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1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 95.11, F.S.; revising the limitations period for
4 commencing an action to enforce a claim of a
5 deficiency judgment after a foreclosure action;
6 providing for applicability to existing causes of
7 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; authorizing sanctions against
13 plaintiffs who fail to comply with complaint
14 requirements; providing for nonapplicability to
15 proceedings involving timeshare interests; creating s.
16 702.036, F.S.; requiring a court to treat a collateral
17 attack on a final judgment of foreclosure on a
18 mortgage as a claim for monetary damages under certain
19 circumstances; prohibiting such court from granting
20 certain relief affecting title to the foreclosed
21 property; providing for construction relating to the
22 rights of certain persons to seek specified types of
23 relief or pursue claims against the foreclosed
24 property under certain circumstances; amending s.
25 702.06, F.S.; limiting the amount of a deficiency
26 judgment; amending s. 702.10, F.S.; revising the class
27 of persons authorized to move for expedited
28 foreclosure to include lienholders; defining the term

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29 "lienholder"; providing requirements and procedures
30 with respect to an order directed to defendants to
31 show cause why a final judgment of foreclosure should
32 not be entered; providing that certain failures by a
33 defendant to make certain filings or to make certain
34 appearances may have specified legal consequences;
35 requiring the court to enter a final judgment of
36 foreclosure and order a foreclosure sale under certain
37 circumstances; revising a restriction on a mortgagee
38 to request a court to order a mortgagor defendant to
39 make payments or to vacate the premises during an
40 action to foreclose on residential real estate to
41 provide that the restriction applies to all but owner-
42 occupied residential property; providing a presumption
43 regarding owner-occupied residential property;
44 requesting the Supreme Court to adopt rules and forms
45 for use in expedited foreclosure proceedings; creating
46 s. 702.11, F.S.; providing requirements for reasonable
47 means of providing adequate protection under s.
48 673.3091, F.S., in mortgage foreclosures of certain
49 residential properties; providing for liability of
50 persons who wrongly claim to be holders of or entitled
51 to enforce a lost, stolen, or destroyed note and cause
52 the mortgage secured thereby to be foreclosed in
53 certain circumstances; providing for construction and
54 applicability; providing an effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

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57
58 Section 1. Paragraph (b) of subsection (2) of section
59 95.11, Florida Statutes, is amended, and paragraph (h) is added
60 to subsection (5) of that section, to read:

61 95.11 Limitations other than for the recovery of real
62 property.—Actions other than for recovery of real property shall
63 be commenced as follows:

64 (2) WITHIN FIVE YEARS.—

65 (b) A legal or equitable action on a contract, obligation,
66 or liability founded on a written instrument, except for an
67 action to enforce a claim against a payment bond, which shall be
68 governed by the applicable provisions of paragraph (5) (e), s.
69 255.05(10), s. 337.18(1), or s. 713.23(1) (e), and except for an
70 action for a deficiency judgment governed by paragraph (5) (h).

71 (5) WITHIN ONE YEAR.—

72 (h) An action to enforce a claim of a deficiency related
73 to a note secured by a mortgage against a residential property
74 that is a one-family to four-family dwelling unit. The
75 limitations period shall commence on the 11th day after the
76 foreclosure sale or the day after the mortgagee accepts a deed
77 in lieu of foreclosure.

78 Section 2. The amendments made by this act to s. 95.11,
79 Florida Statutes, apply to any action commenced on or after July
80 1, 2013, regardless of when the cause of action accrued, except
81 that any action that would not have been barred under s.
82 95.11(2) (b), Florida Statutes, before the amendments made by
83 this act may be commenced no later than 5 years after the action
84 accrued but in no event later than July 1, 2014, and if the

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85 action is not commenced by that date, it is barred by the
86 amendments made by this act.

87 Section 3. Section 702.015, Florida Statutes, is created
88 to read:

89 702.015 Elements of complaint; lost, destroyed, or stolen
90 note affidavit.—

91 (1) The Legislature intends that this section expedite the
92 foreclosure process by ensuring initial disclosure of a
93 plaintiff's status and the facts supporting that status, thereby
94 ensuring the availability of documents necessary to the
95 prosecution of the case.

