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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2012	.	
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (2) and subsection
(5) of section 95.11, Florida Statutes, are amended 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,
or liability founded on a written instrument, except for an
action to enforce a claim against a payment bond, which shall be



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14 governed by the applicable provisions of ss. 255.05(10) and
15 713.23(1)(e), and except for an action for a deficiency
16 judgment, which shall be governed by paragraph (5)(h) and s.
17 702.06.

18 (5) WITHIN ONE YEAR.—

19 (a) An action for specific performance of a contract.

20 (b) An action to enforce an equitable lien arising from the
21 furnishing of labor, services, or material for the improvement
22 of real property.

23 (c) An action to enforce rights under the Uniform
24 Commercial Code—Letters of Credit, chapter 675.

25 (d) An action against any guaranty association and its
26 insured, with the period running from the date of the deadline
27 for filing claims in the order of liquidation.

28 (e) An action to enforce any claim against a payment bond
29 on which the principal is a contractor, subcontractor, or sub-
30 subcontractor as defined in s. 713.01, for private work as well
31 as public work, from the last furnishing of labor, services, or
32 materials or from the last furnishing of labor, services, or
33 materials by the contractor if the contractor is the principal
34 on a bond on the same construction project, whichever is later.

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

39 (g) Except for actions described in subsection (8), an
40 action brought by or on behalf of a prisoner, as defined in s.
41 57.085, relating to the conditions of the prisoner's
42 confinement.



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

46 Section 2. The amendments to s. 95.11, Florida Statutes,
47 made by this act shall apply to any action commenced on or after
48 July 1, 2012, regardless of when the cause of action accrues,
49 except that any action that would not have been barred under s.
50 95.11(2) (b), Florida Statutes, before the changes made by this
51 act may be commenced no later than 5 years after the action
52 accrues and in no event later than July 1, 2014, and if the
53 action is not commenced by that date, it is barred by the
54 changes made by this act.

55 Section 3. Section 701.04, Florida Statutes, is amended to
56 read:

57 701.04 Cancellation of mortgages, liens, and judgments.—

58 (1) (a) If a mortgagor, a holder of an interest in property
59 encumbered by a mortgage, or a designee of either makes a
60 written request for the payoff amount of the mortgage as of a
61 certain date, the holder of the mortgage shall provide a written
62 estoppel statement executed by an officer or authorized agent of
63 the holder of the mortgage to the person making the request
64 within 15 days after the date the request was received. The
65 estoppel statement shall be delivered to the place, facsimile
66 number, or e-mail address designated in the written request. The
67 estoppel statement shall set ~~Within 14 days after receipt of the~~
68 ~~written request of a mortgagor, the holder of a mortgage shall~~
69 ~~deliver to the mortgagor at a place designated in the written~~
70 ~~request an estoppel letter setting forth:~~

71 1. The unpaid balance of the loan secured by the mortgage,



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72 including principal, all accrued interest, and any other charges
73 properly due under or secured by the mortgage as of the date
74 specified in the request. ~~and~~

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

78 3. A certification that the party providing the estoppel
79 statement is the holder of the original promissory note secured
80 thereby, or is the person or agent of the person entitled to
81 enforce the note pursuant to s. 673.3011.

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

84 (b) The mortgagee may not charge a fee for the preparation
85 or delivery of the first two estoppel statements requested for
86 any one mortgage in any calendar month. This paragraph is not
87 intended to limit requirements of federal law.

88 (c) Subsequent owners of the property encumbered by the
89 mortgage, and creditors and lienholders taking an interest in
90 the property for a valuable consideration, and those claiming
91 by, through, and under them, may rely on the estoppel statement
92 and are entitled to the benefits of the statement.

93 (d) Whenever the amount of money due on a ~~any~~ mortgage,
94 ~~lien, or judgment is~~ shall be fully paid to the person or party
95 entitled to ~~the~~ payment ~~thereof~~, or all obligations secured by
96 the mortgage or lien are otherwise satisfied, the mortgagee,
97 ~~creditor, or assignee, or the attorney of record in the case of~~
98 ~~a judgment,~~ to whom such payment has ~~shall have~~ been made or
99 satisfaction has been given, shall execute in writing an
100 instrument acknowledging satisfaction of the ~~said~~ mortgage.



