

By the Committees on Banking and Insurance; and Judiciary; and Senators Latvala and Gaetz

597-04150-12

20121890c2

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; amending s. 702.06,
15 F.S.; limiting the amount of a deficiency judgment;
16 amending s. 702.10, F.S.; expanding the class of
17 persons authorized to move for expedited foreclosure;
18 defining the term "lienholder"; providing requirements
19 and procedures with respect to an order directed to
20 defendants to show cause why a final judgment of
21 foreclosure should not be entered; providing that
22 certain failures by a defendant to make certain
23 filings or to make certain appearances may have
24 specified legal consequences; requiring the court to
25 enter a final judgment of foreclosure and order a
26 foreclosure sale under certain circumstances; revising
27 a restriction on a mortgagee to request a court to
28 order a mortgagor defendant to make payments or to
29 vacate the premises during an action to foreclose on

597-04150-12

20121890c2

30 residential real estate to provide that the
31 restriction applies to all but owner-occupied
32 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 to

597-04150-12

20121890c2

59 a note secured by a mortgage against a residential property that
60 is a one-family to four-family dwelling unit. The limitations
61 period shall commence on the 11th day after the foreclosure sale
62 or the day after the mortgagee accepts a deed in lieu of
63 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 to
74 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 other
85 lien on residential real property, including individual units of
86 condominiums and cooperatives, designed principally for
87 occupation by from one to four families, but not including an

597-04150-12

20121890c2

88 interest in a timeshare property, which secures a promissory
89 note must:

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

94 (b) Allege with specificity the factual basis by which the
95 plaintiff is a person entitled to enforce the note under s.
96 673.3011.

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

105 (4) If the plaintiff is in physical possession of the
106 original promissory note, the plaintiff must file with the
107 court, contemporaneously with and as a condition precedent to
108 the filing of the complaint for foreclosure, certification,
109 under penalty of perjury, that the plaintiff is in physical
110 possession of the original promissory note. The certification
111 must set forth the physical location of the note, the name and
112 title of the individual giving the certification, the name of
113 the person who personally verified such physical possession, and
114 the time and date on which the possession was verified. Correct
115 copies of the note and all allonges to the note must be attached
116 to the certification. The original note and the allonges must be

597-04150-12

20121890c2

117 filed with the court before the entry of any judgment of
118 foreclosure or judgment on the note.

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

122 (a) Detail a clear chain of all endorsements or assignments
123 of the promissory note that is the subject of the 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 the
128 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 Section 4. Section 702.06, Florida Statutes, is amended to
137 read:

138 702.06 Deficiency decree; common-law suit to recover
139 deficiency.—In all suits for the foreclosure of mortgages
140 heretofore or hereafter executed the entry of a deficiency
141 decree for any portion of a deficiency, should one exist, may
142 not exceed the difference between the judgment amount or, in the
143 case of a short sale, the outstanding debt and the fair market
144 value of the property on the date of sale., ~~shall be within the~~
145 sound judicial discretion of the court, but The complainant

597-04150-12

20121890c2

146 shall also have the right to sue at common law to recover such
147 deficiency, unless the court in the foreclosure action has
148 granted or denied a claim for a deficiency judgment ~~provided no~~
149 ~~suit at law to recover such deficiency shall be maintained~~
150 ~~against the original mortgagor in cases where the mortgage is~~
151 ~~for the purchase price of the property involved and where the~~
152 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
153 ~~sale and also is granted a deficiency decree against the~~
154 ~~original mortgagor.~~

155 Section 5. Section 702.10, Florida Statutes, is amended to
156 read:

157 702.10 Order to show cause; entry of final judgment of
158 foreclosure; payment during foreclosure.—

159 (1) A lienholder ~~After a complaint in a foreclosure~~
160 ~~proceeding has been filed, the mortgagee~~ may request an order to
161 show cause for the entry of final judgment in a foreclosure
162 action. For purposes of this section, the term "lienholder"
163 includes the plaintiff and a defendant to the action who holds a
164 lien encumbering the property or a defendant who, by virtue of
165 its status as a condominium association, cooperative
166 association, or homeowners' association, may file a lien against
167 the real property subject to foreclosure. Upon filing, and the
168 court shall immediately review the request and the court file in
169 chambers and without a hearing ~~complaint~~. If, upon examination
170 of the court file ~~complaint~~, the court finds that the complaint
171 is verified, complies with s. 702.015, and alleges a cause of
172 action to foreclose on real property, the court shall promptly
173 issue an order directed to the other parties named in the action
174 ~~defendant~~ to show cause why a final judgment of foreclosure

597-04150-12

20121890c2

175 should not be entered.

