

By Senator Fasano

11-00563-12

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1                   A bill to be entitled  
2       An act relating to mortgages; amending s. 697.02,  
3       F.S.; providing that a mortgage instrument recorded in  
4       the name of a nominee does not provide sufficient  
5       notice of the existence of a lien; amending s. 701.02,  
6       F.S.; defining terms; providing that the use of the  
7       term "nominee" in a mortgage instrument does not  
8       provide sufficient notice of the actual economic  
9       ownership of interests in the real property; requiring  
10      that an assignment of mortgage be recorded upon each  
11      transfer of the beneficial ownership of a mortgage;  
12      conforming cross-references; amending s. 702.01, F.S.;  
13      requiring that an assignment of a mortgage be recorded  
14      upon each transfer of beneficial ownership of the  
15      mortgage before a foreclosure action may be initiated;  
16      providing that the use of the term "nominee" in a  
17      mortgage instrument does not provide sufficient notice  
18      of the actual economic ownership of interests in the  
19      real property; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

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23       Section 1. Section 697.02, Florida Statutes, is amended to  
24       read:

25       697.02 Nature of a mortgage.—A mortgage shall be held to be  
26       a specific lien on the property therein described, and not a  
27       conveyance of the legal title or of the right of possession.  
28       However, a mortgage instrument recorded in the name of a nominee  
29       does not provide sufficient notice of the existence of a lien.

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30 Section 2. Section 701.02, Florida Statutes, is amended to  
31 read:

32 701.02 Assignment not effectual against creditors unless  
33 recorded and indicated in title of document; applicability.—

34 (1) As used in this section, the term:

35 (a) "Assignment of mortgage" includes, but is not limited  
36 to, the transfer of a mortgage to all subsequent mortgage  
37 holders and lenders and all other financial subcontractors and  
38 investors.

39 (b) "Mortgagee" includes the lender or the entity entitled  
40 to receive payments on the loan. The term does not include a  
41 person designated as a "nominee" in a mortgage instrument.

42 (2)~~(1)~~ An assignment of a mortgage upon real property or of  
43 any interest therein, is not good or effectual in law or equity,  
44 against creditors or subsequent purchasers, for a valuable  
45 consideration, and without notice, unless the assignment is  
46 contained in a document that, in its title, indicates an  
47 assignment of mortgage and is recorded according to law. Upon  
48 each transfer of the beneficial ownership of a mortgage, an  
49 assignment of mortgage must be in the official records of the  
50 county in which the mortgaged property is located.

51 (3)~~(2)~~ This section also applies to assignments of  
52 mortgages resulting from transfers of all or any part or parts  
53 of the debt, note or notes secured by mortgage, and none of same  
54 is effectual in law or in equity against creditors or subsequent  
55 purchasers for a valuable consideration without notice, unless a  
56 duly executed assignment be recorded according to law.

57 (4)~~(3)~~ Any assignment of a mortgage, duly executed and  
58 recorded according to law, purporting to assign the principal of

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59 the mortgage debt or the unpaid balance of such principal,  
60 shall, as against subsequent purchasers and creditors for value  
61 and without notice, be held and deemed to assign any and all  
62 accrued and unpaid interest secured by such mortgage, unless  
63 such interest is specifically and affirmatively reserved in such  
64 an assignment by the assignor, and a reservation of such  
65 interest or any part thereof may not be implied.

66 (5)~~(4)~~ Notwithstanding subsections (2), (3), and (4) ~~(1)~~,  
67 ~~(2)~~, and ~~(3)~~ governing the assignment of mortgages, chapters  
68 670-680 of the Uniform Commercial Code of this state govern the  
69 attachment and perfection of a security interest in a mortgage  
70 upon real property and in a promissory note or other right to  
71 payment or performance secured by that mortgage. The assignment  
72 of such a mortgage need not be recorded under this section for  
73 purposes of attachment or perfection of a security interest in  
74 the mortgage under the Uniform Commercial Code.

75 (6)~~(5)~~ Notwithstanding subsection (5) ~~(4)~~, a creditor or  
76 subsequent purchaser of real property or any interest therein,  
77 for valuable consideration and without notice, is entitled to  
78 rely on a full or partial release, discharge, consent, joinder,  
79 subordination, satisfaction, or assignment of a mortgage upon  
80 such property made by the mortgagee of record, without regard to  
81 the filing of any Uniform Commercial Code financing statement  
82 that purports to perfect a security interest in the mortgage or  
83 in a promissory note or other right to payment or performance  
84 secured by the mortgage, and the filing of any such financing  
85 statement does not constitute notice for the purposes of this  
86 section. For the purposes of this subsection, the term  
87 "mortgagee of record" means the person named as the mortgagee in

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88 the recorded mortgage or, if an assignment of the mortgage has  
89 been recorded in accordance with this section, the term  
90 "mortgagee of record" means the assignee named in the recorded  
91 assignment.

92 Section 3. Section 702.01, Florida Statutes, is amended to  
93 read:

94 702.01 Equity.—All mortgages shall be foreclosed in equity.  
95 In a mortgage foreclosure action, the court shall sever for  
96 separate trial all counterclaims against the foreclosing  
97 mortgagee. The foreclosure claim shall, if tried, be tried to  
98 the court without a jury. An assignment of a mortgage must be  
99 recorded in the official records of the county in which the real  
100 property is located upon each transfer of beneficial ownership  
101 of the mortgage before a foreclosure action may be initiated.  
102 The use of the term "nominee" in a mortgage instrument does not  
103 provide sufficient notice of the actual economic ownership of  
104 interests in the real property.

105 Section 4. This act shall take effect July 1, 2012.