96 (2) A complaint that seeks to foreclose a mortgage or
97 other lien on residential real property, including individual
98 units of condominiums and cooperatives, designed principally for
99 occupation by from one to four families which secures a
100 promissory note must:

101 (a) Contain affirmative allegations expressly made by the
102 plaintiff at the time the proceeding is commenced that the
103 plaintiff is the holder of the original note secured by the
104 mortgage; or

105 (b) Allege with specificity the factual basis by which the
106 plaintiff is a person entitled to enforce the note under s.
107 673.3011.

108 (3) If a party has been delegated the authority to
109 institute a mortgage foreclosure action on behalf of the holder
110 of the note, the complaint shall describe the authority of the
111 plaintiff and identify, with specificity, the document that
112 grants the plaintiff the authority to act on behalf of the

113 holder of the note. This subsection is intended to require
114 initial disclosure of status and pertinent facts and not to
115 modify law regarding standing or real parties in interest.

116 (4) If the plaintiff is in physical possession of the
117 original promissory note, the plaintiff must file with the
118 court, contemporaneously with and as a condition precedent to
119 the filing of the complaint for foreclosure, certification,
120 under penalty of perjury, that the plaintiff is in physical
121 possession of the original promissory note. The certification
122 must set forth the physical location of the note, the name and
123 title of the individual giving the certification, the name of
124 the person who personally verified such physical possession, and
125 the time and date on which the possession was verified. Correct
126 copies of the note and all allonges to the note must be attached
127 to the certification. The original note and the allonges must be
128 filed with the court before the entry of any judgment of
129 foreclosure or judgment on the note.

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

133 (a) Detail a clear chain of all endorsements or
134 assignments of the promissory note that is the subject of the
135 action.

136 (b) Set forth facts showing that the plaintiff is entitled
137 to enforce a lost, destroyed, or stolen instrument pursuant to
138 s. 673.3091. Adequate protection as required under s.
139 673.3091(2) shall be provided before the entry of final
140 judgment.

141 (c) Include as exhibits to the affidavit such copies of
142 the note and the allonges to the note, audit reports showing
143 physical receipt of the original note, or other evidence of the
144 acquisition, ownership, and possession of the note as may be
145 available to the plaintiff.

146 (6) The court may sanction the plaintiff for failure to
147 comply with this section.

148 (7) This section does not apply to any foreclosure
149 proceeding involving timeshare interests under part III of
150 chapter 721.

151 Section 4. Section 702.036, Florida Statutes, is created
152 to read:

153 702.036 Finality of mortgage foreclosure judgment.—

154 (1) (a) In any action or proceeding in which a party seeks
155 to set aside, invalidate, or challenge the validity of a final
156 judgment of foreclosure of a mortgage or to establish or
157 reestablish a lien or encumbrance on the property in abrogation
158 of the final judgment of foreclosure of a mortgage, the court
159 shall treat such request solely as a claim for monetary damages
160 and may not grant relief that adversely affects the quality or
161 character of the title to the property, if:

162 1. The party seeking relief from the final judgment of
163 foreclosure of the mortgage was properly served in the
164 foreclosure lawsuit as provided in chapter 48 or chapter 49.

165 2. The final judgment of foreclosure of the mortgage was
166 entered as to the property.

167 3. All applicable appeals periods have run as to the final
168 judgment of foreclosure of the mortgage with no appeals having

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169 been taken or any appeals having been finally resolved.

170 4. The property has been acquired for value, by a person
171 not affiliated with the foreclosing lender or the foreclosed
172 owner, at a time in which no lis pendens regarding the suit to
173 set aside, invalidate, or challenge the foreclosure appears in
174 the official records of the county where the property was
175 located.

176 (b) This subsection does not limit the right to pursue any
177 other relief to which a person may be entitled, including, but
178 not limited to, compensatory damages, punitive damages,
179 statutory damages, consequential damages, injunctive relief, or
180 fees and costs, which does not adversely affect the ownership of
181 the title to the property as vested in the unaffiliated
182 purchaser for value.

