to a property;

333 2. All applicable appeals periods have run as to the final  
 334 judgment of foreclosure of a mortgage and an appeal has not been  
 335 filed or, if an appeal has been filed, it has been finally  
 336 resolved;

337 3. The property has been acquired for value by a person not  
 338 affiliated with the foreclosing lender or the foreclosed owner,  
 339 at a time in which no lis pendens regarding the suit to set  
 340 aside, invalidate, or challenge the foreclosure appears in the  
 341 official records of the county where the property is located;  
 342 and

343 4. The party seeking relief from the final judgment of  
 344 foreclosure of a mortgage has been properly served in the  
 345 foreclosure lawsuit as provided in chapter 48 or chapter 49.

346 (b) This subsection does not limit the right to pursue any  
 347 other relief to which a person may be entitled, including, but  
 348 not limited to, compensatory damages, punitive damages,

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349 statutory damages, consequential damages, injunctive relief, or  
 350 fees and costs, and which does not adversely affect the  
 351 ownership of the title to the property as vested in the  
 352 unaffiliated purchaser for value.

353 (2) For purposes of this section, the following, without  
 354 limitation, shall be considered persons affiliated with the  
 355 foreclosing lender:

356 (a) The foreclosing lender or any loan servicer for the  
 357 loan being foreclosed;

358 (b) Any past or present owner or holder of the loan being  
 359 foreclosed;

360 (c) Any maintenance company, holding company, foreclosure  
 361 services company, or law firm under contract to any entity  
 362 listed in paragraph (a), paragraph (b), or this paragraph, with  
 363 regard to the loan being foreclosed; or

364 (d) Any parent entity, subsidiary, or other person that  
 365 directly, or indirectly through one or more intermediaries,  
 366 controls or is controlled by, or is under common control with,  
 367 any entity listed in paragraph (a), paragraph (b), or paragraph  
 368 (c).

369 (3) After foreclosure of a mortgage based upon the  
 370 enforcement of a lost, destroyed, or stolen note, a person who  
 371 is not a party to the underlying foreclosure action but who  
 372 claims to be the actual holder of the promissory note secured by  
 373 the foreclosed mortgage does not have a claim against the  
 374 foreclosed property after it has been conveyed for valuable  
 375 consideration to a person not affiliated with the foreclosing  
 376 lender or the foreclosed owner. This section does not preclude  
 377 the actual holder of the note from pursuing recovery from any

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378 adequate protection given under s. 673.3091 by the person who  
 379 enforced the note or from the party who wrongfully claimed to be  
 380 the owner or holder of the promissory note or the maker of the  
 381 note or from any other person against whom the actual holder of  
 382 the note may have a claim relating to the note.

383 Section 7. Section 702.06, Florida Statutes, is amended to  
 384 read:

385 702.06 Deficiency decree; ~~common-law~~ suit to recover  
 386 deficiency.-

387 (1) In an action ~~all suits~~ for the foreclosure of a  
 388 mortgage, mortgages heretofore or hereafter executed the entry  
 389 of a deficiency decree for any portion of a deficiency, should  
 390 one exist, ~~must~~ shall be commenced within 1 year after the sale  
 391 date of the mortgaged property pursuant to a court foreclosure  
 392 sale or short sale. If not commenced within 1 year after sale,  
 393 any attempt to collect a deficiency judgment shall be barred.  
 394 The amount of the deficiency judgment may not exceed the  
 395 difference between the judgment amount or, in the case of a  
 396 short sale, the outstanding debt, and the fair market value of  
 397 the property on the date of sale. ~~the sound judicial discretion~~  
 398 of the court, but The complainant shall also have the right to  
 399 sue at common law to recover such deficiency, unless the court  
 400 in the foreclosure action has granted or denied a claim for a  
 401 deficiency judgment ~~provided no suit at law to recover such~~  
 402 deficiency shall be maintained against the original mortgagor in  
 403 cases where the mortgage is for the purchase price of the  
 404 property involved and where the original mortgagee becomes the  
 405 purchaser thereof at foreclosure sale and also is granted a  
 406 deficiency decree against the original mortgagor.

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407 (2) (a) With respect to an owner-occupied, one-family to  
 408 four-family dwelling unit, the party to whom a deficiency is  
 409 owing may move for the entry of a deficiency judgment in the  
 410 foreclosure action or file a separate action for collection of  
 411 the deficiency. The separate action must be filed within 1 year  
 412 after the property has vested in the foreclosing lender or other  
 413 purchaser at the foreclosure sale.

414 (b) If a deficiency is not pursued within the time period  
 415 specified in this subsection, the vesting of the property or  
 416 proceeds of the sale, regardless of the amount, shall be deemed  
 417 to be in full satisfaction of the judgment debt and a right to  
 418 recover any deficiency in any subsequent action or proceeding is  
 419 extinguished.

420 (c) This subsection does not restrict the authority of the  
 421 court to determine the entitlement to any assets held by any  
 422 receiver or any assignee of the rents and profits of the  
 423 property.

