

By Senator Hays

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1 A bill to be entitled
2 An act relating to nonjudicial foreclosure of
3 commercial real property; creating chapter 52, F.S.,
4 relating to nonjudicial foreclosure of commercial real
5 property; providing a short title; providing for
6 applicability of provisions; providing definitions;
7 providing for appointment of a trustee; providing for
8 trustee initiation of foreclosure of mortgage liens;
9 providing for objections by obligors; providing for
10 redemption of property; providing requirements to be
11 met before encumbered property may be sold by trustee;
12 providing for notice of default and intent to
13 foreclose; providing for notice and manner of sale;
14 specifying the effect of a sale; providing for a
15 trustee's certificate of compliance and deed;
16 providing for disposition of sale proceeds; providing
17 that provisions concerning the trustee foreclosure
18 procedure do not impair or otherwise affect a
19 foreclosing creditor's right to bring a judicial
20 foreclosure action; providing for civil actions
21 against foreclosing creditors for material failure to
22 follow trustee foreclosure procedures; providing
23 criminal penalties for a trustee who intentionally
24 violates provisions concerning the trustee foreclosure
25 procedure; providing for construction; providing for
26 application of provisions to mortgage liens existing
27 prior to the effective date of this act for which a
28 foreclosure proceeding has not commenced; providing a
29 directive to the Division of Statutory Revision;

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30 providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Chapter 52, Florida Statutes, consisting of
35 sections 52.101, 52.102, 52.103, and 52.104, is created to read:

36 CHAPTER 52

37 NONJUDICIAL FORECLOSURE OF COMMERCIAL REAL PROPERTY

38 52.101 Short title; applicability.—

39 (1) This chapter may be cited as the "Nonjudicial
40 Foreclosure of Commercial Real Property Act."

41 (2) In lieu of any other foreclosure remedy that may be
42 available under the laws of this state within the judicial
43 system, this chapter may, at the option of the foreclosing
44 creditor, be used to effect a foreclosure of a security
45 instrument in commercial real property. However, if the
46 foreclosing creditor does not elect to use this chapter to
47 effect a foreclosure, this chapter does not modify any other
48 foreclosure remedy available to the foreclosing creditor under
49 the laws of this state.

50 52.102 Definitions.—As used in this chapter, the term:

51 (1) "Commercial real property" means real property that,
52 when a security instrument is entered into, is used or is
53 intended by its owner to be used other than for the personal,
54 family, or household purposes of its owner. Residential real
55 property on which the borrower resides is deemed commercial if
56 it is improved, or is intended by its owner to be improved, to
57 have more than four additional dwelling units.

58 (2) "Debtor" means a person who is obligated, primarily or

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59 secondarily, on an obligation secured in whole or in part by
60 commercial real property.

61 (3) "Foreclosing creditor" means a secured creditor who is
62 engaged in a foreclosure under this chapter.

63 (4) "Interest holder" means a person who holds a possessory
64 interest, other than a leasehold interest with a duration of 1
65 year or less, in nonresidential real property in which a
66 security interest exists.

67 (5) "Junior interest holder" means a person who owns a
68 legally recognized interest in real or personal property that is
69 subordinate in priority to a security interest foreclosed under
70 this chapter.

71 (6) "Nonresidential real property" means commercial real
72 property.

73 (7) "Obligor" means a person who owes payment or other
74 performance of an obligation, whether absolute or conditional,
75 primary or secondary, secured under a security instrument,
76 whether or not the security instrument imposes personal
77 liability on the obligor. The term does not include a person
78 whose sole interest in the property is a security interest.

79 (8) "Personalty and fixtures" means any personal property
80 or fixtures located on or within or affixed to a commercial real
81 property and pledged as collateral for the credit facility in
82 default. To the extent the lender has a perfected security
83 interest in such collateralized personalty and fixtures, such
84 property shall be encompassed by the term "commercial real
85 property" and the security interest in such property shall be
86 foreclosed in the manner set forth in this chapter.

87 (9) "Real property" means any estate or interest in, over,

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88 or under land, including minerals, structures, fixtures, and
89 other things that by custom, usage, or law pass with a
90 conveyance of land though not described or mentioned in the
91 contract of sale or instrument of conveyance. The term includes
92 the interest of a landlord or tenant and, unless under the law
93 of the state in which the property is located that interest is
94 personal property, an interest in a common interest community.

