



806394

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

---

Senators Richter, Gaetz, and Ring moved the following:

**Senate Amendment (with title amendment)**

Between lines 27 and 28  
insert:

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

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

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



806394

14 lien encumbering the property or a defendant who, by virtue of  
15 its status as a condominium association, cooperative  
16 association, or homeowners' association, may file a lien against  
17 the real property subject to foreclosure. Upon filing, and the  
18 court shall immediately review the request and the court file in  
19 chambers and without a hearing ~~complaint~~. If, upon examination  
20 of the court file ~~complaint~~, the court finds that the complaint  
21 is verified, complies with s. 702.015, and alleges a cause of  
22 action to foreclose on real property, the court shall promptly  
23 issue an order directed to the other parties named in the action  
24 ~~defendant~~ to show cause why a final judgment of foreclosure  
25 should not be entered.

26 (a) The order shall:

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

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

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



806394

43 ~~attached~~ final judgment.

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

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

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

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



806394

72 to be reasonable.

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

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

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

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

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

100 (b) The right to be heard at the hearing to show cause is



806394

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

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

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



806394

130 filing with the court of the original note, satisfaction of the  
131 conditions for establishment of a lost note, or upon a showing  
132 to the court that the obligation to be foreclosed is not  
133 evidenced by a promissory note or other negotiable instrument.

134 If the court finds that a ~~the~~ defendant has not waived the right  
135 to be heard on the order to show cause, the court shall ~~then~~  
136 determine whether there is cause not to enter a final judgment  
137 of foreclosure. If the court finds that the defendant has not  
138 shown cause, the court shall promptly enter a judgment of  
139 foreclosure. If the time allotted for the hearing is  
140 insufficient, the court may announce at the hearing a date and  
141 time for the continued hearing. Only the parties who appear,  
142 individually or through an attorney, at the initial hearing must  
143 be notified of the date and time of the continued hearing.

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

152 (a) The order shall:

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



806394

159           2. Direct the time within which service of the order to  
160 show cause and the complaint shall be made upon each ~~the~~  
161 defendant.

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

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

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

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

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

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



806394

188 presumptively constitutes conduct that clearly shows that the  
189 defendant has relinquished the right to be heard.

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

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

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



806394

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

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

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

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

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



806394

246 occupied residential property.

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

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

253 And the title is amended as follows:

254 Delete line 10

255 and insert:

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



275  
276

for use in expedited foreclosure proceedings;  
providing an effective date.