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101 ~~lien, or judgment~~ and have the same acknowledged, or proven, and
102 recorded duly entered of record in the official records book
103 provided by law for such purposes in the proper county. If the
104 person or party executing the satisfaction is not shown as the
105 owner of the mortgage in the official records, the instrument
106 shall be supplemented by an affidavit that the person executing
107 the satisfaction is in physical possession of the original
108 promissory note secured by the mortgage or was entitled to
109 enforce the note pursuant to s. 673.3011. If the person was
110 entitled only to enforce the note, but was not in possession of
111 the note, the person shall provide in the affidavit the specific
112 factual basis for such authority.

113 (e) If the written request for the payoff amount for the
114 mortgage as of a certain date is not from the mortgagor or the
115 designee of the mortgagor, the request must include a copy of
116 the instrument or instruments showing the requestor's ownership
117 interest in the property. The mortgageholder, in response to the
118 request, is not required to itemize the unpaid balance of the
119 loan secured by the mortgage.

120 (2) (a) Within 60 days after ~~of~~ the date of receipt of the
121 full payment of the mortgage in accord with the estoppel
122 statement, ~~lien, or judgment~~, the person required to acknowledge
123 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or
124 cause to be sent ~~the recorded satisfaction~~ to the maker of the
125 promissory note, or such other person as may be designated in
126 writing by the payor at or after the final payment, a certified
127 copy of the recorded satisfaction. The person shall also send to
128 the payor of a mortgage note:

129 1. The original promissory note, marked "paid in full"; or



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130 2. An affidavit stating that the note was lost, destroyed,
131 or stolen, together with exhibits in compliance with s. 702.015
132 and evidence of adequate protections as provided in s. 702.11.

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

139 (3) A summary procedure pursuant to s. 51.011 may be
140 brought to compel compliance with the requirements of this
141 section, and the prevailing party shall recover reasonable
142 attorney fees and costs. The court may limit recovery of
143 attorney fees and costs if an unreasonable number of requests
144 for estoppel statements have been made ~~person who has made the~~
145 full payment. In the case of a civil action arising out of the
146 provisions of this section, the prevailing party shall be
147 entitled to attorney's fees and costs.

148 (4) ~~(2)~~ Whenever a writ of execution has been issued,
149 docketed, and indexed with a sheriff and the judgment upon which
150 it was issued has been fully paid, it shall be the
151 responsibility of the party receiving payment to request, in
152 writing, addressed to the sheriff, return of the writ of
153 execution as fully satisfied.

154 Section 4. Section 701.045, Florida Statutes, is created to
155 read:

156 701.045 Cancellation of liens and judgments.—

157 (1) If the amount of money due on any lien, other than a
158 mortgage, or any judgment is fully paid to the party entitled to



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159 such payment or to the creditor or assignee, the party, the
160 creditor, or the assignee to whom such payment has been made
161 shall execute in writing an instrument acknowledging
162 satisfaction of the lien or judgment, have the instrument
163 acknowledged or proven, and have the instrument duly entered of
164 record in the official records in the appropriate county. Within
165 60 days after the date of receipt of the full payment of the
166 lien or judgment, the party required to acknowledge satisfaction
167 of the lien or judgment shall send or cause to be sent the
168 recorded satisfaction instrument to the party who has made the
169 full payment. In the case of a civil action arising out of this
170 section, the prevailing party is entitled to attorney fees and
171 costs.

172 (2) If a writ of execution has been issued, docketed, and
173 indexed with a sheriff and the judgment upon which it was issued
174 has been fully paid, the party receiving payment must request,
175 in writing and addressed to the sheriff, return of the writ of
176 execution as fully satisfied.

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

179 Section 5. Section 702.015, Florida Statutes, is created to
180 read:

181 702.015 Elements of complaint; lost, destroyed, or stolen
182 note affidavit.-

183 (1) A complaint that seeks to foreclose a mortgage or other
184 lien on residential real property, including individual units of
185 condominiums and cooperatives, designed principally for
186 occupation by from one to four families, but not including an
187 interest in a timeshare property, which secures a promissory



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188 note must:

189 (a) Contain affirmative allegations expressly made by the
190 plaintiff at the time the proceeding is commenced that the
191 plaintiff is the holder of the original note secured by the
192 mortgage; or

193 (b) Allege with specificity the factual basis by which the
194 plaintiff is a person entitled to enforce the note under s.
195 673.3011.

