

HB 213

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1                   A bill to be entitled  
2           An act relating to judicial proceedings; providing a  
3           short title; specifying public policy concerning  
4           alternatives to mortgage foreclosure; amending s.  
5           48.23, F.S.; providing that if the holder of an  
6           unrecorded interest or lien does not intervene in  
7           certain proceedings concerning property subject to a  
8           lis pendens before the occurrence of judicial vesting  
9           pursuant to s. 702.068, F.S., of the property  
10          described in the notice, the property shall be forever  
11          discharged from such unrecorded interests and liens;  
12          amending s. 201.02, F.S.; deleting an obsolete  
13          provision; providing the documentary stamp tax for a  
14          final judgment of foreclosure vesting title in a  
15          lender under a specified provision for foreclosure  
16          without public sale; amending s. 701.04, F.S.;  
17          revising the time period in which an estoppel  
18          statement must be provided; revising the allowable  
19          methods of delivery and contents of an estoppel  
20          statement; prohibiting a fee for an estoppel statement  
21          in certain circumstances; providing a fee for failure  
22          to deliver certain documents within a specified  
23          period; providing a limit on such fees; providing that  
24          specified persons may rely on an estoppel statement;  
25          requiring a specified certification if the person or  
26          party executing a satisfaction is not shown as the  
27          owner of the mortgage in the official records;  
28          requiring specified requests for an estoppel statement

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29 | to include a copy of instruments showing an ownership  
30 | interest in the property; revising requirements for a  
31 | person required to acknowledge satisfaction of the  
32 | mortgage, lien, or judgment; providing for actions to  
33 | compel compliance; providing for attorney fees;  
34 | creating s. 701.045, F.S.; requiring preparation and  
35 | recording of an instrument acknowledging satisfaction  
36 | of the lien or judgment upon full payment; requiring a  
37 | copy of the recorded satisfaction provided to the  
38 | person making the full payment within a specified  
39 | period; providing for civil actions for compliance;  
40 | providing for attorney fees; providing for  
41 | responsibility for return of satisfaction when an  
42 | execution has been issued and a judgment has  
43 | subsequently been fully paid; providing for compliance  
44 | with specified provisions relating to amendment of a  
45 | judgment lien file; creating s. 702.015, F.S.;  
46 | providing requirements for a complaint which seeks to  
47 | foreclose a lien on real property; providing  
48 | requirements for a complaint that includes a count to  
49 | enforce a lost, destroyed, or stolen instrument;  
50 | amending s. 702.035, F.S.; requiring the foreclosing  
51 | party in a mortgage foreclosure action involving  
52 | specified occupied dwellings to provide notice to  
53 | certain persons; specifying the contents of such  
54 | notice; providing for notice to tenants of such  
55 | buildings in foreclosure; specifying the contents of  
56 | such notice; creating s. 702.036, F.S.; providing for

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57 | finality of mortgage foreclosure judgments; requiring  
58 | certain actions to set aside, invalidate, or challenge  
59 | the validity of a final judgment of foreclosure of a  
60 | mortgage or to establish or reestablish a lien or  
61 | encumbrance on the property in abrogation of the final  
62 | judgment of foreclosure of a mortgage to be treated as  
63 | actions for monetary damages only in certain  
64 | circumstances; providing that certain persons be  
65 | considered persons affiliated with the foreclosing  
66 | lender for specified purposes; prohibiting claims by  
67 | persons claiming to have actual promissory notes  
68 | following foreclosure of a mortgage based upon the  
69 | enforcement of a lost, destroyed, or stolen note;  
70 | amending s. 702.04, F.S.; revising procedural  
71 | provisions for foreclosure of lands in different  
72 | counties; amending s. 702.06, F.S.; deleting  
73 | references to actions at common law for deficiencies  
74 | and original mortgagees; providing requirements for  
75 | deficiency decrees in foreclosures of certain owner-  
76 | occupied dwelling units; providing applicability;  
77 | creating s. 702.062, F.S.; providing for extensions of  
78 | time for a party to respond to an initial complaint in  
79 | certain foreclosure proceedings; providing for notice  
80 | when all parties have been served personally and no  
81 | party defendant has filed an answer or other response  
82 | denying, contesting, or asserting defenses to the  
83 | plaintiff's entitlement to the foreclosure in certain  
84 | circumstances; providing for entry of defaults against