424 Section 8. Section 702.10, Florida Statutes, is amended to  
 425 read:

426 702.10 Order to show cause; entry of final judgment of  
 427 foreclosure; payment during foreclosure.-

428 (1) A lienholder ~~After a complaint in a foreclosure~~  
 429 ~~proceeding has been filed, the mortgagee~~ may request an order to  
 430 show cause for the entry of final judgment in a foreclosure  
 431 action. For purposes of this section, the term "lienholder"  
 432 includes the plaintiff and a defendant to the action who holds a  
 433 lien encumbering the property or a defendant who, by virtue of  
 434 its status as a condominium association, cooperative  
 435 association, or homeowners' association, may file a lien against

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436 the real property subject to foreclosure. Upon filing, and the  
 437 court shall immediately review the request and the court file in  
 438 chambers and without a hearing ~~complaint~~. If, upon examination  
 439 of the court file ~~complaint~~, the court finds that the complaint  
 440 is verified, complies with s. 702.015, and alleges a cause of  
 441 action to foreclose on real property, the court shall promptly  
 442 issue an order directed to the other parties named in the action  
 443 ~~defendant~~ to show cause why a final judgment of foreclosure  
 444 should not be entered.

445 (a) The order shall:

446 1. Set the date and time for a hearing on the order to show  
 447 cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner  
 448 than 20 days after the service of the order. ~~When service is~~  
 449 ~~obtained by publication, the date for the hearing may not be set~~  
 450 ~~sooner than 30 days after the first publication.~~ The hearing  
 451 must be held within 90 ~~60~~ days after the date of service.  
 452 Failure to hold the hearing within such time does not affect the  
 453 validity of the order to show cause or the jurisdiction of the  
 454 court to issue subsequent orders.

455 2. Direct the time within which service of the order to  
 456 show cause and the complaint must be made upon the defendant.

457 3. State that the filing of defenses by a motion,  
 458 responsive pleading, affidavits, or other papers ~~or by a~~  
 459 ~~verified or sworn answer at or~~ before the hearing to show cause  
 460 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~  
 461 ~~attached~~ final judgment.

462 4. State that a ~~the~~ defendant has the right to file  
 463 affidavits or other papers before ~~at~~ the time of the hearing to  
 464 show cause and may appear personally or by way of an attorney at

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465 the hearing.

466 5. State that, if ~~a the~~ defendant files defenses by a  
 467 motion, a verified or sworn answer, affidavits, or other papers  
 468 or appears personally or by way of an attorney at the time of  
 469 the hearing, the hearing time ~~will~~ may be used to hear and  
 470 consider the defendant's motion, answer, affidavits, other  
 471 papers, and other evidence and argument as may be presented by  
 472 the defendant or the defendant's attorney. The order shall also  
 473 state that the court may enter an order of final judgment of  
 474 foreclosure, which must be based on clear and convincing  
 475 evidence and the arguments presented. If such an order is  
 476 entered, the court shall enter a final judgment of foreclosure  
 477 ordering the clerk of the court to conduct a foreclosure sale.

478 6. State that, if ~~a the~~ defendant fails to appear at the  
 479 hearing to show cause or fails to file defenses by a motion or  
 480 by a verified or sworn answer or files an answer not contesting  
 481 the foreclosure, such the defendant may be considered to have  
 482 waived the right to a hearing, and in such case, the court may  
 483 enter a default against such defendant and, if appropriate, a  
 484 final judgment of foreclosure ordering the clerk of the court to  
 485 conduct a foreclosure sale.

486 7. State that if the mortgage provides for reasonable  
 487 attorney attorney's fees and the requested attorney attorney's  
 488 fees do not exceed 3 percent of the principal amount owed at the  
 489 time of filing the complaint, it is unnecessary for the court to  
 490 hold a hearing or adjudge the requested attorney attorney's fees  
 491 to be reasonable.

492 8. Attach the form of the proposed final judgment of  
 493 foreclosure which the movant requests the court to will enter,

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494 ~~if the defendant waives the right to be heard~~ at the hearing on  
 495 the order to show cause. The form may contain blanks for the  
 496 court to enter the amounts due.

497 9. Require the party seeking final judgment mortgagee to  
 498 serve a copy of the order to show cause on the other parties the  
 499 ~~mortgagor~~ in the following manner:

500 a. If a party the mortgagor has been served with the  
 501 complaint and original process, or the other party is the  
 502 plaintiff in the action, service of the order to show cause on  
 503 that party order may be made in the manner provided in the  
 504 Florida Rules of Civil Procedure.

505 b. If a defendant the mortgagor has not been served with  
 506 the complaint and original process, the order to show cause,  
 507 together with the summons and a copy of the complaint, shall be  
 508 served on the party mortgagor in the same manner as provided by  
 509 law for original process.

