

1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 95.11, F.S.; reducing the limitations period for
4 commencing an action to enforce a claim of a
5 deficiency judgment subsequent to a foreclosure
6 action; providing for application to existing causes
7 of action; creating s. 702.015, F.S.; providing
8 legislative intent; specifying required contents of a
9 complaint seeking to foreclose on certain types of
10 residential properties with respect to the authority
11 of the plaintiff to foreclose on the note and the
12 location of the note; providing that failure to file
13 such documents does not affect title to property
14 subsequent to a foreclosure sale; providing an
15 exception; amending s. 702.06, F.S.; limiting the
16 amount of a deficiency judgment; amending s. 702.10,
17 F.S.; expanding the class of persons authorized to
18 move for expedited foreclosure; defining the term
19 "lienholder"; providing requirements and procedures
20 with respect to an order directed to defendants to
21 show cause why a final judgment of foreclosure should
22 not be entered; providing that certain failures by a
23 defendant to make certain filings or to make certain
24 appearances may have specified legal consequences;
25 requiring the court to enter a final judgment of
26 foreclosure and order a foreclosure sale under certain
27 circumstances; revising a restriction on a mortgagee
28 to request a court to order a mortgagor defendant to

29 | make payments or to vacate the premises during an
 30 | action to foreclose on residential real estate to
 31 | provide that the restriction applies to all but owner-
 32 | occupied residential property; providing a presumption
 33 | regarding owner-occupied residential property;
 34 | requesting the Supreme Court to adopt rules and forms
 35 | for use in expedited foreclosure proceedings; creating
 36 | s. 702.11, F.S.; establishing expedited foreclosure
 37 | proceedings for abandoned residential real property
 38 | and procedures and requirements with respect thereto;
 39 | providing for application of the act; providing an
 40 | effective date.

41 |

42 | Be It Enacted by the Legislature of the State of Florida:

43 |

44 | Section 1. Paragraph (b) of subsection (2) of section
 45 | 95.11, Florida Statutes, is amended, and paragraph (h) is added
 46 | to subsection (5) of that section, to read:

47 | 95.11 Limitations other than for the recovery of real
 48 | property.—Actions other than for recovery of real property shall
 49 | be commenced as follows:

50 | (2) WITHIN FIVE YEARS.—

51 | (b) A legal or equitable action on a contract, obligation,
 52 | or liability founded on a written instrument, except for an
 53 | action to enforce a claim against a payment bond, which shall be
 54 | governed by the applicable provisions of ss. 255.05(10) and
 55 | 713.23(1)(e), and except for actions for a deficiency judgment
 56 | governed by paragraph (5)(h).

57 (5) WITHIN ONE YEAR.—

58 (h) An action to enforce a claim of a deficiency related
59 to a note secured by a mortgage against a residential property
60 that is a one-family to four-family dwelling unit. The
61 limitations period shall commence on the 11th day after the
62 foreclosure sale or the day after the mortgagee accepts a deed
63 in lieu of foreclosure.

64 Section 2. The amendment to s. 95.11, Florida Statutes,
65 made by this act shall apply to any action commenced on or after
66 July 1, 2012, regardless of when the cause of action accrued,
67 except that any action that would not have been barred under s.
68 95.11(2)(b), Florida Statutes, prior to the amendments made by
69 this act may be commenced no later than 5 years after the action
70 accrued and in no event later than July 1, 2013, and if the
71 action is not commenced by that date, it is barred by the
72 amendments made by this act.

73 Section 3. Section 702.015, Florida Statutes, is created
74 to read:

75 702.015 Elements of complaint; lost, destroyed, or stolen
76 note affidavit.—

77 (1) The Legislature intends that the requirements of this
78 section are to expedite the foreclosure process by ensuring
79 initial disclosure of a plaintiff's status and the facts
80 supporting that status and thereby ensuring the availability of
81 documents necessary to the prosecution of the case. This section
82 is not intended to modify existing law regarding standing or
83 real parties in interest.