196 (2) If a party has been delegated the authority to
197 institute a mortgage foreclosure action on behalf of the holder
198 of the note, the complaint shall describe the authority of the
199 plaintiff and identify, with specificity, the document that
200 grants the plaintiff the authority to act on behalf of the
201 holder of the note. This subsection is intended to require
202 initial disclosure of status and pertinent facts and not to
203 modify law regarding standing or real parties in interest.

204 (3) If the plaintiff is in physical possession of the
205 original promissory note, the plaintiff must file with the
206 court, contemporaneously with and as a condition precedent to
207 the filing of the complaint for foreclosure, certification,
208 under penalty of perjury, that the plaintiff is in physical
209 possession of the original promissory note. The certification
210 must set forth the physical location of the note, the name and
211 title of the individual giving the certification, the name of
212 the person who personally verified such physical possession, and
213 the time and date on which the possession was verified. Correct
214 copies of the note and all allonges to the note must be attached
215 to the certification. The original note and the allonges must be
216 filed with the court before the entry of any judgment of



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217 foreclosure or judgment on the note.

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

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

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

226 (c) Include as exhibits to the affidavit such copies of the
227 note and the allonges to the note, assignments of mortgage,
228 audit reports showing physical receipt of the original note, or
229 other evidence of the acquisition, ownership, and possession of
230 the note as may be available to the plaintiff.

231 Section 6. Section 702.036, Florida Statutes, is created to
232 read:

233 702.036 Finality of mortgage foreclosure judgment.-

234 (1) (a) In an action or proceeding in which a party seeks to
235 set aside, invalidate, or challenge the validity of a final
236 judgment of foreclosure of a mortgage or to establish or
237 reestablish a lien or encumbrance on the property in abrogation
238 of the final judgment of foreclosure of a mortgage, the court
239 shall treat such request solely as a claim for monetary damages
240 and may not grant relief that adversely affects the quality or
241 character of the title to the property if:

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

244 2. All applicable appeals periods have run as to the final
245 judgment of foreclosure of a mortgage and an appeal has not been



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246 filed or, if an appeal has been filed, it has been finally
247 resolved;

248 3. The property has been acquired for value by a person not
249 affiliated with the foreclosing lender or the foreclosed owner,
250 at a time in which no lis pendens regarding the suit to set
251 aside, invalidate, or challenge the foreclosure appears in the
252 official records of the county where the property is located;
253 and

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

257 (b) This subsection does not limit the right to pursue any
258 other relief to which a person may be entitled, including, but
259 not limited to, compensatory damages, punitive damages,
260 statutory damages, consequential damages, injunctive relief, or
261 fees and costs, and which does not adversely affect the
262 ownership of the title to the property as vested in the
263 unaffiliated purchaser for value.

264 (2) For purposes of this section, the following, without
265 limitation, shall be considered persons affiliated with the
266 foreclosing lender:

267 (a) The foreclosing lender or any loan servicer for the
268 loan being foreclosed;

269 (b) Any past or present owner or holder of the loan being
270 foreclosed;

271 (c) Any maintenance company, holding company, foreclosure
272 services company, or law firm under contract to any entity
273 listed in paragraph (a), paragraph (b), or this paragraph, with
274 regard to the loan being foreclosed; or



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275 (d) Any parent entity, subsidiary, or other person that
276 directly, or indirectly through one or more intermediaries,
277 controls or is controlled by, or is under common control with,
278 any entity listed in paragraph (a), paragraph (b), or paragraph
279 (c).

280 (3) After foreclosure of a mortgage based upon the
281 enforcement of a lost, destroyed, or stolen note, a person who
282 is not a party to the underlying foreclosure action but who
283 claims to be the actual holder of the promissory note secured by
284 the foreclosed mortgage does not have a claim against the
285 foreclosed property after it has been conveyed for valuable
286 consideration to a person not affiliated with the foreclosing
287 lender or the foreclosed owner. This section does not preclude
288 the actual holder of the note from pursuing recovery from any
289 adequate protection given under s. 673.3091 by the person who
290 enforced the note or from the party who wrongfully claimed to be
291 the owner or holder of the promissory note or the maker of the
292 note or from any other person against whom the actual holder of
293 the note may have a claim relating to the note.