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85 nonresponding parties; providing for requests for case  
86 management conferences; providing for extensions or  
87 stays in certain circumstances; amending s. 702.065,  
88 F.S.; revising requirements for considering a mortgage  
89 foreclosure proceeding uncontested; providing  
90 requirements for determination of reasonable attorney  
91 fees for foreclosures of certain residential  
92 properties; deleting provisions relating to defaults  
93 in uncontested mortgage foreclosure proceedings and  
94 liquidated damages; creating s. 702.068, F.S.;  
95 providing for an election by a foreclosing lender to  
96 proceed without public sale in certain circumstances;  
97 providing for notice of such an election; specifying  
98 the contents of such notice; providing for a demand  
99 for a public sale by a party; providing for  
100 disposition of proceeds of a public sale; providing  
101 for entry of final judgment; providing for redemption  
102 of property in certain circumstances; providing for  
103 deeming a debt satisfied in certain circumstances;  
104 allowing for pursuit of a deficiency if a party  
105 defendant elects to proceed without a public sale;  
106 amending s. 702.10, F.S.; revising requirements for  
107 proceedings for requests for a hearing to show cause  
108 after a complaint in a foreclosure proceeding has been  
109 filed which is verified in the form of an affidavit  
110 sufficient to support a motion for summary judgment;  
111 providing for a summons; providing for waiver of the  
112 right to be heard at a hearing to show cause in

113 certain circumstances; revising terminology to allow  
 114 for cases in which there are multiple defendants;  
 115 providing for a rebuttable presumption that certain  
 116 properties are homestead properties; providing for  
 117 applicability of other procedures; creating s. 702.11,  
 118 F.S.; providing requirements for reasonable means of  
 119 providing adequate protection under s. 673.3091, F.S.,  
 120 in mortgage foreclosures of certain residential  
 121 properties; providing for liability of persons who  
 122 wrongly claim to be holders of or entitled to enforce  
 123 a lost, stolen, or destroyed note and caused the  
 124 mortgage secured thereby to be foreclosed in certain  
 125 circumstances; creating s. 702.12, F.S.; providing for  
 126 attorney fees as sanctions for raising unsupported  
 127 claims or defenses; providing exceptions; providing  
 128 for damages for delay of litigation; specifying that  
 129 the act does not apply to foreclosures of timeshare  
 130 interests under specified provisions; providing a  
 131 directive to the Division of Statutory Revision;  
 132 providing applicability; providing an effective date.

134 Be It Enacted by the Legislature of the State of Florida:

136 Section 1. This act may be cited as the "Florida Fair  
 137 Foreclosure Act."

138 Section 2. The public policy in this state is to encourage  
 139 borrowers and lenders to work out alternatives to mortgage  
 140 foreclosure before filing suit and to explore possible

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141 settlements in mediation. Once suit has been filed, the public  
 142 interest is served by maintaining the strong tradition of  
 143 judicial due process in mortgage foreclosure cases while moving  
 144 mortgage foreclosure cases to final resolution expeditiously in  
 145 order to get real property back into the stream of commerce, but  
 146 to do so consistent with due process and fundamental fairness  
 147 and without impairing the ability of the courts to manage their  
 148 dockets and schedules. This act is an effort to provide  
 149 additional tools to the courts to assist in achieving such a  
 150 balance.

151 Section 3. Paragraph (d) of subsection (1) of section  
 152 48.23, Florida Statutes, is amended to read:

153 48.23 Lis pendens.—

154 (1)

155 (d) Except for the interest of persons in possession or  
 156 easements of use, the recording of such notice of lis pendens,  
 157 provided that during the pendency of the proceeding it has not  
 158 expired pursuant to subsection (2) or been withdrawn or  
 159 discharged, constitutes a bar to the enforcement against the  
 160 property described in the notice of all interests and liens,  
 161 including, but not limited to, federal tax liens and levies,  
 162 unrecorded at the time of recording the notice unless the holder  
 163 of any such unrecorded interest or lien intervenes in such  
 164 proceedings within 30 days after the recording of the notice. If  
 165 the holder of any such unrecorded interest or lien does not  
 166 intervene in the proceedings and if such proceedings are  
 167 prosecuted to a public judicial sale or judicial vesting  
 168 pursuant to s. 702.068 of the property described in the notice,

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169 the property shall be forever discharged from all such  
170 unrecorded interests and liens. If the notice of lis pendens  
171 expires or is withdrawn or discharged, the expiration,  
172 withdrawal, or discharge of the notice does not affect the  
173 validity of any unrecorded interest or lien.