95 (10) "Secured creditor" means a creditor that has the right
96 to foreclose a security interest in real property under this
97 chapter.

98 (11) "Security instrument" means a mortgage, deed of trust,
99 security deed, contract for deed, agreement for deed, land sale
100 contract, lease creating a security interest, or other contract
101 or conveyance that creates or provides for an interest in real
102 property to secure payment or performance of an obligation,
103 whether by acquisition or retention of a lien, a lessor's
104 interest under a lease, or title to the real property. A
105 security instrument may also create a security interest in
106 personal property. If a security instrument makes a default
107 under any other agreement a default under the security
108 instrument, the security instrument includes the other
109 agreement. The term includes any modification or amendment of a
110 security instrument, and includes a lien on real property
111 created by a record to secure an obligation owed by an owner of
112 the real property to an association in a common interest
113 community or under covenants running with the real property.

114 (12) "Security interest" means an interest in real or
115 personal property that secures payment or performance of an
116 obligation.

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117 (13) "Trustee" means an attorney who is a member in good
118 standing of The Florida Bar and who has been practicing law for
119 at least 5 years or that attorney's law firm, or a title insurer
120 who is authorized to transact business in this state under s.
121 624.401 and who has been authorized to transact business for at
122 least 5 years.

123 52.103 Procedure for trustee foreclosure of mortgage lien.-
124 This section establishes a trustee foreclosure procedure for
125 mortgage liens and security interests in personalty and fixtures
126 collateralizing the same obligation for which the mortgage was
127 given.

128 (1) APPOINTMENT OF TRUSTEE.-

129 (a) A trustee or a substitute trustee may be appointed by a
130 foreclosing creditor at any time by recording a notice of
131 appointment of trustee or notice of substitution of trustee in
132 the official records of the county or counties in which the
133 commercial real property is located. A foreclosing creditor may
134 appoint multiple trustees in a single appointment and any
135 appointed trustee may be used by the foreclosing creditor
136 regarding the trustee foreclosure of any mortgage lien.

137 (b) A trustee shall use good faith, skill, care, and
138 diligence in discharging all of the trustee duties under this
139 section and shall deal honestly and fairly with all parties.

140 (c) The recorded notice of appointment of trustee or notice
141 of substitution of trustee shall contain the name and address of
142 the trustee or substitute trustee and the name and address of
143 the foreclosing creditor.

144 (2) INITIATING TRUSTEE FORECLOSURE OF MORTGAGE LIENS.-

145 (a) Before initiating the trustee foreclosure against

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146 commercial real property, the mortgage or an amendment to a
147 mortgage executed by the obligor before the effective date of
148 this section must contain a statement in substantially the
149 following form:

151 If the mortgagor (which term shall include the
152 original mortgagor's successors or assigns) fails to
153 make timely payments under the obligation secured by
154 this mortgage, or is otherwise deemed in uncured
155 default of this mortgage, the lien against the
156 mortgagor's commercial real property created by this
157 mortgage may be foreclosed in accordance with either a
158 judicial foreclosure procedure or a trustee
159 foreclosure procedure and may result in the loss of
160 your commercial real property. If the mortgagee
161 initiates a trustee foreclosure procedure, the
162 mortgagor has the option to object and the mortgagee
163 may proceed only by filing a judicial foreclosure
164 action.

166 (b) In order to initiate a trustee foreclosure procedure
167 against commercial real property, the foreclosing creditor shall
168 deliver to the trustee an affidavit sworn to, under penalties of
169 perjury, by the creditor that identifies the obligor, the notice
170 address of the obligor, the commercial real property, the
171 official records book and page number in which the mortgage is
172 recorded, the personalty and fixtures and the information
173 regarding perfection of the security interest in such property,
174 and the name and notice address of any holder of a junior

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175 interest in any collateral subject to foreclosure. The affidavit
176 shall be accompanied by a title search of the commercial real
177 property identifying any junior interest holders of record and a
178 lien search, and the effective date of the title search and the
179 lien search must be a date that is within 60 calendar days
180 before the date of the affidavit. The affidavit shall also:

181 1. State the facts that establish that the obligor has
182 defaulted in the obligation to make a payment under a specified
183 provision of the mortgage or is otherwise deemed in uncured
184 default under a specified provision of the mortgage.

