A bill to be entitled
An act relating to mortgage loan servicing; creating
the Florida Homeowner Bill of Rights Act; providing
definitions; providing procedures, requirements, and
limitations with respect to a mortgage servicer's
processing of a borrower's application for the
modification of a mortgage loan as a foreclosure
prevention alternative; requiring a mortgage servicer
to provide a single point of contact for a mortgage
borrower seeking mortgage modification; requiring a
single point of contact to engage in specified
activities and perform certain services with respect
to borrowers; providing requirements and procedures
with respect to a borrower's request for a short sale
of the mortgaged property; providing requirements,
procedures, and limitations with respect to a mortgage
servicer's obtaining of force-placed insurance
coverage on the borrower's mortgaged property;
defining the term "robo-signed" or "robo-signing";
providing for the imposition of civil penalties
against any mortgage servicer who engages in robo-
signing; providing for private causes of action for
material violations of the act by mortgage servicers;
providing for statutory and actual damages and
attorney fees and costs in such actions; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:
Section 1. Short title.—This act may be cited as the "Florida Homeowner Bill of Rights Act."

Section 2. Definitions.—As used in this act, the term:

(1) "Borrower" means a person obligated to repay a mortgage loan and includes, but is not limited to, a coborrower or cosignor.

(2) "Force-placed insurance" means hazard insurance coverage, as well as flood, excess flood, wind-only, and excess wind-only insurance, when obtained by the mortgage servicer.

(3) "Foreclosure prevention alternative" means a loan modification or another available loss mitigation option.

(4) "Mortgage servicer" means a person or entity who directly or indirectly services a loan.

(5) "Servicing" means the act of managing a loan account and includes acting on behalf of the owner by interacting with the borrower, managing the loan account on a daily basis, including collecting and crediting periodic loan payments, managing any escrow account, monitoring and ensuring payment of insurance and taxes, or enforcing the note and security instrument, as the current owner's authorized agent with the express written authority of the current owner of the promissory note.

Section 3. Dual track restricted.—

(1) If a borrower submits a complete application for a loan modification offered by, or through, the mortgage servicer of the borrower, a mortgage servicer, mortgagee, or express written authorized agent may not refer the borrower's account to
foreclosure while the borrower's complete application for any
loan modification program is pending until any of the following
occur:
   (a) The mortgage servicer makes a written determination
that the borrower is not eligible for a loan modification, the
borrower is provided an opportunity to appeal the written denial
within 30 days after the date of the written denial and to
provide evidence that the mortgage servicer's determination was
in error, and the mortgage servicer properly responds to the
appeal.
   (b) The borrower does not accept an offered loan
modification within 14 days after receipt of the written offer.
   (c) The borrower accepts a written loan modification, but
defaults on, or otherwise breaches the borrower's obligations
under, the loan modification.
(2) If the borrower's application for a loan modification
is denied, the mortgage servicer, mortgagee, or authorized agent
may not begin foreclosure until the later of:
   (a) Thirty-one days after the borrower is notified in
writing of the denial if no appeal is filed by the borrower; or
   (b) If the borrower appeals the denial, the later of 31
days after the written denial of the appeal or 31 days after a
loan modification is offered after appeal but declined by the
borrower, or if a loan modification is offered and accepted
after appeal, the date on which the borrower fails to timely
submit the first payment or otherwise breaches the terms of the
offer.
(3) After denial of a loan modification application, the
mortgage servicer must send a written notice to the borrower identifying the reasons for denial, including the following:

(a) The amount of time after the date of receipt of the denial letter that the borrower has to request an appeal of the denial, instructions for how to appeal the denial, and how and where to send the request for appeal.

(b) If the denial is based on investor disallowance, the specific reasons for the investor disallowance and the name and address of the investor, or investment trust, if applicable, and a quotation or copy of the complete provision upon which the denial was based.

(c) If the denial is the result of a net present value calculation, all of the inputs, assumptions, and calculations used to make that determination and a statement that the borrower may obtain all of the inputs used in the net present value calculation upon written request of the mortgage servicer.

(d) If applicable, a finding that the borrower was previously offered a loan modification and failed to successfully make payments under the terms of the modified loan.

(e) If applicable, a description of other foreclosure prevention alternatives for which the borrower may be eligible, and a list of the steps the borrower must take in order to be considered for those options. If the mortgage servicer has already approved the borrower for another foreclosure prevention alternative, the mortgage servicer must provide information necessary to complete the foreclosure prevention alternative.

(4) For purposes of this section, a complete application includes submission of the following:
(a) A completed form that sets forth the borrower's financial, income, and hardship information, such as a uniform borrower assistance form, request for modification and affidavit, or equivalent forms.