174 Section 4. Subsections (1) and (9) of section 201.02,  
175 Florida Statutes, are amended to read:

176 201.02 Tax on deeds and other instruments relating to real  
177 property or interests in real property.—

178 (1) (a) On deeds, instruments, or writings whereby any  
179 lands, tenements, or other real property, or any interest  
180 therein, shall be granted, assigned, transferred, or otherwise  
181 conveyed to, or vested in, the purchaser or any other person by  
182 his or her direction, on each \$100 of the consideration therefor  
183 the tax shall be 70 cents. When the full amount of the  
184 consideration for the execution, assignment, transfer, or  
185 conveyance is not shown in the face of such deed, instrument,  
186 document, or writing, the tax shall be at the rate of 70 cents  
187 for each \$100 or fractional part thereof of the consideration  
188 therefor. For purposes of this section, consideration includes,  
189 but is not limited to, the money paid or agreed to be paid; the  
190 discharge of an obligation; and the amount of any mortgage,  
191 purchase money mortgage lien, or other encumbrance, whether or  
192 not the underlying indebtedness is assumed. If the consideration  
193 paid or given in exchange for real property or any interest  
194 therein includes property other than money, it is presumed that  
195 the consideration is equal to the fair market value of the real  
196 property or interest therein.

197 (b)1. For purposes of this paragraph, the term:  
 198 a. "Conduit entity" means a legal entity to which real  
 199 property is conveyed without full consideration by a grantor who  
 200 owns a direct or indirect interest in the entity, or a successor  
 201 entity.  
 202 b. "Full consideration" means the consideration that would  
 203 be paid in an arm's length transaction between unrelated  
 204 parties.  
 205 2. When real property is conveyed to a conduit entity and  
 206 all or a portion of the grantor's direct or indirect ownership  
 207 interest in the conduit entity is subsequently transferred for  
 208 consideration within 3 years after ~~of~~ such conveyance, tax is  
 209 imposed on each such transfer of an interest in the conduit  
 210 entity for consideration at the rate of 70 cents for each \$100  
 211 or fraction thereof of the consideration paid or given in  
 212 exchange for the ownership interest in the conduit entity.  
 213 3. When an ownership interest is transferred in a conduit  
 214 entity that owns assets other than the real property conveyed to  
 215 the conduit entity, the tax shall be prorated based on the  
 216 percentage the value of such real property represents of the  
 217 total value of all assets owned by the conduit entity.  
 218 4. A gift of an ownership interest in a conduit entity is  
 219 not subject to tax to the extent there is no consideration. The  
 220 transfer of shares or similar equity interests in a conduit  
 221 entity which are dealt in or traded on public, regulated  
 222 security exchanges or markets is not subject to tax under this  
 223 paragraph.  
 224 5. The transfer for purposes of estate planning by a



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225 natural person of an interest in a conduit entity to an  
 226 irrevocable grantor trust as described in subpart E of part I of  
 227 subchapter J of chapter 1 of subtitle A of the United States  
 228 Internal Revenue Code is not subject to tax under this  
 229 paragraph.

230 6. The purpose of this paragraph is to impose the  
 231 documentary stamp tax on the transfer for consideration of a  
 232 beneficial interest in real property. The provisions of this  
 233 paragraph are to be construed liberally to effectuate this  
 234 purpose.

235 (c) Conversion or merger of a trust that is not a legal  
 236 entity that owns real property in this state into a legal entity  
 237 shall be treated as a conveyance of the real property for the  
 238 purposes of this section.

239 (d) Taxes imposed by this subsection shall be paid  
 240 pursuant to s. 201.133 when no document is recorded. If a  
 241 document is recorded, taxes imposed by the paragraph shall be  
 242 paid as required for all other taxable documents that are  
 243 recorded.