176 (a) The order shall:

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

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

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

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

198 5. State that, if a ~~the~~ defendant files defenses by a
199 motion, a verified or sworn answer, affidavits, or other papers
200 or appears personally or by way of an attorney at the time of
201 the hearing, the hearing time will ~~may~~ be used to hear and
202 consider the defendant's motion, answer, affidavits, other
203 papers, and other evidence and argument as may be presented by

597-04150-12

20121890c2

204 the defendant or the defendant's attorney. The order shall also
205 state that the court may enter an order of final judgment of
206 foreclosure at the hearing. If such a determination is entered,
207 the court shall enter a final judgment of foreclosure ordering
208 the clerk of the court to conduct a foreclosure sale.

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

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

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

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

231 a. If a party ~~the mortgager~~ has been personally served with
232 the complaint and original process, or the other party is the

597-04150-12

20121890c2

233 plaintiff in the action, service of the order to show cause on
234 that party ~~order~~ may be made in the manner provided in the
235 Florida Rules of Civil Procedure.

236 b. If a defendant ~~the mortgager~~ has not been personally
237 served with the complaint and original process, the order to
238 show cause, together with the summons and a copy of the
239 complaint, shall be served on the party ~~mortgager~~ in the same
240 manner as provided by law for original process. Service of the
241 complaint and original process by mail or publication is not
242 personal service for purposes of this subparagraph.

243
244 Any final judgment of foreclosure entered under this subsection
245 is for in rem relief only. ~~Nothing in~~ This subsection does not
246 ~~shall~~ preclude the entry of a deficiency judgment where
247 otherwise allowed by law. It is the intent of the Legislature
248 that this alternative procedure may run simultaneously with
249 other court procedures.

250 (b) The right to be heard at the hearing to show cause is
251 waived if a ~~the~~ defendant, after being served as provided by law
252 with an order to show cause, engages in conduct that clearly
253 shows that the defendant has relinquished the right to be heard
254 on that order. The defendant's failure to file defenses by a
255 motion or by a sworn or verified answer, affidavits, or other
256 papers or to appear personally or by way of an attorney at the
257 hearing duly scheduled on the order to show cause presumptively
258 constitutes conduct that clearly shows that the defendant has
259 relinquished the right to be heard. If a defendant files
260 defenses by a motion, ~~or by~~ a verified or sworn answer,
261 affidavits, or other papers at or before the hearing, such

597-04150-12

20121890c2

262 action may constitute ~~constitutes~~ cause and may preclude
263 ~~precludes~~ the entry of a final judgment at the hearing to show
264 cause.

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

275 (d) If the court finds that all defendants have ~~the~~
276 ~~defendant has~~ waived the right to be heard as provided in
277 paragraph (b), the court shall promptly enter a final judgment
278 of foreclosure without the need for further hearing if the
279 plaintiff has shown entitlement to a final judgment and upon the
280 filing with the court of the original note, satisfaction of the
281 conditions for establishment of a lost note, or upon a showing
282 to the court that the obligation to be foreclosed is not
283 evidenced by a promissory note or other negotiable instrument.
284 If the court finds that a ~~the~~ defendant has not waived the right
285 to be heard on the order to show cause, the court shall ~~then~~
286 determine whether there is cause not to enter a final judgment
287 of foreclosure. If the court finds that the defendant has not
288 shown cause, the court shall promptly enter a judgment of
289 foreclosure. If the time allotted for the hearing is
290 insufficient, the court may announce at the hearing a date and

597-04150-12

20121890c2

291 time for the continued hearing. Only the parties who appear,
292 individually or through an attorney, at the initial hearing must
293 be notified of the date and time of the continued hearing.