294 Section 7. Section 702.06, Florida Statutes, is amended to
295 read:

296 702.06 Deficiency decree; ~~common-law~~ suit to recover
297 deficiency.-

298 (1) In an action ~~all suits~~ for the foreclosure of a
299 mortgage, ~~mortgages heretofore or hereafter executed~~ the entry
300 of a deficiency decree for any portion of a deficiency, should
301 one exist, ~~must shall~~ be commenced within 1 year after the sale
302 date of the mortgaged property pursuant to a court foreclosure
303 sale or short sale. If not commenced within 1 year after sale,



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304 any attempt to collect a deficiency judgment shall be barred.
305 The amount of the deficiency judgment may not exceed the
306 difference between the judgment amount or, in the case of a
307 short sale, the outstanding debt, and the fair market value of
308 the property on the date of sale. ~~the sound judicial discretion~~
309 ~~of the court, but~~ The complainant shall also have the right to
310 sue at common law to recover such deficiency, unless the court
311 in the foreclosure action has granted or denied a claim for a
312 deficiency judgment ~~provided no suit at law to recover such~~
313 ~~deficiency shall be maintained against the original mortgagor in~~
314 ~~eases where the mortgage is for the purchase price of the~~
315 ~~property involved and where the original mortgagee becomes the~~
316 ~~purchaser thereof at foreclosure sale and also is granted a~~
317 ~~deficiency decree against the original mortgagor.~~

318 (2) (a) With respect to an owner-occupied, one-family to
319 four-family dwelling unit, the party to whom a deficiency is
320 owing may move for the entry of a deficiency judgment in the
321 foreclosure action or file a separate action for collection of
322 the deficiency. The separate action must be filed within 1 year
323 after the property has vested in the foreclosing lender or other
324 purchaser at the foreclosure sale.

325 (b) If a deficiency is not pursued within the time period
326 specified in this subsection, the vesting of the property or
327 proceeds of the sale, regardless of the amount, shall be deemed
328 to be in full satisfaction of the judgment debt and a right to
329 recover any deficiency in any subsequent action or proceeding is
330 extinguished.

331 (c) This subsection does not restrict the authority of the
332 court to determine the entitlement to any assets held by any



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333 receiver or any assignee of the rents and profits of the
334 property.

335 Section 8. Section 702.10, Florida Statutes, is amended to
336 read:

337 702.10 Order to show cause; entry of final judgment of
338 foreclosure; payment during foreclosure.—

339 (1) A lienholder ~~After a complaint in a foreclosure~~
340 ~~proceeding has been filed, the mortgagee~~ may request an order to
341 show cause for the entry of final judgment in a foreclosure
342 action. For purposes of this section, the term "lienholder"
343 includes the plaintiff and a defendant to the action who holds a
344 lien encumbering the property or a defendant who, by virtue of
345 its status as a condominium association, cooperative
346 association, or homeowners' association, may file a lien against
347 the real property subject to foreclosure. Upon filing, and the
348 court shall immediately review the request and the court file in
349 chambers and without a hearing ~~complaint~~. If, upon examination
350 of the court file ~~complaint~~, the court finds that the complaint
351 is verified, complies with s. 702.015, and alleges a cause of
352 action to foreclose on real property, the court shall promptly
353 issue an order directed to the other parties named in the action
354 ~~defendant~~ to show cause why a final judgment of foreclosure
355 should not be entered.

356 (a) The order shall:

357 1. Set the date and time for a hearing on the order to show
358 cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner
359 than 20 days after the service of the order. ~~When service is~~
360 ~~obtained by publication, the date for the hearing may not be set~~
361 ~~sooner than 30 days after the first publication.~~ The hearing



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362 must be held within 90 ~~60~~ days after the date of service.
363 Failure to hold the hearing within such time does not affect the
364 validity of the order to show cause or the jurisdiction of the
365 court to issue subsequent orders.

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

368 3. State that the filing of defenses by a motion,
369 responsive pleading, affidavits, or other papers ~~or by a~~
370 ~~verified or sworn answer at or~~ before the hearing to show cause
371 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~
372 ~~attached~~ final judgment.

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

377 5. State that, if a ~~the~~ defendant files defenses by a
378 motion, a verified or sworn answer, affidavits, or other papers
379 or appears personally or by way of an attorney at the time of
380 the hearing, the hearing time will ~~may~~ be used to hear and
381 consider the defendant's motion, answer, affidavits, other
382 papers, and other evidence and argument as may be presented by
383 the defendant or the defendant's attorney. The order shall also
384 state that the court may enter an order of final judgment of
385 foreclosure, which must be based on clear and convincing
386 evidence and the arguments presented. If such an order is
387 entered, the court shall enter a final judgment of foreclosure
388 ordering the clerk of the court to conduct a foreclosure sale.