183 (2) For purposes of this section, the following, without
184 limitation, shall be considered persons affiliated with the
185 foreclosing lender:

186 (a) The foreclosing lender or any loan servicer for the
187 loan being foreclosed;

188 (b) Any past or present owner or holder of the loan being
189 foreclosed;

190 (c) Any maintenance company, holding company, foreclosure
191 services company, or law firm under contract to any entity
192 listed in paragraph (a), paragraph (b), or this paragraph, with
193 regard to the loan being foreclosed; or

194 (d) Any parent entity, subsidiary, or other person who
195 directly, or indirectly through one or more intermediaries,
196 controls or is controlled by, or is under common control with,

197 any entity listed in paragraph (a), paragraph (b), or paragraph
 198 (c).

199 (3) After foreclosure of a mortgage based upon the
 200 enforcement of a lost, destroyed, or stolen note, a person who
 201 is not a party to the underlying foreclosure action but who
 202 claims to be the actual holder of the promissory note secured by
 203 the foreclosed mortgage has no claim against the foreclosed
 204 property after it is conveyed for valuable consideration to a
 205 person not affiliated with the foreclosing lender or the
 206 foreclosed owner. This section does not preclude the actual
 207 holder of the note from pursuing recovery from any adequate
 208 protection given pursuant to s. 673.3091 or from the party who
 209 wrongfully claimed to be the owner or holder of the promissory
 210 note under s. 702.11(2) or otherwise, from the maker of the
 211 note, or from any other person against whom it may have a claim
 212 relating to the note.

213 Section 5. Section 702.06, Florida Statutes, is amended to
 214 read:

215 702.06 Deficiency decree; common-law suit to recover
 216 deficiency.—In all suits for the foreclosure of mortgages
 217 heretofore or hereafter executed the entry of a deficiency
 218 decree for any portion of a deficiency, should one exist, may
 219 not exceed the difference between the judgment amount, or in the
 220 case of a short sale, the outstanding debt, and the fair market
 221 value of the property on the date of sale. ~~shall be within the~~
 222 ~~sound judicial discretion of the court, but~~ The complainant
 223 shall also have the right to sue at common law to recover such
 224 deficiency, unless the court in the foreclosure action has

225 ~~granted or denied a claim for a deficiency judgment provided no~~
 226 ~~suit at law to recover such deficiency shall be maintained~~
 227 ~~against the original mortgagor in cases where the mortgage is~~
 228 ~~for the purchase price of the property involved and where the~~
 229 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
 230 ~~sale and also is granted a deficiency decree against the~~
 231 ~~original mortgagor.~~

232 Section 6. Section 702.10, Florida Statutes, is amended to
 233 read:

234 702.10 Order to show cause; entry of final judgment of
 235 foreclosure; payment during foreclosure.—

236 (1) A lienholder ~~After a complaint in a foreclosure~~
 237 ~~proceeding has been filed, the mortgagee may request an order to~~
 238 ~~show cause for the entry of final judgment in a foreclosure~~
 239 ~~action. For purposes of this section, the term "lienholder"~~
 240 ~~includes the plaintiff and a defendant to the action who holds a~~
 241 ~~lien encumbering the property or a defendant who, by virtue of~~
 242 ~~its status as a condominium association, cooperative~~
 243 ~~association, or homeowners' association, may file a lien against~~
 244 ~~the real property subject to foreclosure. Upon filing, and the~~
 245 ~~court shall immediately review the request and the court file in~~
 246 ~~chambers and without a hearing complaint.~~ If, upon examination
 247 of the court file ~~complaint~~, the court finds that the complaint
 248 is verified, complies with s. 702.015, and alleges a cause of
 249 action to foreclose on real property, the court shall promptly
 250 issue an order directed to the other parties named in the action
 251 ~~defendant~~ to show cause why a final judgment of foreclosure
 252 should not be entered.

253 (a) The order shall:

254 1. Set the date and time for a hearing ~~on the order~~ to

255 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~

256 ~~set~~ sooner than the later of 20 days after ~~the~~ service of the

257 order to show cause or 45 days after service of the initial

258 complaint. When service is obtained by publication, the date for

259 the hearing may not be set sooner than 30 days after the first

260 publication. ~~The hearing must be held within 60 days after the~~

261 ~~date of service. Failure to hold the hearing within such time~~

262 ~~does not affect the validity of the order to show cause or the~~

263 ~~jurisdiction of the court to issue subsequent orders.~~

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

265 show cause and the complaint must be made upon the defendant.