(b) Income documentation based on income type that is not more than 90 days' old on the date that a complete application is submitted.

(c) Hardship documentation based on hardship type.

(d) An IRS Form 4506-T-EZ or IRS Form 4506-T signed by the borrower.

(5) Before filing the foreclosure, the mortgage servicer must provide the borrower with the following:

(a) A copy of the borrower's promissory note or other evidence of indebtedness.

(b) A copy of the borrower's deed of trust or mortgage.

(c) A copy of any assignment, if applicable, of the borrower's mortgage required to demonstrate the right of the mortgage service to foreclose.

(d) All documents that substantiate the servicer's claim of its right to foreclose on behalf of the owner, if applicable.

(e) A copy of the borrower's life of loan payment history.

Section 4. Single point of contract.—The mortgage servicer must establish an easily accessible and reliable single point of contact for each mortgage borrower promptly after the borrower requests loss mitigation assistance and provide the borrower one or more direct means of communication with the single point of contact.

(1) The single point of contact is responsible for:
(a) Communicating information concerning the process available for a borrower to apply for foreclosure prevention alternatives, timelines relating to the process, and the deadlines for any submissions that are required in order for the borrower to be considered for prevention foreclosure alternatives.

(b) Coordinating receipt of all documents associated with loan modification or loss mitigation activities and notifying the borrower of any missing documents necessary to complete the application.

(c) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative.

(d) Ensuring the borrower is considered for all foreclosure prevention alternatives offered by, and through, the mortgage servicer, if any.

(e) Having access to and open lines of communication with individuals with the ability and authority to stop foreclosure proceedings when necessary.

(2) The single point of contact must, at a minimum, provide the following services to the borrower:

(a) Contact and notify the borrower of the single point of contact's status as the single point of contact.

(b) Explain programs for which the borrower is eligible.

(c) Explain the requirements of programs for which the borrower is eligible.

(d) Explain program documentation requirements and
timelines.

e) Provide basic information about the status of the borrower's account, including pending loan modification applications, other loss mitigation alternatives, and foreclosure activity.

f) Notify the borrower of missing documents and provide a secure address or secure electronic means for submission of documents by the borrower in order to complete the loan modification application.

g) Communicate any mortgage servicer's decision concerning a loan modification application and other loss mitigation alternatives to the borrower in writing.

h) Assist the borrower in pursuing options other than foreclosure upon denial of a loan modification.

i) If a loan modification is approved, explain the loan modification program to the borrower.

j) Ensure the borrower receives all documents necessary to memorialize the loan modification and ensure the borrower has all information needed to remit the payments due under the loan modification agreement.

k) Provide information regarding credit counseling, if necessary.

l) Facilitate the resolution of any internal processing requirements for the borrower.

m) Have access to individuals with the ability to stop foreclosure proceedings when necessary to comply with the federal Making Home Affordable Program.

(3) The single point of contact shall remain assigned to
the borrower's account until the mortgage servicer determines
that all loss mitigation options offered by or through the
mortgage servicer have been exhausted or the borrower's account
becomes current.

(4) Mortgage servicers must ensure that a single point of
contact has the authority to refer and transfer a borrower to an
appropriate supervisor upon request of the borrower.

(5) For purposes of this section, "single point of
contact" means an individual or team of personnel each of whom
has the ability and authority to perform the responsibilities
described in subsections (1)-(4).

Section 5. Short sale; thirty-day settlement.—The mortgage
servicer must send written confirmation acknowledging the
borrower's first request for a short sale to the borrower or his
or her agent within 10 business days after receipt of the
request if the mortgage servicer has been properly authorized in
writing by the borrower to communicate with the borrower's
agent. The confirmation must include a statement that clearly
and conspicuously informs the borrower that the mortgage
servicer may demand a deficiency payment if such deficiency
claim is permitted by applicable law.

(1) The mortgage servicer must send to the borrower at the
borrower's address of record or to the borrower's agent timely
written notification of any missing documents that are required
in order for the consideration of the short sale within 30 days
after receiving the borrower's request for a short sale.

(2) The mortgage servicer must communicate any disposition
of the borrower's request for a short sale within 30 days after
receipt of all the required information and any required third-party consents.

Section 6. Force-placed insurance.—

(1) The mortgage servicer may not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. For escrowed accounts, the mortgage servicer must continue to advance payments for the homeowner's existing policy unless the borrower or insurance company cancels the existing policy for any purpose other than nonpayment.