389 6. State that, if a ~~the~~ defendant fails to appear at the
390 hearing to show cause or fails to file defenses by a motion or



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391 by a verified or sworn answer or files an answer not contesting
392 the foreclosure, such ~~the~~ defendant may be considered to have
393 waived the right to a hearing, and in such case, the court may
394 enter a default against such defendant and, if appropriate, a
395 final judgment of foreclosure ordering the clerk of the court to
396 conduct a foreclosure sale.

397 7. State that if the mortgage provides for reasonable
398 attorney attorney's fees and the requested attorney attorney's
399 fees do not exceed 3 percent of the principal amount owed at the
400 time of filing the complaint, it is unnecessary for the court to
401 hold a hearing or adjudge the requested attorney attorney's fees
402 to be reasonable.

403 8. Attach the form of the proposed final judgment of
404 foreclosure which the movant requests the court to will enter,
405 ~~if the defendant waives the right to be heard~~ at the hearing on
406 the order to show cause. The form may contain blanks for the
407 court to enter the amounts due.

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

411 a. If a party ~~the mortgager~~ has been served with the
412 complaint and original process, or the other party is the
413 plaintiff in the action, service of the order to show cause on
414 that party ~~order~~ may be made in the manner provided in the
415 Florida Rules of Civil Procedure.

416 b. If a defendant ~~the mortgager~~ has not been served with
417 the complaint and original process, the order to show cause,
418 together with the summons and a copy of the complaint, shall be
419 served on the party ~~mortgager~~ in the same manner as provided by



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420 law for original process.

421

422 Any final judgment of foreclosure entered under this subsection
423 is for in rem relief only. ~~Nothing in~~ This subsection does not
424 ~~shall~~ preclude the entry of a deficiency judgment where
425 otherwise allowed by law. It is the intent of the Legislature
426 that this alternative procedure may run simultaneously with
427 other court procedures.

428 (b) The right to be heard at the hearing to show cause is
429 waived if a ~~the~~ defendant, after being served as provided by law
430 with an order to show cause, engages in conduct that clearly
431 shows that the defendant has relinquished the right to be heard
432 on that order. The defendant's failure to file defenses by a
433 motion or by a sworn or verified answer, affidavits, or other
434 papers or to appear personally or by way of an attorney at the
435 hearing duly scheduled on the order to show cause presumptively
436 constitutes conduct that clearly shows that the defendant has
437 relinquished the right to be heard. If a defendant files
438 defenses by a motion, or by a verified or sworn answer,
439 affidavits, or other papers at or before the hearing, such
440 action may constitute ~~constitutes~~ cause and may preclude
441 ~~precludes~~ the entry of a final judgment at the hearing to show
442 cause.

443 (c) In a mortgage foreclosure proceeding, when a final
444 ~~default~~ judgment of foreclosure has been entered against the
445 mortgagor and the note or mortgage provides for the award of
446 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
447 court to hold a hearing or adjudge the requested attorney
448 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3



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449 percent of the principal amount owed on the note or mortgage at
450 the time of filing, even if the note or mortgage does not
451 specify the percentage of the original amount that would be paid
452 as liquidated damages.

453 (d) If the court finds that all defendants have ~~the~~
454 ~~defendant has~~ waived the right to be heard as provided in
455 paragraph (b), the court shall promptly enter a final judgment
456 of foreclosure without the need for further hearing if the
457 plaintiff has shown entitlement to a final judgment. If the
458 court finds that a ~~the~~ defendant has not waived the right to be
459 heard on the order to show cause, the court shall ~~then~~ determine
460 whether there is cause not to enter a final judgment of
461 foreclosure. If the court determines, based upon clear and
462 convincing evidence and the arguments presented, to support
463 entry of a final judgment of foreclosure, the court shall enter
464 a final judgment of foreclosure ordering the clerk of the court
465 to conduct a foreclosure sale ~~finds that the defendant has not~~
466 ~~shown cause, the court shall promptly enter a judgment of~~
467 ~~foreclosure~~. If the time allotted for the hearing is
468 insufficient, the court may announce at the hearing a date and
469 time for the continued hearing. Only the parties who appear,
470 individually or through an attorney, at the initial hearing must
471 be notified of the date and time of the continued hearing.

472 (2) This subsection does not apply to foreclosure of an
473 owner-occupied residence. As part of any other ~~In an~~ action for
474 foreclosure, and in addition to any other relief that the court
475 may award ~~other than residential real estate, the plaintiff the~~
476 ~~mortgagee~~ may request that the court enter an order directing
477 the mortgagor defendant to show cause why an order to make



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478 payments during the pendency of the foreclosure proceedings or
479 an order to vacate the premises should not be entered.