266 3. State that the filing of defenses by a motion, responsive pleading,

267 affidavits, or other papers ~~or by a~~

268 ~~verified or sworn answer at or~~ before the hearing to show cause

269 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~

270 ~~attached~~ final judgment.

271 4. State that a ~~the~~ defendant has the right to file

272 affidavits or other papers before ~~at~~ the time of the hearing to

273 show cause and may appear personally or by way of an attorney at

274 the hearing.

275 5. State that, if a ~~the~~ defendant files defenses by a

276 motion, a verified or sworn answer, affidavits, or other papers

277 or appears personally or by way of an attorney at the time of

278 the hearing, the hearing time will ~~may~~ be used to hear and

279 consider the defendant's motion, answer, affidavits, other

280 papers, and other evidence and argument as may be presented by

281 the defendant or the defendant's attorney. The order shall also
282 state that the court may enter an order of final judgment of
283 foreclosure at the hearing and order the clerk of the court to
284 conduct a foreclosure sale.

285 6. State that, if a ~~the~~ defendant fails to appear at the
286 hearing to show cause or fails to file defenses by a motion or
287 by a verified or sworn answer or files an answer not contesting
288 the foreclosure, such ~~the~~ defendant may be considered to have
289 waived the right to a hearing, and in such case, the court may
290 enter a default against such defendant and, if appropriate, a
291 final judgment of foreclosure ordering the clerk of the court to
292 conduct a foreclosure sale.

293 7. State that if the mortgage provides for reasonable
294 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
295 fees do not exceed 3 percent of the principal amount owed at the
296 time of filing the complaint, it is unnecessary for the court to
297 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
298 to be reasonable.

299 8. Attach the form of the proposed final judgment of
300 foreclosure which the movant requests the court to will enter,
301 ~~if the defendant waives the right to be heard at the hearing on~~
302 ~~the order to show cause. The form may contain blanks for the~~
303 court to enter the amounts due.

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

307 a. If a party ~~the mortgagor~~ has been served pursuant to
308 chapter 48 with the complaint and original process, or the other

309 party is the plaintiff in the action, service of the order to
 310 show cause on that party ~~order~~ may be made in the manner
 311 provided in the Florida Rules of Civil Procedure.

312 b. If a defendant ~~the mortgagor~~ has not been served
 313 pursuant to chapter 48 with the complaint and original process,
 314 the order to show cause, together with the summons and a copy of
 315 the complaint, shall be served on the party ~~mortgagor~~ in the
 316 same manner as provided by law for original process.

317
 318 Any final judgment of foreclosure entered under this subsection
 319 is for in rem relief only. ~~Nothing in~~ This subsection does not
 320 ~~shall~~ preclude the entry of a deficiency judgment where
 321 otherwise allowed by law. The Legislature intends that this
 322 alternative procedure may run simultaneously with other court
 323 procedures.

324 (b) The right to be heard at the hearing to show cause is
 325 waived if a ~~the~~ defendant, after being served as provided by law
 326 with an order to show cause, engages in conduct that clearly
 327 shows that the defendant has relinquished the right to be heard
 328 on that order. The defendant's failure to file defenses by a
 329 motion or by a sworn or verified answer, affidavits, or other
 330 papers or to appear personally or by way of an attorney at the
 331 hearing duly scheduled on the order to show cause presumptively
 332 constitutes conduct that clearly shows that the defendant has
 333 relinquished the right to be heard. If a defendant files
 334 defenses by a motion, or by a verified or sworn answer,
 335 affidavits, or other papers or presents evidence at or before
 336 the hearing, which would be sufficient to preclude the entry of

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337 | a summary judgment, such action constitutes cause and precludes
338 | the entry of a final judgment at the hearing to show cause.