510 Any final judgment of foreclosure entered under this subsection  
 511 is for in rem relief only. ~~Nothing in~~ This subsection does not  
 512 ~~shall~~ preclude the entry of a deficiency judgment where  
 513 otherwise allowed by law. It is the intent of the Legislature  
 514 that this alternative procedure may run simultaneously with  
 515 other court procedures.

516 (b) The right to be heard at the hearing to show cause is  
 517 waived if a the defendant, after being served as provided by law  
 518 with an order to show cause, engages in conduct that clearly  
 519 shows that the defendant has relinquished the right to be heard  
 520 on that order. The defendant's failure to file defenses by a  
 521 motion or by a sworn or verified answer, affidavits, or other  
 522

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523 papers or to appear personally or by way of an attorney at the  
 524 hearing duly scheduled on the order to show cause presumptively  
 525 constitutes conduct that clearly shows that the defendant has  
 526 relinquished the right to be heard. If a defendant files  
 527 defenses by a motion, ~~or by~~ a verified or sworn answer,  
 528 affidavits, or other papers at or before the hearing, such  
 529 action may constitute ~~constitutes~~ cause and may preclude  
 530 ~~precludes~~ the entry of a final judgment at the hearing to show  
 531 cause.

532 (c) In a mortgage foreclosure proceeding, when a final  
 533 default judgment of foreclosure has been entered against the  
 534 mortgagor and the note or mortgage provides for the award of  
 535 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
 536 court to hold a hearing or adjudge the requested attorney  
 537 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
 538 percent of the principal amount owed on the note or mortgage at  
 539 the time of filing, even if the note or mortgage does not  
 540 specify the percentage of the original amount that would be paid  
 541 as liquidated damages.

542 (d) If the court finds that all defendants have ~~the~~  
 543 ~~defendant has~~ waived the right to be heard as provided in  
 544 paragraph (b), the court shall promptly enter a final judgment  
 545 of foreclosure without the need for further hearing if the  
 546 plaintiff has shown entitlement to a final judgment. If the  
 547 court finds that a ~~the~~ defendant has not waived the right to be  
 548 heard on the order to show cause, the court shall ~~then~~ determine  
 549 whether there is cause not to enter a final judgment of  
 550 foreclosure. If the court determines, based upon clear and  
 551 convincing evidence and the arguments presented, to support

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552 entry of a final judgment of foreclosure, the court shall enter  
 553 a final judgment of foreclosure ordering the clerk of the court  
 554 to conduct a foreclosure sale ~~finds that the defendant has not~~  
 555 ~~shown cause, the court shall promptly enter a judgment of~~  
 556 ~~foreclosure. If the time allotted for the hearing is~~  
 557 insufficient, the court may announce at the hearing a date and  
 558 time for the continued hearing. Only the parties who appear,  
 559 individually or through an attorney, at the initial hearing must  
 560 be notified of the date and time of the continued hearing.

561 (2) This subsection does not apply to foreclosure of an  
 562 owner-occupied residence. As part of any other ~~in an~~ action for  
 563 foreclosure, and in addition to any other relief that the court  
 564 may award ~~other than residential real estate, the plaintiff the~~  
 565 ~~mortgagee~~ may request that the court enter an order directing  
 566 the mortgagor defendant to show cause why an order to make  
 567 payments during the pendency of the foreclosure proceedings or  
 568 an order to vacate the premises should not be entered.

569 (a) The order shall:

570 1. Set the date and time for hearing on the order to show  
 571 cause. However, the date for the hearing may ~~shall~~ not be set  
 572 sooner than 20 days after the service of the order. If where  
 573 service is obtained by publication, the date for the hearing may  
 574 ~~shall~~ not be set sooner than 30 days after the first  
 575 publication.

576 2. Direct the time within which service of the order to  
 577 show cause and the complaint shall be made upon each ~~the~~  
 578 defendant.

579 3. State that a ~~the~~ defendant has the right to file  
 580 affidavits or other papers at the time of the hearing and may

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581 appear personally or by way of an attorney at the hearing.

582 4. State that, if ~~a the~~ defendant fails to appear at the  
583 hearing to show cause and fails to file defenses by a motion or  
584 by a verified or sworn answer, the defendant ~~is may be~~ deemed to  
585 have waived the right to a hearing and in such case the court  
586 may enter an order to make payment or vacate the premises.

587 5. Require the movant mortgagee to serve a copy of the  
588 order to show cause on the defendant mortgagor in the following  
589 manner:

590 a. If a defendant ~~the mortgagor~~ has been served with the  
591 complaint and original process, service of the order may be made  
592 in the manner provided in the Florida Rules of Civil Procedure.

593 b. If a defendant ~~the mortgagor~~ has not been served with  
594 the complaint and original process, the order to show cause,  
595 together with the summons and a copy of the complaint, shall be  
596 served on the defendant mortgagor in the same manner as provided  
597 by law for original process.