(2) The mortgage servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a mortgage unless:

(a) The mortgage servicer has sent, by first-class mail, two written notices, mailed at least 30 days apart, to the borrower containing:

1. A reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally-related mortgage.

2. A statement that the mortgage servicer does not have evidence of insurance coverage of such property.

3. A clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower currently has insurance coverage.

4. A statement that if the required insurance payments are not made, that the mortgage servicer shall begin paying the insurance premium and bill the borrower for the cost and if the
borrower continues not to pay the premium, that the lender loss
payable endorsement and the standard mortgage contract permit
the servicer to maintain the policy in effect by paying the
premises.

5. A statement that the mortgage servicer may obtain
insurance coverage at the borrower's expense if the borrower
does not provide sufficient evidence of existing coverage in a
timely manner.

6. A statement that the cost of such insurance coverage
may be significantly higher than the cost of the borrower's
coverage.

7. For first lien loans on the mortgage servicer's primary
servicing system, a statement, if the borrower desires to
maintain his or her voluntary policy, that the mortgage servicer
shall offer an escrow account and advance the premium due on the
voluntary policy if the borrower:

a. Accepts the offer of the escrow account.

b. Provides a copy of the invoice from the voluntary
carrier.

c. Agrees in writing to reimburse the escrow advances
through regular escrow payments.

d. Agrees to escrow and to repay the advanced premium and
the future premiums necessary to maintain any required insurance
policy.

e. Agrees to allow the mortgagor servicer to manage the
escrow account in accordance with the loan documents and with
state and federal law.

8. In the case of single-interest coverage, a statement
that the coverage may only protect the mortgage holder's interest and not the borrower's interest.

(b) The mortgage servicer has not received from the borrower written confirmation of insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the second notice required under paragraph (a) was sent by the mortgage servicer.

(3) The mortgage servicer must accept any reasonable form of written confirmation from a borrower or the borrower's insurance agent of existing insurance coverage that includes the existing insurance policy number and the identity and contact information for the insurance company or agent.

(4) The mortgage servicer may not place insurance on a mortgaged property or require a borrower to obtain or maintain such insurance in excess of 100 percent of the insurable value of the improvements. If the insurance policy purchased by the mortgage servicer on behalf of the borrower is not a single-interest coverage policy and insures the interests of the borrower also, the amount of insurance coverage may equal the amount of the last known property insurance policy voluntarily purchased by the borrower.

(5) Within 15 days after receipt of evidence of a borrower's existing insurance coverage by the mortgage servicer, the mortgage servicer must:

(a) Terminate the force-placed insurance.

(b) Refund to the borrower all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance
coverage were each in effect at the same time, and any related
fees charged to the borrower's account with respect to the
force-placed insurance during such period.

(6) Any force-placed insurance policy must be purchased
for a commercially reasonable price.

(7) The mortgage servicer may not request the homeowner to
reimburse any portion of the force-placed insurance premium
attributable to any commission earned on such policy by the
mortgage servicer or any related entity, costs associated with
insurance tracking or administration, or any other costs other
than the actual cost of the force-placed insurance policy
premium.

(8) A mortgage servicer or affiliate of the mortgage
servicer may not:

(a) Accept a rebate, inducement, commission, policyholder
dividend, retrospective premium adjustment, profit-sharing, or
similar return of premium, or other insurance coverages at
inadequate rates from any person that provides the mortgage
servicer or the mortgage servicer's affiliate with forced-placed
insurance; or

(b) Accept insurance tracking or any other services from a
person that provides the mortgage servicer or the mortgage
servicer's affiliate with force-placed insurance, without paying
a fair market price for such services, the cost of which may not
be included in the cost of insurance premiums or billed to
borrower's account.

(9) The mortgage servicer may not charge the borrower for
more than 45 days of coverage before the date of the force-
placed insurance placement.

Section 7. Robo-signing.–

(1) For purposes of this section, the term "robo-signed" or "robo-signing" means the signing of a document that contains information that was not verified for accuracy by the person or persons signing, attesting, or swearing to the accuracy of the document or statement. Evidence of a failure to verify may include, but is not limited to, inaccurate, inconsistent, or vague information contained within the document or statement. For purposes of this definition, multiple people may verify the document or statement so long as the document or statement specifies the portions verified by each signer.

(2) Any mortgage servicer that engages in robo-signing when filing documents in any court relative to a foreclosure proceeding is liable for a civil penalty of up to $10,000 per incident in an action brought by the Department of Legal Affairs or Office of Financial Regulation.

Section 8. Private right of action.–

(1) For any material violation of this act by the mortgage servicer, the borrower may recover:

(a) Statutory damages of up to $10,000, but not less than $1,500, from the mortgage servicer.

(b) Actual damages.

(c) Attorney fees and costs.

(2) If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, or authorized agent, the court may award the borrower the greater of treble actual damages or
Section 9. This act shall take effect July 1, 2013.