244 (9) A certificate of title filed ~~issued~~ by the clerk of  
 245 court under s. 45.031 ~~(6) (5)~~ in a public ~~judicial~~ sale of real  
 246 property under an order or final judgment issued pursuant to a  
 247 foreclosure proceeding is subject to the tax imposed by  
 248 subsection (1). However, the amount of the tax shall be computed  
 249 based solely on the amount of the highest and best bid received  
 250 for the property at the foreclosure sale. A final judgment of  
 251 foreclosure vesting title in a lender under s. 702.068 is  
 252 subject to the tax imposed by subsection (1) based upon a sale

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253 price of \$100. ~~This subsection is intended to clarify existing~~  
 254 ~~law and shall be applied retroactively.~~

255 Section 5. Section 701.04, Florida Statutes, is amended to  
 256 read:

257 701.04 Cancellation of mortgages, liens, and judgments.—

258 (1)(a) Within 15 ~~14~~ days after the date on which a receipt  
 259 ~~of the~~ written request for an estoppel statement is received  
 260 from ~~of~~ a mortgagor, the holder of an interest in the property  
 261 encumbered by a mortgage, or the designee of either, requesting  
 262 a payoff amount for the mortgage as of a certain date, the  
 263 holder of a mortgage shall provide a written estoppel statement  
 264 executed by an officer or authorized agent of the holder of the  
 265 mortgage deliver to the person making the request ~~mortgagor~~ at  
 266 the a place, fax number, or e-mail address designated in the  
 267 written request. The an estoppel statement shall set ~~letter~~  
 268 ~~setting~~ forth the following:

269 1. The unpaid balance of the loan secured by the mortgage,  
 270 including principal, all accrued interest, and any other charges  
 271 properly due under or secured by the mortgage as of the  
 272 requested date certain.

273 2. ~~and~~ Interest on a per-day basis for the unpaid balance  
 274 for a period of no less than 20 days after the date of delivery  
 275 of the estoppel statement.

276 3. Certification that the party providing the estoppel  
 277 statement is the holder of the original promissory note secured  
 278 thereby, or is the person or agent of the person entitled to  
 279 enforce the note pursuant to s. 673.3011, as the case may be.

280 4. A commitment to comply with subsection (3) upon timely

281 receipt of the amounts set forth in the estoppel statement.

282 (b) The mortgagee may not charge a fee for the preparation  
 283 or delivery of the first two estoppel statements requested for  
 284 any one mortgage in any calendar month. This paragraph is not  
 285 intended to limit requirements of federal law.

286 (c) Subsequent owners of the property encumbered by the  
 287 mortgage, and creditors and lienholders taking an interest in  
 288 the property, for a valuable consideration, and those claiming  
 289 by, through, and under them, may rely on the estoppel statement  
 290 and shall be entitled to the benefits thereof.

291 (d) Whenever the amount of money due on any mortgage or  
 292 lien is, or judgment shall be fully paid to the person or party  
 293 entitled to the payment thereof, or all obligations secured by  
 294 the mortgage or lien are otherwise satisfied, the mortgagee,  
 295 creditor, or assignee, or the attorney of record in the case of  
 296 a judgment, to whom such payment has shall have been made or  
 297 satisfaction has been given, shall execute in writing an  
 298 instrument acknowledging satisfaction of the said mortgage,  
 299 lien, or judgment and have the same acknowledged, or proven, and  
 300 duly entered of record in the official records book provided by  
 301 law for such purposes in the proper county. When the person or  
 302 party executing the satisfaction is not shown as the owner of  
 303 the mortgage in the official records, the instrument shall be  
 304 supplemented by a sworn certification that the person executing  
 305 the satisfaction was then in physical possession of the original  
 306 promissory note secured by the mortgage or was then a person  
 307 entitled to enforce the note pursuant to s. 673.3011 and, if the  
 308 latter, shall provide the specific factual basis for such

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309 authority.

310 (e) If the written request for an estoppel statement is  
 311 not from the mortgagor or the designee of the mortgagor, the  
 312 request shall include a copy of the instrument or instruments  
 313 showing the requestor's ownership interest in the property and  
 314 the unpaid balance of the loan secured by the mortgage need not  
 315 be itemized.