84 (2) A complaint that seeks to foreclose a mortgage or

85 other lien on residential real property, including individual
86 units of condominiums and cooperatives, designed principally for
87 occupation by from one to four families which secures a
88 promissory note must:

89 (a) Contain affirmative allegations expressly made by the
90 plaintiff at the time the proceeding is commenced that the
91 plaintiff is the holder of the original note secured by the
92 mortgage; or

93 (b) Allege with specificity the factual basis by which the
94 plaintiff is a person entitled to enforce the note under s.
95 673.3011.

96 (3) If a party has been delegated the authority to
97 institute a mortgage foreclosure action on behalf of the holder
98 of the note, the complaint shall describe the authority of the
99 plaintiff and identify, with specificity, the document that
100 grants the plaintiff the authority to act on behalf of the
101 holder of the note. This subsection is intended to require
102 initial disclosure of status and pertinent facts and not to
103 modify law regarding standing or real parties in interest.

104 (4) If the plaintiff is in physical possession of the
105 original promissory note, the plaintiff must file with the
106 court, contemporaneously with and as a condition precedent to
107 the filing of the complaint for foreclosure, certification,
108 under penalty of perjury, that the plaintiff is in physical
109 possession of the original promissory note. The certification
110 must set forth the physical location of the note, the name and
111 title of the individual giving the certification, the name of
112 the person who personally verified such physical possession, and

113 the time and date on which the possession was verified. Correct
114 copies of the note and all allonges to the note must be attached
115 to the certification. The original note and the allonges must be
116 filed with the court before the entry of any judgment of
117 foreclosure or judgment on the note.

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

121 (a) Detail a clear chain of all endorsements or
122 assignments of the promissory note that is the subject of the
123 action.

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

127 (c) Include as exhibits to the affidavit such copies of
128 the note and the allonges to the note, audit reports showing
129 physical receipt of the original note, or other evidence of the
130 acquisition, ownership, and possession of the note as may be
131 available to the plaintiff.

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

136 (7) This section does not apply to any foreclosure
137 proceeding involving timeshare interests under part III of
138 chapter 721.

139 Section 4. Section 702.06, Florida Statutes, is amended to
140 read:

141 702.06 Deficiency decree; common-law suit to recover
 142 deficiency.—In all suits for the foreclosure of mortgages
 143 heretofore or hereafter executed the entry of a deficiency
 144 decree for any portion of a deficiency, should one exist, may
 145 not exceed the difference between the judgment amount or, in the
 146 case of a short sale, the outstanding debt and the fair market
 147 value of the property on the date of sale., ~~shall be within the~~
 148 ~~sound judicial discretion of the court, but~~ The complainant
 149 shall also have the right to sue at common law to recover such
 150 deficiency, unless the court in the foreclosure action has
 151 granted or denied a claim for a deficiency judgment ~~provided no~~
 152 ~~suit at law to recover such deficiency shall be maintained~~
 153 ~~against the original mortgagor in cases where the mortgage is~~
 154 ~~for the purchase price of the property involved and where the~~
 155 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
 156 ~~sale and also is granted a deficiency decree against the~~
 157 ~~original mortgagor.~~

158 Section 5. Section 702.10, Florida Statutes, is amended to
 159 read:

160 702.10 Order to show cause; entry of final judgment of
 161 foreclosure; payment during foreclosure.—

162 (1) A lienholder ~~After a complaint in a foreclosure~~
 163 ~~proceeding has been filed, the mortgagee may request an order to~~
 164 show cause for the entry of final judgment in a foreclosure
 165 action. For purposes of this section, the term "lienholder"
 166 includes the plaintiff and a defendant to the action who holds a
 167 lien encumbering the property or a defendant who, by virtue of
 168 its status as a condominium association, cooperative

169 association, or homeowners' association, may file a lien against
 170 the real property subject to foreclosure. Upon filing, and the
 171 court shall immediately review the request and the court file in
 172 chambers and without a hearing ~~complaint~~. If, upon examination
 173 of the court file ~~complaint~~, the court finds that the complaint
 174 is verified, complies with s. 702.015, and alleges a cause of
 175 action to foreclose on real property, the court shall promptly
 176 issue an order directed to the other parties named in the action
 177 ~~defendant~~ to show cause why a final judgment of foreclosure
 178 should not be entered.