598 (b) The right of a defendant to be heard at the hearing to  
599 show cause is waived if the defendant, after being served as  
600 provided by law with an order to show cause, engages in conduct  
601 that clearly shows that the defendant has relinquished the right  
602 to be heard on that order. ~~A The~~ defendant's failure to file  
603 defenses by a motion or by a sworn or verified answer or to  
604 appear at the hearing duly scheduled on the order to show cause  
605 presumptively constitutes conduct that clearly shows that the  
606 defendant has relinquished the right to be heard.

607 (c) If the court finds that a the defendant has waived the  
608 right to be heard as provided in paragraph (b), the court may  
609 promptly enter an order requiring payment in the amount provided

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610 in paragraph (f) or an order to vacate.

611 (d) If the court finds that the mortgagor has not waived  
612 the right to be heard on the order to show cause, the court  
613 shall, at the hearing on the order to show cause, consider the  
614 affidavits and other showings made by the parties appearing and  
615 make a determination of the probable validity of the underlying  
616 claim alleged against the mortgagor and the mortgagor's  
617 defenses. If the court determines that the plaintiff mortgagee  
618 is likely to prevail in the foreclosure action, the court shall  
619 enter an order requiring the mortgagor to make the payment  
620 described in paragraph (e) to the plaintiff mortgagee and  
621 provide for a remedy as described in paragraph (f). However, the  
622 order shall be stayed pending final adjudication of the claims  
623 of the parties if the mortgagor files with the court a written  
624 undertaking executed by a surety approved by the court in an  
625 amount equal to the unpaid balance of the lien being foreclosed  
626 ~~the mortgage on the property~~, including all principal, interest,  
627 unpaid taxes, and insurance premiums paid by the plaintiff the  
628 ~~mortgagee~~.

629 (e) ~~If In the event~~ the court enters an order requiring the  
630 mortgagor to make payments to the plaintiff mortgagee, payments  
631 shall be payable at such intervals and in such amounts provided  
632 for in the mortgage instrument before acceleration or maturity.  
633 The obligation to make payments pursuant to any order entered  
634 under this subsection shall commence from the date of the motion  
635 filed under this section hereunder. The order shall be served  
636 upon the mortgagor no later than 20 days before the date  
637 specified for the first payment. The order may permit, but may  
638 ~~shall not require,~~ the plaintiff mortgagee to take all

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639 appropriate steps to secure the premises during the pendency of  
640 the foreclosure action.

641 (f) ~~If in the event~~ the court enters an order requiring  
642 payments, the order shall also provide that the plaintiff is  
643 ~~mortgagee shall be~~ entitled to possession of the premises upon  
644 the failure of the mortgagor to make the payment required in the  
645 order unless at the hearing on the order to show cause the court  
646 finds good cause to order some other method of enforcement of  
647 its order.

648 (g) All amounts paid pursuant to this section shall be  
649 credited against the mortgage obligation in accordance with the  
650 terms of the loan documents; ~~provided, however, that any~~  
651 payments made under this section do shall not constitute a cure  
652 of any default or a waiver or any other defense to the mortgage  
653 foreclosure action.

654 (h) Upon the filing of an affidavit with the clerk that the  
655 premises have not been vacated pursuant to the court order, the  
656 clerk shall issue to the sheriff a writ for possession which  
657 shall be governed by the provisions of s. 83.62.

658 (i) For purposes of this subsection, there is a rebuttable  
659 presumption that a residential property for which a homestead  
660 exemption for taxation was granted according to the certified  
661 rolls of the latest assessment by the county property appraiser,  
662 before the filing of the foreclosure action, is an owner-  
663 occupied residential property.

664 (3) The Supreme Court is requested to amend the Florida  
665 Rules of Civil Procedure to provide for expedited foreclosure  
666 proceedings in conformity with this section. The Supreme Court  
667 is requested to develop and publish forms for use under this

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668 section.

669 Section 9. Section 702.11, Florida Statutes, is created to  
670 read:

671 702.11 Adequate protections for lost, destroyed, or stolen  
672 notes in mortgage foreclosure.--

673 (1) In connection with a mortgage foreclosure, the court  
674 may find any of the following as reasonable means of providing  
675 adequate protection under s. 673.3019:

676 (a) A written indemnification agreement by a person  
677 reasonably believed sufficiently solvent to honor such an  
678 obligation;

679 (b) A surety bond;

680 (c) A letter of credit issued by a financial institution;

681 (d) A deposit of cash collateral with the clerk of the  
682 court; or

683 (e) Such other security as the court may deem appropriate  
684 under the circumstances.

685  
686 Any security given shall be on terms and in amounts set by the  
687 court, for a time period through the running of the statute of  
688 limitations for enforcement of the underlying note, and  
689 conditioned to indemnify and hold harmless the maker of the note  
690 against any loss or damage, including principal, interest, and  
691 attorney fees and costs, which might occur by reason of a claim  
692 by another person to enforce the note.