185 2. Specify the amounts secured by the lien as of the date
186 of the affidavit and a per diem amount to account for further
187 accrual of the amounts secured by the lien.

188 3. State that the appropriate amount of documentary stamp
189 tax and intangible taxes has been paid upon recording of the
190 mortgage or otherwise paid to the state.

191 4. State that the foreclosing creditor is the holder of the
192 note and has complied with all preconditions in the note and
193 mortgage to determine the amounts secured by the lien and to
194 initiate the use of the trustee foreclosure procedure.

195 (3) OBLIGOR'S RIGHTS.-

196 (a) The obligor may object to the foreclosing creditor's
197 use of the trustee foreclosure procedure for a specific default
198 within 15 business days after receipt of notice by sending a
199 written objection to the trustee using the objection form
200 provided for in subsection (5), and the foreclosing creditor may
201 proceed thereafter only with a judicial foreclosure action as to
202 that specified default.

203 (b) At any time before the trustee issues the certificate

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204 of sale under paragraph (7) (f), the obligor may redeem the
205 commercial real property by paying the amounts secured by the
206 lien in cash or certified funds to the trustee. After the
207 trustee issues the certificate of sale, there is no right of
208 redemption.

209 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
210 trustee may sell an encumbered commercial real property
211 foreclosed under this section if:

212 (a) The trustee has received the affidavit from the
213 foreclosing creditor under paragraph (2) (b).

214 (b) The trustee has not received a written objection to the
215 use of the trustee foreclosure procedure under paragraph (3) (a).

216 (c) The commercial real property was not redeemed under
217 paragraph (3) (b).

218 (d) There is no lis pendens recorded and pending against
219 the same commercial real property.

220 (e) The trustee is in possession of the original promissory
221 note and all renewals, modifications, or other renegotiations
222 thereof then in effect executed by the mortgagor and secured by
223 the mortgage lien.

224 (f) The trustee has provided written notice of default and
225 intent to foreclose as required under subsection (5) and a
226 period of at least 30 calendar days has elapsed after the notice
227 is deemed perfected under subsection (5).

228 (g) The notice of sale required under subsection (6) has
229 been recorded in the official records of the county in which the
230 mortgage was recorded.

231 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

232 (a) In any foreclosure proceeding under this section, the

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233 trustee is required to notify the obligor of the proceeding by
234 sending the obligor a written notice of default and intent to
235 foreclose to the notice address of the obligor by certified
236 mail, commercial delivery service, or delivery service permitted
237 by the agreement between the mortgagor and the mortgagee, return
238 receipt requested, and by first-class mail or permitted delivery
239 service, postage prepaid, as follows:

240 1. The notice of default and intent to foreclose shall
241 identify the obligor, the notice address of the obligor, the
242 legal description of the commercial real property, the nature of
243 the default, the amounts secured by the lien, and a per diem
244 amount to account for further accrual of the amounts secured by
245 the lien and shall state the method by which the obligor may
246 cure the default, including the period of time after the date of
247 the notice of default and intent to foreclose within which the
248 obligor may cure the default.

249 2. The notice of default and intent to foreclose shall
250 include an objection form with which the obligor can notify the
251 trustee that the obligor objects to the use of the trustee
252 foreclosure procedure by signing and returning the objection
253 form to the trustee. The objection form shall identify the
254 obligor, the notice address of the obligor, the commercial real
255 property, and the return address of the trustee and shall state:

256
257 The undersigned obligor exercises the obligor's right
258 to object to the use of the trustee foreclosure
259 procedure contained in section 52.103, Florida
260 Statutes.

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262 The objection is not effective unless notarized and sworn to
263 under penalty of perjury.