179 (a) The order shall:

180 1. Set the date and time for a hearing ~~on the order~~ to
 181 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~
 182 ~~set~~ sooner than the later of 20 days after the service of the
 183 order to show cause or 45 days after the service of the initial
 184 complaint. When service is obtained by publication, the date for
 185 the hearing may not be set sooner than 55 ~~30~~ days after the
 186 first publication. ~~The hearing must be held within 60 days after~~
 187 ~~the date of service. Failure to hold the hearing within such~~
 188 ~~time does not affect the validity of the order to show cause or~~
 189 ~~the jurisdiction of the court to issue subsequent orders.~~

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

192 3. State that the filing of defenses by a motion,
 193 responsive pleading, affidavits, or other papers ~~or by a~~
 194 ~~verified or sworn answer at or before the hearing to show cause~~
 195 may constitute ~~constitutes~~ cause for the court not to enter the
 196 ~~attached~~ final judgment.

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

201 5. State that, if a ~~the~~ defendant files defenses by a
 202 motion, a verified or sworn answer, affidavits, or other papers
 203 or appears personally or by way of an attorney at the time of
 204 the hearing, the hearing time will ~~may~~ be used to hear and
 205 consider the defendant's motion, answer, affidavits, other
 206 papers, and other evidence and argument as may be presented by
 207 the defendant or the defendant's attorney. The order shall also
 208 state that the court may enter an order of final judgment of
 209 foreclosure at the hearing. If such a determination is entered,
 210 the court shall enter a final judgment of foreclosure ordering
 211 the clerk of the court to conduct a foreclosure sale.

212 6. State that, if a ~~the~~ defendant fails to appear at the
 213 hearing to show cause or fails to file defenses by a motion or
 214 by a verified or sworn answer or files an answer not contesting
 215 the foreclosure, such ~~the~~ defendant may be considered to have
 216 waived the right to a hearing, and in such case, the court may
 217 enter a default against such defendant and, if appropriate, a
 218 final judgment of foreclosure ordering the clerk of the court to
 219 conduct a foreclosure sale.

220 7. State that if the mortgage provides for reasonable
 221 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
 222 fees do not exceed 3 percent of the principal amount owed at the
 223 time of filing the complaint, it is unnecessary for the court to
 224 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees

225 to be reasonable.

226 8. Attach the form of the proposed final judgment of
227 foreclosure which the movant requests the court to will enter,
228 ~~if the defendant waives the right to be heard~~ at the hearing on
229 the order to show cause. The form may contain blanks for the
230 court to enter the amounts due.

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

234 a. If a party the mortgager has been served pursuant to
235 chapter 48 with the complaint and original process, or the other
236 party is the plaintiff in the action, service of the order to
237 show cause on that party order may be made in the manner
238 provided in the Florida Rules of Civil Procedure.

239 b. If a defendant the mortgager has not been served
240 pursuant to chapter 48 with the complaint and original process,
241 the order to show cause, together with the summons and a copy of
242 the complaint, shall be served on the party mortgager in the
243 same manner as provided by law for original process.

244

245 Any final judgment of foreclosure entered under this subsection
246 is for in rem relief only. ~~Nothing in~~ This subsection does not
247 ~~shall~~ preclude the entry of a deficiency judgment where
248 otherwise allowed by law. It is the intent of the Legislature
249 that this alternative procedure may run simultaneously with
250 other court procedures.

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

253 with an order to show cause, engages in conduct that clearly
254 shows that the defendant has relinquished the right to be heard
255 on that order. The defendant's failure to file defenses by a
256 motion or by a sworn or verified answer, affidavits, or other
257 papers or to appear personally or by way of an attorney at the
258 hearing duly scheduled on the order to show cause presumptively
259 constitutes conduct that clearly shows that the defendant has
260 relinquished the right to be heard. If a defendant files
261 defenses by a motion, ~~or by~~ a verified or sworn answer,
262 affidavits, or other papers at or before the hearing, such
263 action may constitute ~~constitutes~~ cause and may preclude
264 ~~precludes~~ the entry of a final judgment at the hearing to show
265 cause.

266 (c) In a mortgage foreclosure proceeding, when a final
267 ~~default~~ judgment of foreclosure has been entered against the
268 mortgagor and the note or mortgage provides for the award of
269 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
270 court to hold a hearing or adjudge the requested attorney
271 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
272 percent of the principal amount owed on the note or mortgage at
273 the time of filing, even if the note or mortgage does not
274 specify the percentage of the original amount that would be paid
275 as liquidated damages.