693 (2) Any person who wrongly claimed to be the holder of or,  
694 pursuant to s. 673.3011, wrongly claimed to be entitled to  
695 enforce a lost, stolen, or destroyed note and caused the  
696 mortgage secured by the note to be foreclosed is liable to the

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697 actual holder of the note for actual damages suffered, together  
 698 with attorney fees and costs of the actual holder of the note in  
 699 enforcing rights under this section. The extent of the liability  
 700 is not limited to any adequate protections given under s.  
 701 673.3091. In addition, the actual holder of the note may pursue  
 702 recovery directly against any adequate protections given.

703 (a) The actual holder of the note is not required to pursue  
 704 recovery against the maker of the note or any guarantor of the  
 705 note as a condition precedent to pursuing remedies under this  
 706 section.

707 (b) This section does not limit or restrict the ability of  
 708 the actual holder of the note to pursue any other claims or  
 709 remedies it may have against the maker, the person who wrongly  
 710 claimed to be the holder, or any person who facilitated or  
 711 participated in the claim to the note or enforcement of the  
 712 note.

713 Section 10. Section 702.13, Florida Statutes, is created to  
 714 read:

715 702.13 Expedited foreclosure of abandoned residential real  
 716 property.—

717 (1) As used in this section, the term "abandoned  
 718 residential real property" means residential real property that  
 719 is deemed abandoned upon a showing that:

720 (a) A duly licensed process server unaffiliated with the  
 721 owner or servicer of any mortgage on the residential real  
 722 property or with the attorney or law firm representing such  
 723 owner or servicer has made at least three attempts to locate an  
 724 occupant of the residential real property. The attempts must  
 725 have been made at least 72 hours apart, and at least one each of

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726 such attempts must have been made before 12 p.m., between 12  
 727 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt  
 728 must include physically knocking or ringing at the door of the  
 729 residential real property and such other efforts as are normally  
 730 sufficient to obtain a response from an occupant.

731 (b) Two or more of the following conditions exist:

732 1. Windows or entrances to the premises are boarded up or  
 733 closed off or multiple window panes are broken and unrepaired.

734 2. Doors to the premises are smashed through, broken off,  
 735 unhinged, or continuously unlocked.

736 3. Rubbish, trash, or debris has accumulated on the  
 737 mortgaged premises.

738 4. The premises are deteriorating and are below or in  
 739 imminent danger of falling below minimum community standards for  
 740 public safety and sanitation.

741 5. If the premises are a part of a condominium or are  
 742 governed by a mandatory homeowners' association, the manager or  
 743 other representative of the association has confirmed that  
 744 assessments for the unit are at least 90 days delinquent.

745 6. Interviews with at least two neighbors in different  
 746 households indicate that the residence has been abandoned. The  
 747 neighbors must be adjoining, across the street in view of the  
 748 home, or across the hall or adjacent to the unit in a  
 749 condominium or cooperative.

750  
 751 The process server making attempts to locate an occupant of the  
 752 residential real property may provide, by affidavit and  
 753 photographic or other documentation, evidence of the condition  
 754 of the residential real property.

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755 (2) (a) The party entitled to enforce the note and mortgage  
 756 encumbering the residential real property appearing to be  
 757 abandoned must file a petition before the court seeking to  
 758 determine the status of the residential real property and to  
 759 invoke an expedited foreclosure proceeding relating to the  
 760 property. Upon the filing of an affidavit of diligent search and  
 761 inquiry and the affidavit or documentary evidence set forth in  
 762 subsection (1), the court shall, upon request of the petitioner,  
 763 issue one or more subpoenas to the utility companies serving the  
 764 residential real property commanding disclosure of the status of  
 765 utility service to the subject property, including whether  
 766 utilities are currently turned off and whether all outstanding  
 767 utility payments have been made and, if so, by whom.

768 (b) If, after review of the response of the utility  
 769 companies to the subpoenas and all other matters of record, the  
 770 court determines the property to have been abandoned, the party  
 771 entitled to foreclose on interest encumbering the residential  
 772 real property is entitled to use the expedited mortgage  
 773 foreclosure procedures set forth in s. 702.10 upon service by  
 774 publication. However, service must be made on any condominium,  
 775 cooperative, or homeowners' association having a lien interest  
 776 in the property and all other junior lienholders as required by  
 777 law.

778 Section 11. This act is intended to be remedial in nature  
 779 and applies to any action filed on or after the effective date  
 780 of this act. The failure to strictly comply with the  
 781 requirements of this act may be asserted only within the  
 782 foreclosure proceeding itself and does not affect the validity  
 783 of any final judgment of foreclosure which may be granted or

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784 give rise to any independent cause of action or claim for  
 785 damages against the plaintiff or any other party.

786 Section 12. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

To Bill  
and meet  
791184

2-2-12

*Meeting Date*

Topic Acupuncture

Bill Number SB 1860

Name Pat Mixon

Amendment Barcode 791184  
*(if applicable)*

Job Title Governmental Consultant

Address 119 East Park Avenue

Phone 850-528-44

*Street*

Tallahassee FL 32301

E-mail pat@mixonandassociates.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing Myself regarding personal health issues

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12  
Meeting Date

Topic PIP INSURANCE

Bill Number SB 1860

Name DAVID A. HART

Amendment Barcode 220258  
(if applicable)

Job Title EXEC V.P.