264 3. The notice of default and intent to foreclose shall also
265 contain a statement in substantially the following form:

266
267 If you fail to cure the default as set forth in this
268 notice or take other appropriate action with regard to
269 this foreclosure matter, you risk losing ownership of
270 your commercial real property through the trustee
271 foreclosure procedure established in section 52.103,
272 Florida Statutes. You may choose to sign and send to
273 the trustee the enclosed objection form notifying him
274 or her of your objection to proceeding nonjudicially.
275 You have the right to cure your default in the manner
276 set forth in this notice at any time before the
277 trustee's sale of your commercial real property. You
278 may be responsible for the difference between the
279 amount for which the trustee can sell the property and
280 the amount you still owe under the mortgage. A
281 deficiency may only be established in a court of law
282 in a proceeding separate from the trustee's
283 foreclosure. In any such proceeding, you will be
284 allowed to raise the sufficiency of the trustee's sale
285 price as a defense to the deficiency.

286
287 4. The trustee shall also mail a copy of the notice of
288 default and intent to foreclose, without the objection form, to
289 the notice address of any junior interest holder by certified
290 mail, registered mail, or permitted delivery service, return

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291 receipt requested, and by first-class mail or permitted delivery
292 service, postage prepaid.

293 5. Notice under this paragraph is considered perfected upon
294 the trustee receiving the return receipt bearing the signature
295 of the obligor or junior interest holder, as applicable, within
296 30 calendar days after the trustee sent the notice under this
297 paragraph. Notice under this paragraph is not perfected if the
298 notice is returned as undeliverable within 30 calendar days
299 after the trustee sent the notice, if the trustee cannot
300 ascertain from the receipt that the obligor or junior interest
301 holder, as applicable, is the person who signed the receipt, or
302 if the receipt from the obligor or junior interest holder, as
303 applicable, is returned or refused within 30 calendar days after
304 the trustee sent the notice.

305 (b) If the notice required by paragraph (a) is returned as
306 undeliverable within 30 calendar days after the trustee sent the
307 notice, the trustee shall perform a diligent search and inquiry
308 to obtain a different address for the obligor or junior interest
309 holder. For purposes of this paragraph, any address known and
310 used by the foreclosing creditor for sending regular mailings or
311 other communications from the foreclosing creditor to the
312 obligor or junior interest holder, as applicable, shall be
313 included with other addresses produced from the diligent search
314 and inquiry, if any.

315 1. If the trustee's diligent search and inquiry produces an
316 address different from the notice address, the trustee shall
317 mail a copy of the notice by certified mail, registered mail, or
318 permitted delivery service, return receipt requested, and by
319 first-class mail or permitted delivery service, postage prepaid,

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320 to the new address. Notice under this subparagraph is considered
321 perfected upon the trustee receiving the return receipt bearing
322 the signature of the obligor or junior interest holder, as
323 applicable, within 30 calendar days after the trustee sent the
324 notice under this subparagraph. Notice under this subparagraph
325 is not perfected if the trustee cannot ascertain from the
326 receipt that the obligor or junior interest holder, as
327 applicable, is the person who signed the receipt or the receipt
328 from the obligor or junior interest holder, as applicable, is
329 returned refused. If the trustee does not perfect notice under
330 this subparagraph, the trustee shall perfect service as provided
331 in paragraph (c).

332 2. If the trustee's diligent search and inquiry does not
333 locate a different address for the obligor or junior interest
334 holder, as applicable, the trustee may perfect notice against
335 that person as provided in paragraph (c).

336 (c) If the notice is not perfected under subparagraph (a)5.
337 and such notice was not returned as undeliverable, or if the
338 notice was not perfected under subparagraph (b)1., the trustee
339 may perfect notice by publication in a newspaper of general
340 circulation in the county or counties in which the commercial
341 real property is located. The notice shall appear at least once
342 a week for 2 consecutive weeks. Notice under this paragraph is
343 considered perfected upon completion of publication as required
344 in this paragraph.

345 (d) If notice is perfected under paragraph (a), the trustee
346 shall execute an affidavit in recordable form setting forth the
347 manner in which notice was perfected and attach the affidavit to
348 the certificate of compliance set forth in subsection (9). The

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349 affidavit shall state the nature of the notice, the date on
350 which the notice was mailed, the name and address on the
351 envelope containing the notice, the manner in which the notice
352 was mailed, and the basis for that knowledge.