339 | (c) In a mortgage foreclosure proceeding, when a final
340 | ~~default~~ judgment of foreclosure has been entered against the
341 | mortgagor and the note or mortgage provides for the award of
342 | reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
343 | court to hold a hearing or adjudge the requested attorney
344 | ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
345 | percent of the principal amount owed on the note or mortgage at
346 | the time of filing, even if the note or mortgage does not
347 | specify the percentage of the original amount that would be paid
348 | as liquidated damages.

349 | (d) If the court finds that all defendants have ~~the~~
350 | ~~defendant has~~ waived the right to be heard as provided in
351 | paragraph (b), the court shall promptly enter a final judgment
352 | of foreclosure without the need for further hearing if the
353 | plaintiff has shown entitlement to a final judgment and upon the
354 | filing with the court of the original note, satisfaction of the
355 | conditions for establishment of a lost note, or upon a showing
356 | to the court that the obligation to be foreclosed is not
357 | evidenced by a promissory note or other negotiable instrument.
358 | If the court finds that a ~~the~~ defendant has not waived the right
359 | to be heard on the order to show cause, the court shall ~~then~~
360 | determine whether there is cause not to enter a final judgment
361 | of foreclosure. If the court finds that the defendant has not
362 | shown cause, the court shall promptly enter a judgment of
363 | foreclosure. If the time allotted for the hearing is
364 | insufficient, the court may announce at the hearing a date and

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

368 (2) Except as provided in paragraph (i), as part of any ~~In~~
 369 an action for foreclosure, and in addition to any other relief
 370 that the court may award ~~other than residential real estate,~~ the
 371 plaintiff ~~the mortgagee~~ may request that the court enter an
 372 order directing the mortgagor defendant to show cause why an
 373 order to make payments during the pendency of the foreclosure
 374 proceedings or an order to vacate the premises should not be
 375 entered.

376 (a) The order shall:

377 1. Set the date and time for hearing on the order to show
 378 cause. However, the date for the hearing may ~~shall~~ not be set
 379 sooner than 20 days after the service of the order. If ~~Where~~
 380 service is obtained by publication, the date for the hearing may
 381 ~~shall~~ not be set sooner than 30 days after the first
 382 publication.

383 2. Direct the time within which service of the order to
 384 show cause and the complaint shall be made upon each ~~the~~
 385 defendant.

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

389 4. State that, if a ~~the~~ defendant fails to appear at the
 390 hearing to show cause and fails to file defenses by a motion or
 391 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
 392 have waived the right to a hearing and in such case the court

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393 may enter an order to make payment or vacate the premises.

394 5. Require the movant ~~mortgagee~~ to serve a copy of the
395 order to show cause on the defendant ~~mortgagor~~ in the following
396 manner:

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

400 b. If a defendant ~~the mortgagor~~ has not been served with
401 the complaint and original process, the order to show cause,
402 together with the summons and a copy of the complaint, shall be
403 served on the defendant ~~mortgagor~~ in the same manner as provided
404 by law for original process.

405 (b) The right of a defendant to be heard at the hearing to
406 show cause is waived if the defendant, after being served as
407 provided by law with an order to show cause, engages in conduct
408 that clearly shows that the defendant has relinquished the right
409 to be heard on that order. A ~~The~~ defendant's failure to file
410 defenses by a motion or by a sworn or verified answer or to
411 appear at the hearing duly scheduled on the order to show cause
412 presumptively constitutes conduct that clearly shows that the
413 defendant has relinquished the right to be heard.

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

418 (d) If the court finds that the mortgagor has not waived
419 the right to be heard on the order to show cause, the court
420 shall, at the hearing on the order to show cause, consider the

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421 affidavits and other showings made by the parties appearing and
422 make a determination of the probable validity of the underlying
423 claim alleged against the mortgagor and the mortgagor's
424 defenses. If the court determines that the plaintiff mortgagee
425 is likely to prevail in the foreclosure action, the court shall
426 enter an order requiring the mortgagor to make the payment
427 described in paragraph (e) to the plaintiff mortgagee and
428 provide for a remedy as described in paragraph (f). However, the
429 order shall be stayed pending final adjudication of the claims
430 of the parties if the mortgagor files with the court a written
431 undertaking executed by a surety approved by the court in an
432 amount equal to the unpaid balance of the lien being foreclosed
433 ~~the mortgage on the property~~, including all principal, interest,
434 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
435 ~~mortgagee~~.