Address 136 S. BRONOUGH  
Street

Phone 850. 521-1200

TALLAHASSEE, FL 32301  
City State Zip

E-mail dhart@flchamber.com

Speaking:  For  Against  Information

Representing FL CHAMBER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Bill and Amendment*

2-2-12

*Meeting Date*

Topic Acupuncture

Bill Number SB 1860

Name John Cerra

Amendment Barcode 79189  
*(if applicable)*  
*(if applicable)*

Job Title Governmental Consultant

Address 11441 SW 110 Lane

Phone 786-525-6233

*Street*

Miami

FL

*City*

*State*

*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Myself, discussing personal health issues.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

*Meeting Date*

Topic Acupuncture

Bill Number SB 1860

Name Juhan Mixon

Amendment Barcode 29189  
*(if applicable)*

Job Title Governmental Consultant

Address 119 East Park Avenue

Phone 850-528-4441

*Street*

Tallahassee

FL

32301

*City*

*State*

*Zip*

E-mail juhan@mixonandassociates.com

Speaking:  For  Against  Information

Representing Florida State Oriental Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP AUTO INSURANCE

Bill Number 1860  
(if applicable)

Name BILL NEWTON

Amendment Barcode 791184  
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 3006 W. KENNEDY BLVD STE B  
Street

Phone 813-877-6712

TAMPA FL 33609  
City State Zip

E-mail BILLNOPEAN.ORG

Speaking:  For  Against  Information

Representing FLORIDA CONSUMER ACTION NETWORK

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/12

Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Russel Lazega

Amendment Barcode 527256  
(if applicable)

Job Title Attorney, Author of Leading Text on Fla. PIP

Address 45 E. Sheridan St.

Phone \_\_\_\_\_

Street  
Dania Beach, FL 33004  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Responsive Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 2, 2012

Meeting Date

Topic PIP

Bill Number 1860

Name Kim Driggers

Amendment Barcode 527256 (if applicable)

Job Title Lawyer

Address 909 E. Park Ave

Phone 850.222.2000

Tallahassee, FL 32301

E-mail kdriggers@tallahasseeattorney.com

Speaking:  For  Against  Information

Representing Amend. Florida Justice Assn

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-2-12

Meeting Date

Topic PIP AUTO INSURANCE

Bill Number 1860  
(if applicable)

Name BILL NEWTON

Amendment Barcode 527256  
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 3006 W KENNEDY BLVD STE B

Phone 813-877-6712

Street

TAMPA, FL 33609

City

State

Zip

E-mail BILLN@FCAN.ORG

Speaking:  For  Against  Information

Representing FLORIDA CONSUMER ACTION NETWORK

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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Feb 2, 2012  
Meeting Date

Topic PIP

Bill Number 1860

Name Kim Driggers

Amendment Barcode 527256  
(if applicable)

Job Title Lawyer

Address 909 E. Park Ave

Phone 850.222.2000

Street  
Tallahassee FL 32301  
City State Zip

E-mail Kdriggers@Tallahasseeattorneys.com

Speaking:  For  Against  Information

Representing Florida Justice Assn.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/12  
Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Jeff Morrison DC

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Chiropractor

Address 1609 91<sup>st</sup> St. NW.  
Street

Phone 941-739-2225

Bradenton FL 34209  
City State Zip

E-mail dr.morrison@verizon.net

Speaking:  For  Against  Information

Representing Fl. Chiropractic Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/12

Meeting Date

Topic PIP Fraud

Bill Number SB 860  
*(if applicable)*

Name CHRIS CONNELL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Major - Tallahassee Police Dept

Address 234 E Seventh Ave

Phone 850.891.4301

Tallahassee FL 32301  
*City State Zip*

E-mail Chris.Connell@talgar.com

Speaking:  For  Against  Information

Representing FLORIDA POLICE CHIEFS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic RIP Bill

Bill Number 1860

Name Kevin Weiss

Amendment Barcode ~~221150~~ (if applicable)

Job Title Appellate Attorney

760588 (if applicable)

Address 698 North Maitland Ave.

Phone 407-509-1539

Maitland, FL 32751  
City State Zip

E-mail WEISS@weisslegalgroup.com

Speaking:  For  Against  Information

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-2-12

Meeting Date

Topic PIP INSURANCE

Bill Number SB 1860  
*(if applicable)*

Name DAVID A HART

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXEC - VP

Address 136 S. BRONOUGH  
*Street*

Phone 850-521-1200

TALLAHASSEE FL 32301  
*City State Zip*

E-mail dhart@flchamber.com

Speaking:  For  Against  Information

Representing FL CHAMBER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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2/2/12

Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Tammy Perdue

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

<sup>Street</sup>  
Tallahassee FL 32301  
City State Zip

E-mail tperdue@aif.com

Speaking:  ~~For~~  Against  Information

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/2012  
Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Robert Heatz

Amendment Barcode 220258  
(if applicable)

