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LEGISLATIVE ACTION

Senate	.	House
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Senators Richter, Gaetz, and Ring moved the following:

Senate Amendment (with title amendment)

Between lines 27 and 28
insert:

Section 2. Section 702.10, Florida Statutes, is amended to
read:

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

(1) A lienholder ~~After a complaint in a foreclosure
proceeding has been filed, the mortgagee~~ may request an order to
show cause for the entry of final judgment in a foreclosure
action. For purposes of this section, the term "lienholder"
includes the plaintiff and a defendant to the action who holds a



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14 lien encumbering the property or a defendant who, by virtue of
15 its status as a condominium association, cooperative
16 association, or homeowners' association, may file a lien against
17 the real property subject to foreclosure. Upon filing, and the
18 court shall immediately review the request and the court file in
19 chambers and without a hearing ~~complaint~~. If, upon examination
20 of the court file ~~complaint~~, the court finds that the complaint
21 is verified and alleges a cause of action to foreclose on real
22 property, the court shall promptly issue an order directed to
23 the other parties named in the action ~~defendant~~ to show cause
24 why a final judgment of foreclosure should not be entered.

25 (a) The order shall:

26 1. Set the date and time for a hearing ~~on the order~~ to show
27 cause. ~~However,~~ The date for the hearing may not occur ~~be set~~
28 sooner than the later of 20 days after the service of the order
29 to show cause or 45 days after the service of the initial
30 complaint. When service is obtained by publication, the date for
31 the hearing may not be set sooner than 55 ~~30~~ days after the
32 first publication. ~~The hearing must be held within 60 days after~~
33 ~~the date of service. Failure to hold the hearing within such~~
34 ~~time does not affect the validity of the order to show cause or~~
35 ~~the jurisdiction of the court to issue subsequent orders.~~

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

38 3. State that the filing of defenses by a motion,
39 responsive pleading, affidavits, or other papers ~~or by a~~
40 verified or sworn answer at or before the hearing to show cause
41 may constitute ~~constitutes~~ cause for the court not to enter the
42 attached final judgment.



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

47 5. State that, if a ~~the~~ defendant files defenses by a
48 motion, a verified or sworn answer, affidavits, or other papers
49 or appears personally or by way of an attorney at the time of
50 the hearing, the hearing time will ~~may~~ be used to hear and
51 consider the defendant's motion, answer, affidavits, other
52 papers, and other evidence and argument as may be presented by
53 the defendant or the defendant's attorney. The order shall also
54 state that the court may enter an order of final judgment of
55 foreclosure at the hearing. If such a determination is entered,
56 the court shall enter a final judgment of foreclosure ordering
57 the clerk of the court to conduct a foreclosure sale.

58 6. State that, if a ~~the~~ defendant fails to appear at the
59 hearing to show cause or fails to file defenses by a motion or
60 by a verified or sworn answer or files an answer not contesting
61 the foreclosure, such ~~the~~ defendant may be considered to have
62 waived the right to a hearing, and in such case, the court may
63 enter a default against such defendant and, if appropriate, a
64 final judgment of foreclosure ordering the clerk of the court to
65 conduct a foreclosure sale.

66 7. State that if the mortgage provides for reasonable
67 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
68 fees do not exceed 3 percent of the principal amount owed at the
69 time of filing the complaint, it is unnecessary for the court to
70 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
71 to be reasonable.



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72 8. Attach the form of the proposed final judgment of
73 foreclosure which the movant requests the court to will enter,
74 if the defendant waives the right to be heard at the hearing on
75 the order to show cause. The form may contain blanks for the
76 court to enter the amounts due.

77 9. Require the party seeking final judgment mortgagee to
78 serve a copy of the order to show cause on the other parties the
79 mortgager in the following manner:

80 a. If a party the mortgager has been personally served with
81 the complaint and original process, or the other party is the
82 plaintiff in the action, service of the order to show cause on
83 that party order may be made in the manner provided in the
84 Florida Rules of Civil Procedure.

85 b. If a defendant the mortgager has not been personally
86 served with the complaint and original process, the order to
87 show cause, together with the summons and a copy of the
88 complaint, shall be served on the party mortgager in the same
89 manner as provided by law for original process. Service of the
90 complaint and original process by mail or publication is not
91 personal service for purposes of this subparagraph.

92
93 Any final judgment of foreclosure entered under this subsection
94 is for in rem relief only. ~~Nothing in~~ This subsection does not
95 shall preclude the entry of a deficiency judgment where
96 otherwise allowed by law. It is the intent of the Legislature
97 that this alternative procedure may run simultaneously with
98 other court procedures.

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



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101 with an order to show cause, engages in conduct that clearly
102 shows that the defendant has relinquished the right to be heard
103 on that order. The defendant's failure to file defenses by a
104 motion or by a sworn or verified answer, affidavits, or other
105 papers or to appear personally or by way of an attorney at the
106 hearing duly scheduled on the order to show cause presumptively
107 constitutes conduct that clearly shows that the defendant has
108 relinquished the right to be heard. If a defendant files
109 defenses by a motion, ~~or by~~ a verified or sworn answer,
110 affidavits, or other papers at or before the hearing, such
111 action may constitute ~~constitutes~~ cause and may preclude
112 ~~precludes~~ the entry of a final judgment at the hearing to show
113 cause.

114 (c) In a mortgage foreclosure proceeding, when a final
115 ~~default~~ judgment of foreclosure has been entered against the
116 mortgagor and the note or mortgage provides for the award of
117 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
118 court to hold a hearing or adjudge the requested attorney
119 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
120 percent of the principal amount owed on the note or mortgage at
121 the time of filing, even if the note or mortgage does not
122 specify the percentage of the original amount that would be paid
123 as liquidated damages.