276 (d) If the court finds that all defendants have ~~the~~
277 ~~defendant has~~ waived the right to be heard as provided in
278 paragraph (b), the court shall promptly enter a final judgment
279 of foreclosure without the need for further hearing if the
280 plaintiff has shown entitlement to a final judgment and upon the

281 filing with the court of the original note, satisfaction of the
 282 conditions for establishment of a lost note, or upon a showing
 283 to the court that the obligation to be foreclosed is not
 284 evidenced by a promissory note or other negotiable instrument.
 285 If the court finds that a ~~the~~ defendant has not waived the right
 286 to be heard on the order to show cause, the court shall ~~then~~
 287 determine whether there is cause not to enter a final judgment
 288 of foreclosure. If the court finds that the defendant has not
 289 shown cause, the court shall promptly enter a judgment of
 290 foreclosure. If the time allotted for the hearing is
 291 insufficient, the court may announce at the hearing a date and
 292 time for the continued hearing. Only the parties who appear,
 293 individually or through an attorney, at the initial hearing must
 294 be notified of the date and time of the continued hearing.

295 (2) This subsection does not apply to foreclosure of an
 296 owner-occupied residence. As part of any other ~~In an~~ action for
 297 foreclosure, and in addition to any other relief that the court
 298 may award ~~other than residential real estate,~~ the plaintiff the
 299 mortgagee may request that the court enter an order directing
 300 the mortgagor defendant to show cause why an order to make
 301 payments during the pendency of the foreclosure proceedings or
 302 an order to vacate the premises should not be entered.

303 (a) The order shall:

304 1. Set the date and time for hearing on the order to show
 305 cause. However, the date for the hearing may ~~shall~~ not be set
 306 sooner than 20 days after the service of the order. If ~~Where~~
 307 service is obtained by publication, the date for the hearing may
 308 ~~shall~~ not be set sooner than 30 days after the first

309 publication.

310 2. Direct the time within which service of the order to
311 show cause and the complaint shall be made upon each ~~the~~
312 defendant.

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

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

321 5. Require the movant ~~mortgagee~~ to serve a copy of the
322 order to show cause on the defendant ~~mortgager~~ in the following
323 manner:

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

327 b. If a defendant ~~the mortgager~~ has not been served with
328 the complaint and original process, the order to show cause,
329 together with the summons and a copy of the complaint, shall be
330 served on the defendant ~~mortgager~~ in the same manner as provided
331 by law for original process.

332 (b) The right of a defendant to be heard at the hearing to
333 show cause is waived if the defendant, after being served as
334 provided by law with an order to show cause, engages in conduct
335 that clearly shows that the defendant has relinquished the right
336 to be heard on that order. A ~~The~~ defendant's failure to file

337 defenses by a motion or by a sworn or verified answer or to
338 appear at the hearing duly scheduled on the order to show cause
339 presumptively constitutes conduct that clearly shows that the
340 defendant has relinquished the right to be heard.

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

345 (d) If the court finds that the mortgagor has not waived
346 the right to be heard on the order to show cause, the court
347 shall, at the hearing on the order to show cause, consider the
348 affidavits and other showings made by the parties appearing and
349 make a determination of the probable validity of the underlying
350 claim alleged against the mortgagor and the mortgagor's
351 defenses. If the court determines that the plaintiff mortgagee
352 is likely to prevail in the foreclosure action, the court shall
353 enter an order requiring the mortgagor to make the payment
354 described in paragraph (e) to the plaintiff mortgagee and
355 provide for a remedy as described in paragraph (f). However, the
356 order shall be stayed pending final adjudication of the claims
357 of the parties if the mortgagor files with the court a written
358 undertaking executed by a surety approved by the court in an
359 amount equal to the unpaid balance of the lien being foreclosed
360 ~~the mortgage on the property~~, including all principal, interest,
361 unpaid taxes, and insurance premiums paid by the plaintiff the
362 ~~mortgagee~~.