353 (e) If notice is perfected under paragraph (b), the trustee
354 shall execute an affidavit in recordable form setting forth the
355 manner in which notice was perfected and attach the affidavit to
356 the certificate of compliance set forth in subsection (9). The
357 affidavit shall state the nature of the notice, the dates on
358 which the notice was mailed, the name and addresses on the
359 envelopes containing the notice, the manner in which the notice
360 was mailed, the fact that a signed receipt from the certified
361 mail, registered mail, or permitted delivery service was timely
362 received, and the name and address on the envelopes containing
363 the notice.

364 (f) If notice is perfected under paragraph (c), the trustee
365 shall execute an affidavit in recordable form setting forth the
366 manner in which notice was perfected and attach the affidavit to
367 the certificate of compliance set forth in subsection (9). The
368 affidavit shall include all the information contained in either
369 paragraph (d) or paragraph (e), as applicable, shall state that
370 the notice was perfected by publication after diligent search
371 and inquiry was made for the current address for the person,
372 shall include a statement that notice was perfected by
373 publication, and shall set forth the information required by s.
374 49.041 in the case of a natural person or s. 49.051 in the case
375 of a corporation, whichever is applicable. No other action of
376 the trustee is necessary to perfect notice.

377 (6) NOTICE OF SALE.-

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- 378 (a) The notice of sale shall set forth:
- 379 1. The name and notice addresses of the obligor and any
380 junior interest holder.
- 381 2. The legal description of the commercial real property
382 and a list of all personalty and fixtures.
- 383 3. The name and address of the trustee.
- 384 4. A description of the default that is the basis for the
385 foreclosure.
- 386 5. The official records book and page numbers in which the
387 mortgage is recorded.
- 388 6. The amounts secured by the lien and a per diem amount to
389 account for further accrual of the amounts secured by the lien.
- 390 7. The date, location, and starting time of the trustee's
391 sale.
- 392 8. The right of and the method by which the obligor may
393 redeem the collateral or the right of any junior interest holder
394 to redeem its interest up to the date the trustee issues the
395 certificate of sale in accordance with paragraph (7) (f).
- 396 (b) The trustee shall send a copy of the notice of sale
397 within 3 business days after the date it is submitted for
398 recording by first-class mail or permitted delivery service,
399 postage prepaid, to the notice addresses of the obligor and any
400 junior interest holder.
- 401 (c) After the date of recording of the notice of sale,
402 notice is not required to be given to any person claiming an
403 interest in the commercial real property except as provided in
404 this section. The recording of the notice of sale has the same
405 force and effect as the filing of a lis pendens in a judicial
406 proceeding under s. 48.23.

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407 (d) The trustee shall publish the notice of sale in a
408 newspaper of general circulation in the county or counties in
409 which the commercial real property is located at least once a
410 week for 2 consecutive weeks before the date of the sale. The
411 last publication shall occur at least 5 calendar days before the
412 sale.

413 (7) MANNER OF SALE.—

414 (a) The sale of foreclosed commercial real property by the
415 trustee in a public auction shall be held in the county in which
416 the commercial real property is located on the date, location,
417 and starting time designated in the notice of sale, which shall
418 be after 9 a.m. but before 4 p.m. on a business day not less
419 than 30 calendar days after the recording of the notice of sale.
420 The trustee's sale may occur online at a specific website on the
421 Internet or in any other manner used by the clerk of the court
422 for a judicial foreclosure sales procedure in the county or
423 counties in which the commercial real property is located.

424 (b) The trustee shall conduct the sale and may act as the
425 auctioneer.

426 (c) The foreclosing creditor and any person other than the
427 trustee may bid at the sale. In lieu of participating in the
428 sale, the foreclosing creditor may send the trustee written
429 bidding instructions that the trustee shall announce as
430 appropriate during the sale.

431 (d) The trustee may postpone the sale from time to time. In
432 such case, notice of postponement must be given by the trustee
433 at the date, time, and location contained in the notice of sale.
434 The notice of sale for the postponed sale shall be mailed as
435 provided in paragraph (6) (b), recorded as provided in paragraph

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436 (4) (g), and published as provided in paragraph (6) (d). The
437 effective date of the initial notice of sale as provided in
438 paragraph (6) (b) is not affected by a postponed sale.