316 (2) (a) Within 60 days after ~~of~~ the date of receipt of the  
 317 full payment of the mortgage in accord with the estoppel  
 318 statement, ~~lien, or judgment,~~ the person required to acknowledge  
 319 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or  
 320 cause to be sent the recorded satisfaction to the maker of the  
 321 promissory note, or such other person as may be designated in  
 322 writing by the payor at or after the final payment, the recorded  
 323 satisfaction and, in the case of the payor of a mortgage note,  
 324 either:

- 325 1. The original promissory note, marked "paid in full"; or
- 326 2. A lost, destroyed, or stolen note affidavit together  
 327 with exhibits in compliance with s. 702.015 and evidence of  
 328 adequate protections as provided in s. 702.11 ~~person who has~~  
 329 ~~made the full payment. In the case of a civil action arising out~~  
 330 ~~of the provisions of this section, the prevailing party shall be~~  
 331 ~~entitled to attorney's fees and costs.~~

332 (b) If the documents required by this subsection have not  
 333 been delivered within 60 days, the party who received payment on  
 334 the note or mortgage shall pay to the maker of the promissory  
 335 note or its designee a fee in the amount of \$100 per day for  
 336 each day beyond 60 days that the documents have not been

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337 delivered. The aggregate fees under this paragraph may not  
338 exceed \$5,000.

339 (3)-(2) Whenever a writ of execution has been issued,  
340 docketed, and indexed with a sheriff and the judgment upon which  
341 it was issued has been fully paid, it shall be the  
342 responsibility of the party receiving payment to request, in  
343 writing, addressed to the sheriff, return of the writ of  
344 execution as fully satisfied.

345 (4) A summary procedure pursuant to s. 51.011 may be  
346 brought to compel compliance with the various obligations and  
347 duties of this section, and the prevailing party shall recover  
348 reasonable attorney fees and costs. The court may limit recovery  
349 of attorney fees and costs when an unreasonable number of  
350 requests for estoppel statements has been made.

351 Section 6. Section 701.045, Florida Statutes, is created  
352 to read:

353 701.045 Cancellation of liens and judgments.-

354 (1) Whenever the amount of money due on any lien, other  
355 than a mortgage, or judgment is fully paid to the person or  
356 party entitled to such payment, the creditor or assignee, or the  
357 attorney of record in the case of a judgment, to whom such  
358 payment has been made shall execute in writing an instrument  
359 acknowledging satisfaction of the lien or judgment and have it  
360 acknowledged, or proven, and duly entered of record in the  
361 official records in the proper county. Within 60 days after the  
362 date of receipt of the full payment of the lien or judgment, the  
363 person required to acknowledge satisfaction of the lien or  
364 judgment shall send or cause to be sent the recorded

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365 satisfaction to the person who has made the full payment. In the  
 366 case of a civil action arising out of this section, the  
 367 prevailing party shall be entitled to attorney fees and costs.

368 (2) Whenever a writ of execution has been issued,  
 369 docketed, and indexed with a sheriff and the judgment upon which  
 370 it was issued has been fully paid, it shall be the  
 371 responsibility of the party receiving payment to request, in  
 372 writing and addressed to the sheriff, return of the writ of  
 373 execution as fully satisfied.

374 (3) The party receiving full payment of any judgment shall  
 375 also comply with s. 55.206, as appropriate.

376 Section 7. Section 702.015, Florida Statutes, is created  
 377 to read:

378 702.015 Elements of complaint; lost, destroyed, or stolen  
 379 note affidavit.—Any complaint which seeks to foreclose a lien on  
 380 real property which secures a promissory note must contain  
 381 affirmative allegations expressly made by the plaintiff at the  
 382 time the proceeding is commenced that the plaintiff is the  
 383 holder of the original note secured by the mortgage or allege  
 384 with specificity the factual basis by which the plaintiff is a  
 385 person entitled to enforce the note under s. 673.3011. When a  
 386 party has been delegated the authority to institute a mortgage  
 387 foreclosure action on behalf of the holder of the note, the  
 388 complaint shall describe the authority of the plaintiff and  
 389 identify, with specificity, the document that grants the  
 390 plaintiff the authority to act on behalf of the holder of the  
 391 note.