480 (a) The order shall:

481 1. Set the date and time for hearing on the order to show
482 cause. However, the date for the hearing may ~~shall~~ not be set
483 sooner than 20 days after the service of the order. If ~~Where~~
484 service is obtained by publication, the date for the hearing may
485 ~~shall~~ not be set sooner than 30 days after the first
486 publication.

487 2. Direct the time within which service of the order to
488 show cause and the complaint shall be made upon each ~~the~~
489 defendant.

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

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

498 5. Require the movant ~~mortgagee~~ to serve a copy of the
499 order to show cause on the defendant ~~mortgagor~~ in the following
500 manner:

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

504 b. If a defendant ~~the mortgagor~~ has not been served with
505 the complaint and original process, the order to show cause,
506 together with the summons and a copy of the complaint, shall be



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507 served on the defendant ~~mortgagor~~ in the same manner as provided
508 by law for original process.

509 (b) The right of a defendant to be heard at the hearing to
510 show cause is waived if the defendant, after being served as
511 provided by law with an order to show cause, engages in conduct
512 that clearly shows that the defendant has relinquished the right
513 to be heard on that order. A ~~The~~ defendant's failure to file
514 defenses by a motion or by a sworn or verified answer or to
515 appear at the hearing duly scheduled on the order to show cause
516 presumptively constitutes conduct that clearly shows that the
517 defendant has relinquished the right to be heard.

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

522 (d) If the court finds that the mortgagor has not waived
523 the right to be heard on the order to show cause, the court
524 shall, at the hearing on the order to show cause, consider the
525 affidavits and other showings made by the parties appearing and
526 make a determination of the probable validity of the underlying
527 claim alleged against the mortgagor and the mortgagor's
528 defenses. If the court determines that the plaintiff ~~mortgagee~~
529 is likely to prevail in the foreclosure action, the court shall
530 enter an order requiring the mortgagor to make the payment
531 described in paragraph (e) to the plaintiff ~~mortgagee~~ and
532 provide for a remedy as described in paragraph (f). However, the
533 order shall be stayed pending final adjudication of the claims
534 of the parties if the mortgagor files with the court a written
535 undertaking executed by a surety approved by the court in an



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536 amount equal to the unpaid balance of the lien being foreclosed
537 ~~the mortgage on the property~~, including all principal, interest,
538 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
539 ~~mortgagee~~.

540 (e) ~~If In the event~~ the court enters an order requiring the
541 mortgagor to make payments to the plaintiff mortgagee, payments
542 shall be payable at such intervals and in such amounts provided
543 for in the mortgage instrument before acceleration or maturity.
544 The obligation to make payments pursuant to any order entered
545 under this subsection shall commence from the date of the motion
546 filed under this section hereunder. The order shall be served
547 upon the mortgagor no later than 20 days before the date
548 specified for the first payment. The order may permit, but may
549 ~~shall~~ not require, the plaintiff mortgagee to take all
550 appropriate steps to secure the premises during the pendency of
551 the foreclosure action.

552 (f) ~~If In the event~~ the court enters an order requiring
553 payments, the order shall also provide that the plaintiff is
554 ~~mortgagee shall be~~ entitled to possession of the premises upon
555 the failure of the mortgagor to make the payment required in the
556 order unless at the hearing on the order to show cause the court
557 finds good cause to order some other method of enforcement of
558 its order.

559 (g) All amounts paid pursuant to this section shall be
560 credited against the mortgage obligation in accordance with the
561 terms of the loan documents; ~~provided, however, that any~~
562 payments made under this section do shall not constitute a cure
563 of any default or a waiver or any other defense to the mortgage
564 foreclosure action.



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

569 (i) For purposes of this subsection, there is a rebuttable
570 presumption that a residential property for which a homestead
571 exemption for taxation was granted according to the certified
572 rolls of the latest assessment by the county property appraiser,
573 before the filing of the foreclosure action, is an owner-
574 occupied residential property.

575 (3) The Supreme Court is requested to amend the Florida
576 Rules of Civil Procedure to provide for expedited foreclosure
577 proceedings in conformity with this section. The Supreme Court
578 is requested to develop and publish forms for use under this
579 section.