Job Title Attorney

Address 423 N. Baylen St

Phone (850) 466-3888

Street  
Pensacola FL 32501  
City State Zip

E-mail  Robert@robertheatzlaw.com

Speaking:  For  Against  Information

Representing Florida Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/2012  
Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Robert Heath

Amendment Barcode 220258  
(if applicable)

Job Title attorney

Address 423 N. Baylen St.  
Street

Phone (850) 466-3888

Penstroke FL 32501  
City State Zip

E-mail Robert@robertheathlaw.com

Speaking:  For  Against  Information

Representing Florida Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/12

Meeting Date

Topic PIP

Bill Number SB 1860  
*(if applicable)*

Name Gerald Wester

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 101 E College Av

Phone \_\_\_\_\_

Street

Tall

City

FL

State

Zip

E-mail Gwester@capcityconsulting.com

Speaking:  For  Against  Information

Representing American Insurance Association AIA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/2/12

Meeting Date

Topic PIP Bill

Bill Number 1860

Name Kevin Weiss

Amendment Barcode ~~21150~~ (if applicable)

Job Title Appellate Attorney

760588 (if applicable)

Address 698 North Maitland Ave.

Phone 407-509-1539

Maitland, FL 32751  
Street City State Zip

E-mail weiss@weisslegalgroup.com

Speaking:  For  Against  Information

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-2-12

Meeting Date

Topic PIP

Bill Number 1860  
(if applicable)

Name MICHAEL CARLSON

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Executive Director

Address 275 S. Monroe St. Ste. 835

Phone 544 9576

Street  
Tallahassee FL 32312  
City State Zip

E-mail Michael.Carlson@Piff.net

Speaking:  For  Against  Information

Representing Personal Insurance Federation of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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2/2/12

Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Russel Lazega

Amendment Barcode 527256  
(if applicable)

Job Title Attorney, Author of Leading Text on Fla. PIP

Address 45 E. Sheridan St.

Phone \_\_\_\_\_

Street

Dania Beach, FL 33004

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing Responsive Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-2-12

Meeting Date

Topic PIP AUTO INSURANCE

Bill Number 1860  
*(if applicable)*

Name BILL NEWTON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 3006 W KENNEDY BLVD STE B

Phone 813-877-6712

Street

TAMPA, FL 33609

City

State

Zip

E-mail BILLEN@FCAN.ORG

Speaking:  For  Against  Information

Representing FLORIDA CONSUMER ACTION NETWORK

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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1-2-12  
Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Janet Mabry

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Consultant

Address 2866 Bay Heather Cir  
Street

Phone 850-934-1629

Gulf Breeze FL. 32563  
City State Zip

E-mail MabryJE@CS.com

Speaking:  For  Against  Information

Representing Florida State Massage Therapy Assn.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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2-2-12  
Meeting Date

Topic PIP

Bill Number SB1860  
*(if applicable)*

Name Joy Ryan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 204 S. Monroe St  
Street

Phone 681-6710

City

State

Zip

E-mail joy@blanklaw.com

Speaking:  For  Against  Information

Representing MetLife & Nationwide

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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2/2/12

Meeting Date

Topic

PIP

Bill Number

~~1860~~ 1860

(if applicable)

Name

Cheryl Amundsen

Amendment Barcode

(if applicable)

Job Title

Concerned Citizen

Address

Street

Phone

City

State

Zip

E-mail

Speaking:

For

Against

Information

Representing

Put the Brakes on Accident Fraud Coaliti

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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THE FLORIDA SENATE  
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2-2-12

Meeting Date

Topic PIP

Bill Number SB 1860  
*(if applicable)*

Name Dr. Chip Smith

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Chiropractor

Address 555 Ave L

Phone 863-293-4249

Street

Winter Haven FL 33881

City

State

Zip

E-mail DRHG.Smith@  
Verizon.com net

Speaking:  For  Against  Information

Representing Fla Chiropractic Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-2-12

Meeting Date

Topic PIP

Bill Number 1560  
1080

(if applicable)

Name Verr: Rayborn

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone 850 524 2394

City

State

Zip

Speaking:  For  Against  Information

Representing Florida Sheriff's Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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\_\_\_\_\_  
*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1866  
*(if applicable)*

Name DONOVAN BROWN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title COUNSEL, STATE GOVERNMENT RELATIONS

Address \_\_\_\_\_

Phone \_\_\_\_\_

*Street*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State*

\_\_\_\_\_  
*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing PROPERTY & CASUALTY INSURERS ASSOCIATION OF AMERICA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 Feb 12  
Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Rebecca O'Hara

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VP Govt Affairs

Address 113 E College Ave  
Street

Phone 339 6211

Talla. FL 32301  
City State Zip

E-mail rohara@flmedical.org

Speaking:  For  Against  Information

Representing Fla Medical Ass'n

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

02.02.12

Date

1860

Bill Number

~~22450~~

Barcode

Name William Large

Phone 8502220170

Address 210 S. Monroe Street

E-mail william.e@justice.org

Street Tallahassee

FL

32301

Job Title President

City

State

Zip

Speaking:  For  Against  Information

Appearing at request of Chair

Subject motor vehicle Personal Injury Protection Insurance

Representing Florida Justice Reform Institute

Lobbyist registered with Legislature:  Yes

No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Pam Langford

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title H.E.A.L.S. of the South

Address \_\_\_\_\_  
*Street*

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Put the Brakes on Accident + Fraud Coaliti

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**APPEARANCE RECORD**

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2/2/12

Meeting Date

Topic PIP BILL

Bill Number 1860

(if applicable)

Name RUTLEDGE BRADFORD

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title ATTORNEY

Address 5210 S. ORANGE AVE.