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



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130 conditions for establishment of a lost note, or upon a showing
131 to the court that the obligation to be foreclosed is not
132 evidenced by a promissory note or other negotiable instrument.
133 If the court finds that a ~~the~~ defendant has not waived the right
134 to be heard on the order to show cause, the court shall ~~then~~
135 determine whether there is cause not to enter a final judgment
136 of foreclosure. If the court finds that the defendant has not
137 shown cause, the court shall promptly enter a judgment of
138 foreclosure. If the time allotted for the hearing is
139 insufficient, the court may announce at the hearing a date and
140 time for the continued hearing. Only the parties who appear,
141 individually or through an attorney, at the initial hearing must
142 be notified of the date and time of the continued hearing.

143 (2) This subsection does not apply to foreclosure of an
144 owner-occupied residence. As part of any other ~~In an~~ action for
145 foreclosure, and in addition to any other relief that the court
146 may award ~~other than residential real estate, the plaintiff the~~
147 ~~mortgagee~~ may request that the court enter an order directing
148 the mortgagor defendant to show cause why an order to make
149 payments during the pendency of the foreclosure proceedings or
150 an order to vacate the premises should not be entered.

151 (a) The order shall:

152 1. Set the date and time for hearing on the order to show
153 cause. However, the date for the hearing may ~~shall~~ not be set
154 sooner than 20 days after the service of the order. If ~~Where~~
155 service is obtained by publication, the date for the hearing may
156 ~~shall~~ not be set sooner than 30 days after the first
157 publication.

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



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159 show cause and the complaint shall be made upon each ~~the~~
160 defendant.

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

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

169 5. Require the movant ~~mortgagee~~ to serve a copy of the
170 order to show cause on the defendant ~~mortgager~~ in the following
171 manner:

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

175 b. If a defendant ~~the mortgager~~ has not been served with
176 the complaint and original process, the order to show cause,
177 together with the summons and a copy of the complaint, shall be
178 served on the defendant ~~mortgager~~ in the same manner as provided
179 by law for original process.

180 (b) The right of a defendant to be heard at the hearing to
181 show cause is waived if the defendant, after being served as
182 provided by law with an order to show cause, engages in conduct
183 that clearly shows that the defendant has relinquished the right
184 to be heard on that order. A ~~The~~ defendant's failure to file
185 defenses by a motion or by a sworn or verified answer or to
186 appear at the hearing duly scheduled on the order to show cause
187 presumptively constitutes conduct that clearly shows that the



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188 defendant has relinquished the right to be heard.

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

193 (d) If the court finds that the mortgagor has not waived
194 the right to be heard on the order to show cause, the court
195 shall, at the hearing on the order to show cause, consider the
196 affidavits and other showings made by the parties appearing and
197 make a determination of the probable validity of the underlying
198 claim alleged against the mortgagor and the mortgagor's
199 defenses. If the court determines that the plaintiff mortgagee
200 is likely to prevail in the foreclosure action, the court shall
201 enter an order requiring the mortgagor to make the payment
202 described in paragraph (e) to the plaintiff mortgagee and
203 provide for a remedy as described in paragraph (f). However, the
204 order shall be stayed pending final adjudication of the claims
205 of the parties if the mortgagor files with the court a written
206 undertaking executed by a surety approved by the court in an
207 amount equal to the unpaid balance of the lien being foreclosed
208 ~~the mortgage on the property~~, including all principal, interest,
209 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
210 ~~mortgagee~~.

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



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217 filed under this section hereunder. The order shall be served
218 upon the mortgagor no later than 20 days before the date
219 specified for the first payment. The order may permit, but may
220 ~~shall~~ not require, the plaintiff mortgagee to take all
221 appropriate steps to secure the premises during the pendency of
222 the foreclosure action.

223 (f) ~~If In the event~~ the court enters an order requiring
224 payments, the order shall also provide that the plaintiff is
225 ~~mortgagee shall be~~ entitled to possession of the premises upon
226 the failure of the mortgagor to make the payment required in the
227 order unless at the hearing on the order to show cause the court
228 finds good cause to order some other method of enforcement of
229 its order.

230 (g) All amounts paid pursuant to this section shall be
231 credited against the mortgage obligation in accordance with the
232 terms of the loan documents; ~~provided, however, that any~~
233 payments made under this section do shall not constitute a cure
234 of any default or a waiver or any other defense to the mortgage
235 foreclosure action.

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

240 (i) For purposes of this subsection, there is a rebuttable
241 presumption that a residential property for which a homestead
242 exemption for taxation was granted according to the certified
243 rolls of the latest assessment by the county property appraiser,
244 before the filing of the foreclosure action, is an owner-
245 occupied residential property.



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

250
251 ===== T I T L E A M E N D M E N T =====

252 And the title is amended as follows:

253 Delete line 10

254 and insert:

255 notice of lien; amending s. 702.10, F.S.; expanding
256 the class of persons authorized to move for expedited
257 foreclosure; defining the term "lienholder"; providing
258 requirements and procedures with respect to an order
259 directed to defendants to show cause why a final
260 judgment of foreclosure should not be entered;
261 providing that certain failures by a defendant to make
262 certain filings or to make certain appearances may
263 have specified legal consequences; requiring the court
264 to enter a final judgment of foreclosure and order a
265 foreclosure sale under certain circumstances; revising
266 a restriction on a mortgagee to request a court to
267 order a mortgagor defendant to make payments or to
268 vacate the premises during an action to foreclose on
269 residential real estate to provide that the
270 restriction applies to all but owner-occupied
271 residential property; providing a presumption
272 regarding owner-occupied residential property;
273 requesting the Supreme Court to adopt rules and forms
274 for use in expedited foreclosure proceedings;



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providing an effective date.