363 (e) If ~~In the event~~ the court enters an order requiring
364 the mortgagor to make payments to the plaintiff mortgagee,

365 | payments shall be payable at such intervals and in such amounts
 366 | provided for in the mortgage instrument before acceleration or
 367 | maturity. The obligation to make payments pursuant to any order
 368 | entered under this subsection shall commence from the date of
 369 | the motion filed under this section ~~hereunder~~. The order shall
 370 | be served upon the mortgagor no later than 20 days before the
 371 | date specified for the first payment. The order may permit, but
 372 | ~~may shall~~ not require, the plaintiff ~~mortgagee~~ to take all
 373 | appropriate steps to secure the premises during the pendency of
 374 | the foreclosure action.

375 | (f) ~~If In the event~~ the court enters an order requiring
 376 | payments, the order shall also provide that the plaintiff is
 377 | ~~mortgagee shall be~~ entitled to possession of the premises upon
 378 | the failure of the mortgagor to make the payment required in the
 379 | order unless at the hearing on the order to show cause the court
 380 | finds good cause to order some other method of enforcement of
 381 | its order.

382 | (g) All amounts paid pursuant to this section shall be
 383 | credited against the mortgage obligation in accordance with the
 384 | terms of the loan documents; ~~provided, however, that any~~
 385 | payments made under this section do ~~shall~~ not constitute a cure
 386 | of any default or a waiver or any other defense to the mortgage
 387 | foreclosure action.

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

392 | (i) For purposes of this subsection, there is a rebuttable

393 presumption that a residential property for which a homestead
 394 exemption for taxation was granted according to the certified
 395 rolls of the latest assessment by the county property appraiser,
 396 before the filing of the foreclosure action, is an owner-
 397 occupied residential property.

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

402 Section 6. Section 702.11, Florida Statutes, is created to
 403 read:

404 702.11 Expedited foreclosure of abandoned residential real
 405 property.-

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

409 (a) A duly licensed process server unaffiliated with the
 410 owner or servicer of any mortgage on the residential real
 411 property or with the attorney or law firm representing such
 412 owner or servicer has made at least three attempts to locate an
 413 occupant of the residential real property. The attempts must
 414 have been made at least 72 hours apart, and at least one each of
 415 such attempts must have been made before 12 p.m., between 12
 416 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
 417 must include physically knocking or ringing at the door of the
 418 residential real property and such other efforts as are normally
 419 sufficient to obtain a response from an occupant.

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

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

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

425 3. Rubbish, trash, or debris has accumulated on the
426 mortgaged premises.

427 4. The premises are deteriorating and are below or in
428 imminent danger of falling below minimum community standards for
429 public safety and sanitation.

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

435 6. Interviews with at least two neighbors in different
436 households indicate that the residence has been abandoned. The
437 neighbors must be adjoining, across the street in view of the
438 home, or across the hall or adjacent to the unit in a
439 condominium or cooperative.

440
441 The sheriff or process server making attempts to locate an
442 occupant of the residential real property and to determine the
443 abandoned status of the residential real property may provide,
444 by affidavit and photographic or other documentation, evidence
445 of the condition of the residential real property.

446 (2) (a) The party entitled to enforce the note and mortgage
447 encumbering the residential real property appearing to be
448 abandoned may file a petition before the court seeking to

449 determine the status of the residential real property and to
450 invoke an expedited foreclosure proceeding relating to the
451 property. Upon the filing of an affidavit of diligent search and
452 inquiry and the affidavit or documentary evidence set forth in
453 subsection (1), the court shall, upon request of the petitioner,
454 issue one or more subpoenas to the utility companies serving the
455 residential real property commanding disclosure of the status of
456 utility service to the subject property, including whether
457 utilities are currently turned off and whether all outstanding
458 utility payments have been made and, if so, by whom.

459 (b) If, after review of the response of the utility
460 companies to the subpoenas and all other matters of record, the
461 court may deem the property to have been abandoned and the
462 plaintiff entitled to expedited foreclosure.

463 Section 7. The amendments to s. 702.10, Florida Statutes,
464 and the creation of s. 702.11, Florida Statutes, by this act are
465 remedial in nature and shall apply to causes of action pending
466 on the effective date of this act. Section 702.015, Florida
467 Statutes, as created by this act, applies to cases filed on or
468 after July 1, 2012.

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

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