Phone (407) 926-3710

Street

ORLANDO, FL 32809

E-mail rutledge1c@bradfordlaw.com

City

State

Zip

Speaking:  For  Against  Information

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/2/2012  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB1860  
*(if applicable)*

Name Mark Delegal

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Retained Counsel

Address 215 S. Monroe Street #200

Phone 850 222-3533

Tallahassee FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing State Farm Mutual Automobile Insurance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/2/12

Meeting Date

Topic PIP

Bill Number SB1860  
*(if applicable)*

Name Russel Lazega

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney, Author of leading legal text on PIP

Address 45 E. Sheridan St.

Phone 754-263-4252

*Street*  
Dania Beach FL 33004  
*City State Zip*

E-mail Russ@LazegaLaw.com

Speaking:  For  Against  Information

Representing Responsive Auto Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic PIP Bill

Bill Number 1860  
(if applicable)

Name Kevin Weiss

Amendment Barcode ~~760588~~  
760588  
(if applicable)

Job Title Attorney

Address 698 N. Maitland Avenue  
Street  
Maitland, FL 32751  
City State Zip

Phone 407-599-9036

E-mail weiss@weisslegalgroup.com

Speaking:  For  Against  Information

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Budget, *Chair*  
Rules, *Vice Chair*  
Agriculture  
Banking and Insurance  
Budget - Subcommittee on Finance and Tax  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Education Pre-K - 12  
Rules - Subcommittee on Ethics and Elections

### JOINT COMMITTEE:

Legislative Budget Commission, *Chair*

### SENATOR JD ALEXANDER

17th District

February 27, 2012

Senator Garrett S. Richter, Chair  
Committee on Banking & Insurance  
322 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Senator Richter,

I respectfully request permission to be absent from the Committee on Banking & Insurance, today, February 27, 2012. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

A handwritten signature in black ink, appearing to read "JD Alexander".

JD Alexander  
Senator, District 17

Xc: Steve Burgess

#### REPLY TO:

- 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** KN 412

**Case:**

**Caption:** Senate Committee on Banking and Insurance 412K -- 4:45 - 6 pm

**Type:**

**Judge:**

**Started:** 2/27/2012 4:49:01 PM

**Ends:** 2/27/2012 5:59:29 PM

**Length:** 01:10:29

4:49:15 PM Meeting called to order by Chair Richter  
4:49:24 PM Roll Call -- quorum present  
4:51:07 PM CS/SB 1890 by Sen. Latvala - Mortgage Foreclosure Proceedings  
4:52:02 PM Barcode 136600 and 921754 were withdrawn  
4:52:53 PM Sen. Latvala recognized to explain delete all amendment (Sen. Hays)  
5:09:31 PM Representative Passidomo  
5:10:33 PM Amd. to Amd. 241434 -- without objection -- adopted  
5:11:19 PM Amd. 462064 - delete all amendment by Sen. Hays -- adopted  
5:19:03 PM Amd. 462064 - delete all amendment by Sen. Hays -- adopted  
5:29:14 PM Motion by Sen. Gaetz for time certain vote at 5:55  
5:30:15 PM Grey Clark, Lawyer/title agent -- against bill  
5:33:38 PM Alice Vickers, FL Consumer Action Network  
5:35:01 PM Mark Wilson, President, FL Chamber of Commerce  
5:36:26 PM Frank Pitt, PICO United Florida  
5:39:43 PM Lynn Drysdale, Jacksonville Area Legal Aid, Inc.  
5:40:45 PM Anthony DiMarco, Florida Bankers Association  
5:43:17 PM Brian Pitts, Justice -2-Jesus  
5:45:22 PM Richard Kosan, Attorney  
5:47:07 PM Larry Hendricks speaking against the bill  
5:49:38 PM Sylvia Landis speaking against the bill  
5:51:13 PM Susan Gabel, Focus and PICO United Florida  
5:52:02 PM Deborah Lilley --against the bill  
5:53:05 PM Barbara Stephens - against the bill  
5:53:44 PM Motion by Sen. Gaetz--move time certain vote on bill to 5:58  
5:58:18 PM Sen. Latvala closed on bill  
5:58:30 PM Roll call on SB 1890 -- adopted  
5:59:02 PM Motion for CS  
5:59:17 PM Meeting adjourned.