439 (e) The highest bidder of the commercial real property
440 shall pay the price bid to the trustee in cash or certified
441 funds on the day of the sale. If the foreclosing creditor is the
442 highest bidder, the foreclosing creditor shall receive a credit
443 in the amount of the high bid up to the amount set forth in the
444 notice of sale as provided in subparagraph (6) (a) 6.

445 (f) On the date of the sale and upon receipt of the cash or
446 certified funds due from the highest bidder, the trustee shall
447 issue to the highest bidder a certificate of sale stating that a
448 foreclosure conforming to the requirements of this section has
449 occurred, including the time, location, and date of the sale,
450 that the foreclosed commercial real property was sold, the
451 amounts secured by the lien, and the amount of the highest bid.
452 A copy of the certificate of sale shall be mailed by certified
453 mail, registered mail, or permitted delivery service, return
454 receipt requested, to all persons entitled to receive a notice
455 of sale under subsection (6).

456 (g) Before a sale is conducted pursuant to this subsection,
457 a junior interest holder may pursue adjudication by court, by
458 interpleader, or in any other authorized manner reflecting any
459 matter that is disputed by the junior interest holder.

460 (8) EFFECT OF TRUSTEE'S SALE.—

461 (a) A sale conducted under subsection (7) forecloses and
462 terminates all interests of any person with notice to whom
463 notice is given under subsection (5) and paragraph (6) (b), and
464 of any other person claiming interests by, through, or under any

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465 such person, in the affected commercial real property. A failure
466 to give notice to any person entitled to notice does not affect
467 the validity of the sale as to the interests of any person
468 properly notified. A person entitled to notice but not given
469 notice has the rights of a person not made a defendant in a
470 judicial foreclosure.

471 (b) Upon issuance of a certificate of sale under paragraph
472 (7) (f), all rights of redemption that have been foreclosed under
473 this section shall terminate.

474 (c) The foreclosing creditor may seek a deficiency judgment
475 against the debtor in a judicial proceeding subsequent to the
476 foreclosure sale. The debtor may raise the adequacy of the price
477 obtained at the foreclosure sale as a defense to all or part of
478 the deficiency, but has the burden of proof as to the alleged
479 inadequacy.

480 (d) The issuance and recording of the trustee's deed is
481 presumed valid and may be relied upon by third parties without
482 actual knowledge of any irregularities in the foreclosure
483 proceedings. If for any reason there is an irregularity in the
484 foreclosure proceedings, a purchaser becomes subrogated to
485 rights of the foreclosing creditor to the indebtedness that it
486 secured to the extent necessary to reforeclose the mortgage lien
487 in order to correct the irregularity and becomes entitled to an
488 action de novo for the foreclosure of such mortgage lien. Any
489 subsequent reforeclosure required to correct an irregularity may
490 be conducted as provided in this section.

491 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

492 (a) Within 10 calendar days after the trustee conducts a
493 sale, the trustee shall execute and acknowledge a certificate of

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494 compliance that:

495 1. Confirms delivery of the notice of default and intent to
496 foreclose and attaches the affidavit required under subsection
497 (5).

498 2. States that the default was not cured, that the trustee
499 did not receive any written objection under paragraph (3) (a),
500 and that the commercial real property was not redeemed under
501 paragraph (3) (b).

502 3. States that the trustee is in possession of the original
503 promissory note executed by the mortgagor and secured by the
504 mortgage lien.

505 4. Confirms that the notice of sale was published as
506 required in paragraph (6) (d) and attaches an affidavit of
507 publication for the notice of sale.

508 5. Confirms that the notice of sale was mailed as required
509 in paragraph (6) (b) together with a list of the parties to whom
510 the notice of sale was mailed.

511 (b) In furtherance of the execution of the certificate of
512 compliance required under this subsection, the trustee may rely
513 upon an affidavit or certification from the foreclosing creditor
514 as to the facts and circumstances of default and failure to cure
515 the default.

516 (10) TRUSTEE'S DEED.—

517 (a) The trustee's deed shall include the name and address
518 of the trustee, the name and address of the highest bidder, the
519 name of the former owner, a legal description of the commercial
520 real property, and the name and address of the preparer of the
521 trustee's deed. The trustee's deed may not contain any
522 warranties of title from the trustee. The certificate of

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523 compliance shall be attached as an exhibit to the trustee's
524 deed.