580 Section 9. Section 702.11, Florida Statutes, is created to
581 read:

582 702.11 Adequate protections for lost, destroyed, or stolen
583 notes in mortgage foreclosure.-

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

587 (a) A written indemnification agreement by a person
588 reasonably believed sufficiently solvent to honor such an
589 obligation;

590 (b) A surety bond;

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

592 (d) A deposit of cash collateral with the clerk of the
593 court; or



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594 (e) Such other security as the court may deem appropriate
595 under the circumstances.

596
597 Any security given shall be on terms and in amounts set by the
598 court, for a time period through the running of the statute of
599 limitations for enforcement of the underlying note, and
600 conditioned to indemnify and hold harmless the maker of the note
601 against any loss or damage, including principal, interest, and
602 attorney fees and costs, which might occur by reason of a claim
603 by another person to enforce the note.

604 (2) Any person who wrongly claimed to be the holder of or,
605 pursuant to s. 673.3011, wrongly claimed to be entitled to
606 enforce a lost, stolen, or destroyed note and caused the
607 mortgage secured by the note to be foreclosed is liable to the
608 actual holder of the note for actual damages suffered, together
609 with attorney fees and costs of the actual holder of the note in
610 enforcing rights under this section. The extent of the liability
611 is not limited to any adequate protections given under s.
612 673.3091. In addition, the actual holder of the note may pursue
613 recovery directly against any adequate protections given.

614 (a) The actual holder of the note is not required to pursue
615 recovery against the maker of the note or any guarantor of the
616 note as a condition precedent to pursuing remedies under this
617 section.

618 (b) This section does not limit or restrict the ability of
619 the actual holder of the note to pursue any other claims or
620 remedies it may have against the maker, the person who wrongly
621 claimed to be the holder, or any person who facilitated or
622 participated in the claim to the note or enforcement of the



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623 note.

624 Section 10. Section 702.13, Florida Statutes, is created to
625 read:

626 702.13 Expedited foreclosure of abandoned residential real
627 property.-

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

631 (a) A duly licensed process server unaffiliated with the
632 owner or servicer of any mortgage on the residential real
633 property or with the attorney or law firm representing such
634 owner or servicer has made at least three attempts to locate an
635 occupant of the residential real property. The attempts must
636 have been made at least 72 hours apart, and at least one each of
637 such attempts must have been made before 12 p.m., between 12
638 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
639 must include physically knocking or ringing at the door of the
640 residential real property and such other efforts as are normally
641 sufficient to obtain a response from an occupant.

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

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

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

647 3. Rubbish, trash, or debris has accumulated on the
648 mortgaged premises.

649 4. The premises are deteriorating and are below or in
650 imminent danger of falling below minimum community standards for
651 public safety and sanitation.



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

656 6. Interviews with at least two neighbors in different
657 households indicate that the residence has been abandoned. The
658 neighbors must be adjoining, across the street in view of the
659 home, or across the hall or adjacent to the unit in a
660 condominium or cooperative.

661
662 The process server making attempts to locate an occupant of the
663 residential real property may provide, by affidavit and
664 photographic or other documentation, evidence of the condition
665 of the residential real property.

666 (2) (a) The party entitled to enforce the note and mortgage
667 encumbering the residential real property appearing to be
668 abandoned must file a petition before the court seeking to
669 determine the status of the residential real property and to
670 invoke an expedited foreclosure proceeding relating to the
671 property. Upon the filing of an affidavit of diligent search and
672 inquiry and the affidavit or documentary evidence set forth in
673 subsection (1), the court shall, upon request of the petitioner,
674 issue one or more subpoenas to the utility companies serving the
675 residential real property commanding disclosure of the status of
676 utility service to the subject property, including whether
677 utilities are currently turned off and whether all outstanding
678 utility payments have been made and, if so, by whom.

679 (b) If, after review of the response of the utility
680 companies to the subpoenas and all other matters of record, the



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681 court determines the property to have been abandoned, the party
682 entitled to foreclose on interest encumbering the residential
683 real property is entitled to use the expedited mortgage
684 foreclosure procedures set forth in s. 702.10 upon service by
685 publication. However, service must be made on any condominium,
686 cooperative, or homeowners' association having a lien interest
687 in the property and all other junior lienholders as required by
688 law.

689 Section 11. This act is intended to be remedial in nature
690 and applies to any action filed on or after the effective date
691 of this act. The failure to strictly comply with the
692 requirements of this act may be asserted only within the
693 foreclosure proceeding itself and does not affect the validity
694 of any final judgment of foreclosure which may be granted or
695 give rise to any independent cause of action or claim for
696 damages against the plaintiff or any other party.