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

302 (a) The order shall:

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

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

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

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

597-04150-12

20121890c2

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

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

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

331 (b) The right of a defendant to be heard at the hearing to
332 show cause is waived if the defendant, after being served as
333 provided by law with an order to show cause, engages in conduct
334 that clearly shows that the defendant has relinquished the right
335 to be heard on that order. A ~~The~~ defendant's failure to file
336 defenses by a motion or by a sworn or verified answer or to
337 appear at the hearing duly scheduled on the order to show cause
338 presumptively constitutes conduct that clearly shows that the
339 defendant has relinquished the right to be heard.

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

344 (d) If the court finds that the mortgagor has not waived
345 the right to be heard on the order to show cause, the court
346 shall, at the hearing on the order to show cause, consider the
347 affidavits and other showings made by the parties appearing and
348 make a determination of the probable validity of the underlying

597-04150-12

20121890c2

349 claim alleged against the mortgagor and the mortgagor's
350 defenses. If the court determines that the plaintiff mortgagee
351 is likely to prevail in the foreclosure action, the court shall
352 enter an order requiring the mortgagor to make the payment
353 described in paragraph (e) to the plaintiff mortgagee and
354 provide for a remedy as described in paragraph (f). However, the
355 order shall be stayed pending final adjudication of the claims
356 of the parties if the mortgagor files with the court a written
357 undertaking executed by a surety approved by the court in an
358 amount equal to the unpaid balance of the lien being foreclosed
359 ~~the mortgage on the property~~, including all principal, interest,
360 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
361 ~~mortgagee~~.

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

374 (f) If ~~In the event~~ the court enters an order requiring
375 payments, the order shall also provide that the plaintiff is
376 ~~mortgagee shall be~~ entitled to possession of the premises upon
377 the failure of the mortgagor to make the payment required in the

597-04150-12

20121890c2

378 order unless at the hearing on the order to show cause the court
379 finds good cause to order some other method of enforcement of
380 its order.

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

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

391 (i) For purposes of this subsection, there is a rebuttable
392 presumption that a residential property for which a homestead
393 exemption for taxation was granted according to the certified
394 rolls of the latest assessment by the county property appraiser,
395 before the filing of the foreclosure action, is an owner-
396 occupied residential property.

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

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

403 702.11 Expedited foreclosure of abandoned residential real
404 property.-

405 (1) As used in this section, the term "abandoned
406 residential real property" means residential real property that

597-04150-12

20121890c2

407 is deemed abandoned upon a showing that:

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

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

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

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

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

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

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

434 6. Interviews with at least two neighbors in different
435 households indicate that the residence has been abandoned. The

597-04150-12

20121890c2

436 neighbors must be adjoining, across the street in view of the
437 home, or across the hall or adjacent to the unit in a
438 condominium or cooperative.

439
440 The sheriff or process server making attempts to locate an
441 occupant of the residential real property and to determine the
442 abandoned status of the residential real property may provide,
443 by affidavit and photographic or other documentation, evidence
444 of the condition of the residential real property, and may
445 charge a reasonable fee for the attempts and for any affidavit
446 or other documentation evidencing the condition of the
447 residential real property.

448 (2) (a) The party entitled to enforce the note and mortgage
449 encumbering the residential real property appearing to be
450 abandoned may file a petition before the court seeking to
451 determine the status of the residential real property and to
452 invoke an expedited foreclosure proceeding relating to the
453 property. Upon the filing of an affidavit of diligent search and
454 inquiry and the affidavit or documentary evidence set forth in
455 subsection (1), the court shall, upon request of the petitioner,
456 issue one or more subpoenas to the utility companies serving the
457 residential real property commanding disclosure of the status of
458 utility service to the subject property, including whether
459 utilities are currently turned off and whether all outstanding
460 utility payments have been made and, if so, by whom.

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

597-04150-12

20121890c2

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

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

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