525 (b) Ten calendar days after a sale, absent the prior filing
526 and service on the trustee of a judicial action to enjoin
527 issuance of the trustee's deed to the commercial real property,
528 the trustee shall:

529 1. Cancel the original promissory note executed by the
530 mortgagor and secured by the mortgage lien.

531 2. Issue a trustee's deed to the highest bidder or the
532 highest bidder's assignee.

533 3. Record the trustee's deed in the official records of the
534 county or counties in which the commercial real property is
535 located.

536 (c)1. The certificate of compliance and trustee's deed
537 together are presumptive evidence of the truth of the matters
538 set forth in them, and an action to set aside the sale and void
539 the trustee's deed may not be filed or otherwise pursued against
540 any person acquiring the commercial real property for value.

541 2. The trustee's deed conveys to the highest bidder or its
542 assignee all rights, title, and interest in the commercial real
543 property and personalty and fixtures that the former owner had,
544 or had the power to convey, together with all rights, title, and
545 interest that the former owner or his or her successors in
546 interest acquired after the execution of the mortgage.

547 3. The issuance and recording of a trustee's deed has the
548 same force and effect as the issuance and recording of a
549 certificate of title by the clerk of the court in a judicial
550 foreclosure action.

551 (11) DISPOSITION OF PROCEEDS OF SALE.-

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552 (a) The trustee shall apply the proceeds of the sale as
553 follows:

554 1. To the expenses of the sale, including compensation of
555 the trustee.

556 2. To the amount owed and set forth in the notice as
557 required under subparagraph (6) (a) 6.

558 3. If there are junior interest holders, the trustee may
559 file an action in interpleader, pay the surplus to a court of
560 competent jurisdiction, name the competing junior interest
561 holders, and ask the court to determine the proper distribution
562 of the surplus. In an interpleader action, the trustee shall
563 recover reasonable attorney's fees and costs.

564 4. If there are no junior interest holders, or if all
565 junior interest holders have been paid, any surplus shall be
566 paid to the former owner. If the trustee is unable to locate the
567 former owner within 1 year after the sale, the surplus, if any,
568 shall be deposited with the Chief Financial Officer as provided
569 in chapter 717.

570 (b) In disposing of the proceeds of the sale, the trustee
571 may rely on the information provided in the affidavit of the
572 foreclosing creditor under paragraph (2) (b) and, in the event of
573 a dispute or uncertainty over such claims, the trustee has the
574 discretion to submit the matter to adjudication by court, by
575 interpleader, or in any other authorized manner and shall
576 recover reasonable attorney's fees and costs.

577 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure
578 procedure established in this section does not impair or
579 otherwise affect the foreclosing creditor's continuing right to
580 bring a judicial foreclosure action, in lieu of using the

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581 trustee foreclosure procedure, with respect to any mortgage
582 lien.

583 (13) ACTIONS FOR FAILURE TO FOLLOW TRUSTEE FORECLOSURE
584 PROCEDURE.—

585 (a) An action for actual damages for a material violation
586 of this section may be brought by an obligor against the
587 foreclosing creditor for the failure to follow the trustee
588 foreclosure procedure contained in this section.

589 (b) Any trustee who intentionally violates the provisions
590 of this section concerning the trustee foreclosure procedure
591 commits a felony of the third degree, punishable as provided in
592 s. 775.082, s. 775.083, or s. 775.084.

593 52.104 Miscellaneous provisions.—

594 (1) In the event of a conflict between the provisions of
595 this chapter and chapter 702 or other applicable law, the
596 provisions of this chapter prevail. The procedures in this
597 chapter must be given effect in the context of any foreclosure
598 proceedings against commercial real properties governed by this
599 chapter, chapter 702, chapter 718, or chapter 719.

600 (2) In addition to assessment liens and mortgage liens
601 arising after the effective date of this act, this chapter
602 applies to all mortgage liens existing prior to the effective
603 date of this act for which a foreclosure proceeding has not yet
604 commenced.

605 Section 2. The Division of Statutory Revision is directed
606 to replace the phrase "the effective date of this act" wherever
607 it occurs in this act with the date this act becomes a law.

608 Section 3. This act shall take effect July 1, 2011.