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

698
699 ===== T I T L E A M E N D M E N T =====

700 And the title is amended as follows:

701 Delete everything before the enacting clause
702 and insert:

703 A bill to be entitled
704 An act relating to mortgage foreclosure proceedings;
705 amending s. 95.11, F.S.; specifying the limitation
706 period for initiating an action to collect a
707 deficiency following the foreclosure of certain
708 dwellings; providing for application to existing
709 causes of action; amending s. 701.04, F.S.; specifying



710 requirements for a holder of a mortgage to provide an
711 estoppel statement to certain persons requesting the
712 payoff amount for the mortgage; specifying the
713 required contents of the estoppel statement; requiring
714 a person who provides a mortgage satisfaction to
715 provide supplemental information if the person was not
716 the owner of the mortgage; requiring certain persons
717 who are not a mortgagor to provide information showing
718 the requestor's ownership interest in the property to
719 the mortgageholder when making a request for the
720 payoff amount of the mortgage; specifying documents
721 that the person who provides the mortgage satisfaction
722 must provide to the payor of a mortgage note;
723 specifying a fee for failing to timely provide the
724 required documents to the payor; authorizing the use
725 of a summary procedure to compel compliance with
726 requirements to provide an estoppel statement or the
727 documents that must be provided by the person who
728 provides a mortgage satisfaction; creating s. 701.045,
729 F.S.; requiring a party who is owed and who is fully
730 paid money due on a lien or judgment to execute in
731 writing an instrument acknowledging satisfaction of
732 the lien or judgment, to have the instrument recorded
733 in the official records of the appropriate county
734 requiring the party, and to send within a specified
735 time the recorded instrument to the person who made
736 full payment; providing for attorney fees and costs;
737 requiring the party receiving full payment for a
738 judgment for which a writ of execution has been



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739 issued, docketed, and indexed with a sheriff to
740 request, in writing and addressed to the sheriff, the
741 return of the satisfied writ of execution; requiring
742 compliance with certain procedures; creating s.
743 702.015, F.S.; specifying required contents of a
744 complaint seeking to foreclose on certain types of
745 residential properties with respect to the authority
746 of the plaintiff to foreclose on the note and the
747 location of the note; creating s. 702.036, F.S.;
748 requiring a court to treat a challenge to a final
749 judgment of foreclosure as a claim for monetary
750 damages under certain circumstances; amending s.
751 702.06, F.S.; providing that a person who forecloses
752 on a mortgage may not initiate an action to recover a
753 deficiency if the court in the foreclosure action has
754 granted or denied a claim for a deficiency judgment;
755 limiting the amount of the deficiency judgment;
756 requiring a separate action to recover a deficiency to
757 be initiated within a certain time period; amending s.
758 702.10, F.S.; expanding the class of persons
759 authorized to move for expedited foreclosure; defining
760 the term "lienholder"; providing requirements and
761 procedures with respect to an order directed to
762 defendants to show cause why a final judgment of
763 foreclosure should not be entered; providing that
764 certain failures by a defendant to make certain
765 filings or to make certain appearances may have
766 specified legal consequences; requiring the court to
767 enter a final judgment of foreclosure and order a



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768 foreclosure sale under certain circumstances; amending
769 a restriction on a mortgagee to request a court to
770 order a mortgagor defendant to make payments or to
771 vacate the premises during an action to foreclose on
772 residential real estate to provide that the
773 restriction applies to all but owner-occupied
774 residential property; providing a presumption
775 regarding owner-occupied residential property;
776 requesting the Supreme Court to adopt rules and forms
777 for use in expedited foreclosure proceedings; creating
778 s. 702.11, F.S.; specifying security that may be
779 determined by the court as adequate protection against
780 a loss by another person seeking to enforce the
781 mortgage; authorizing the holder of a note to initiate
782 an action against a person who wrongfully claimed to
783 be entitled to enforce the note for damages and
784 attorney fees and costs; authorizing the holder of the
785 note to pursue the recovery against any adequate
786 protections given by the person who wrongfully claimed
787 to be entitled to enforce the note; creating s.
788 702.13, F.S.; establishing expedited foreclosure
789 proceedings for abandoned residential real property
790 and procedures and requirements with respect thereto;
791 providing for application of the act; providing an
792 effective date.