436 (e) If ~~In the event~~ the court enters an order requiring
437 the mortgagor to make payments to the plaintiff mortgagee,
438 payments shall be payable at such intervals and in such amounts
439 provided for in the mortgage instrument before acceleration or
440 maturity. The obligation to make payments pursuant to any order
441 entered under this subsection shall commence from the date of
442 the motion filed under this section ~~hereunder~~. The order shall
443 be served upon the mortgagor no later than 20 days before the
444 date specified for the first payment. The order may permit, but
445 may shall not require, the plaintiff mortgagee to take all
446 appropriate steps to secure the premises during the pendency of
447 the foreclosure action.

448 (f) If ~~In the event~~ the court enters an order requiring

449 | payments, the order shall also provide that the plaintiff is
 450 | ~~mortgagee shall be~~ entitled to possession of the premises upon
 451 | the failure of the mortgagor to make the payment required in the
 452 | order unless at the hearing on the order to show cause the court
 453 | finds good cause to order some other method of enforcement of
 454 | its order.

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

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

465 | (i) This subsection does not apply to foreclosure of an
 466 | owner-occupied residence. For purposes of this paragraph, there
 467 | is a rebuttable presumption that a residential property for
 468 | which a homestead exemption for taxation was granted according
 469 | to the certified rolls of the latest assessment by the county
 470 | property appraiser, before the filing of the foreclosure action,
 471 | is an owner-occupied residential property.

472 | (3) The Supreme Court is requested to amend the Florida
 473 | Rules of Civil Procedure to provide for expedited foreclosure
 474 | proceedings in conformity with this section and is requested to
 475 | develop and publish forms for use under this section.

476 | Section 7. Section 702.11, Florida Statutes, is created to

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477 read:

478 702.11 Adequate protections for lost, destroyed, or stolen
479 notes in mortgage foreclosure.—

480 (1) In connection with a mortgage foreclosure, the
481 following constitute reasonable means of providing adequate
482 protection under s. 673.3091 if so found by the court:

483 (a) A written indemnification agreement by a person
484 reasonably believed sufficiently solvent to honor such an
485 obligation;

486 (b) A surety bond;

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

488 (d) A deposit of cash collateral with the clerk of the
489 court; or

490 (e) Such other security as the court may deem appropriate
491 under the circumstances.

492
493 Any security given shall be on terms and in amounts set by the
494 court, for a time period through the running of the statute of
495 limitations for enforcement of the underlying note, and
496 conditioned to indemnify and hold harmless the maker of the note
497 against any loss or damage, including principal, interest, and
498 attorney fees and costs, that might occur by reason of a claim
499 by another person to enforce the note.

500 (2) Any person who wrongly claims to be the holder of or
501 pursuant to s. 673.3011 to be entitled to enforce a lost,
502 stolen, or destroyed note and causes the mortgage secured
503 thereby to be foreclosed is liable to the actual holder of the
504 note, without limitation to any adequate protections given, for

505 actual damages suffered together with attorney fees and costs of
506 the actual holder of the note in enforcing rights under this
507 subsection. In addition, the actual holder of the note may
508 pursue recovery directly against any adequate protections given.

509 (a) The actual holder of the note is not required to
510 pursue recovery against the maker of the note or any guarantor
511 thereof as a condition precedent to pursuing remedies under this
512 section.

513 (b) This section does not limit or restrict the ability of
514 the actual holder of the note to pursue any other claims or
515 remedies it may have against the maker, the person who wrongly
516 claimed to be the holder, or any person who facilitated or
517 participated in the claim to the note or enforcement thereof.

518 Section 8. The Legislature finds that this act is remedial
519 in nature and applies to all mortgages encumbering real property
520 and all promissory notes secured by a mortgage, whether executed
521 before, on, or after the effective date of this act. In
522 addition, the Legislature finds that s. 702.015, Florida
523 Statutes, as created by this act, applies to cases filed on or
524 after July 1, 2013; however, the amendments to s. 702.10,
525 Florida Statutes, and the creation of s. 702.11, Florida
526 Statutes, by this act, apply to causes of action pending on the
527 effective date of this act.

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