392 (1) Unless the complaint includes a count to enforce a

393 lost, destroyed, or stolen instrument, the plaintiff shall cause  
 394 to be filed with the court, contemporaneously with and as a  
 395 condition precedent to the filing of the complaint for  
 396 foreclosure, either:

397 (a) The original promissory note; or

398 (b) Certification, under penalty of perjury, that the  
 399 plaintiff is in physical possession of the original promissory  
 400 note. Such certification must set forth the physical location of  
 401 the note, the name and title of the individual giving the  
 402 certification, and the name of the person who personally  
 403 verified such physical possession and the time and date on which  
 404 possession was verified. Correct copies of the note and all  
 405 allonges thereto shall be attached to the certification. The  
 406 original note shall be filed with the court prior to the entry  
 407 of any judgment of foreclosure or judgment on such note.

408 (2) When the complaint includes a count to enforce a lost,  
 409 destroyed, or stolen instrument, an affidavit executed under  
 410 penalty of perjury shall be attached to the complaint. The  
 411 affidavit shall:

412 (a) Detail a clear chain of all assignments for the  
 413 promissory note that is the subject of the action.

414 (b) Set forth facts showing that the plaintiff is entitled  
 415 to enforce a lost, destroyed, or stolen instrument pursuant to  
 416 s. 673.3091.

417 (c) Include as exhibits to the affidavit such copies of  
 418 the note and allonges thereto, assignments of mortgage, audit  
 419 reports showing physical receipt of the original note, or other  
 420 evidence of the acquisition, ownership, and possession of the

421 note as may be available to the plaintiff.

422 (3) Following dismissal of the foreclosure case without  
 423 prejudice and without completion of the foreclosure, and upon  
 424 request of the plaintiff, the clerk may return the original  
 425 promissory note to the plaintiff without need for further order  
 426 of the court.

427 Section 8. Section 702.035, Florida Statutes, is amended  
 428 to read:

429 702.035 Legal notice concerning foreclosure proceedings.—

430 (1) The foreclosing party only in a mortgage foreclosure  
 431 action involving an occupied residential real property,  
 432 including individual units of condominiums and cooperatives,  
 433 designated principally for occupation by from one to four  
 434 families, but not including an interest in a timeshare property  
 435 the foreclosure of which is governed by part III of chapter 721,  
 436 shall provide notice substantially in accordance with this  
 437 section to:

438 (a) Any mortgagor having an interest in the property and  
 439 the record title owners of the property; and

440 (b) All tenants of a dwelling unit in the property if the  
 441 foreclosing party is seeking to foreclose the interest of the  
 442 tenants.

443 (2) The notice required under paragraph (1) (a) shall:

444 (a) Be delivered with the summons and complaint. Such  
 445 notice shall be in 14-point boldfaced type and the title of the  
 446 notice shall be in 20-point boldfaced type. The notice shall be  
 447 on its own page.

448 (b) Appear as follows:



449  
450 NOTICE: YOU ARE IN DANGER OF LOSING YOUR HOME

451  
452 If you fail to respond to the summons and complaint in  
453 this foreclosure action, you may lose your home.

454 Please read the summons and complaint carefully. You  
455 should immediately contact an attorney or your local  
456 legal aid office to obtain advice on how to protect  
457 yourself. Sending a payment to your mortgage company  
458 will not stop this foreclosure action.

459  
460 YOU MUST RESPOND BY PREPARING A DOCUMENT KNOWN AS AN  
461 ANSWER AND DELIVERING A COPY OF THE ANSWER TO THE  
462 ATTORNEY FOR THE PLAINTIFF (LENDER) AND FILING THE  
463 ORIGINAL ANSWER WITH THE COURT WITHIN 20 DAYS AFTER  
464 BEING SERVED. THERE IS NO CHARGE FOR FILING AN ANSWER.  
465 A TELEPHONE CALL OR E-MAIL TO THE ATTORNEY FOR THE  
466 PLAINTIFF WILL NOT SATISFY THE REQUIREMENT TO FILE AN  
467 ANSWER. THIS LAWSUIT DOES NOT MEAN THAT YOU MUST  
468 IMMEDIATELY MOVE OUT OF YOUR PROPERTY.

469  
470 SOURCES OF INFORMATION AND ASSISTANCE:

471 The state encourages you to become informed about your  
472 options in foreclosure. You should contact a licensed  
473 Florida attorney to assist you. If you cannot afford  
474 an attorney, your local legal aid office may be able  
475 to assist you at little or no cost to you. There are  
476 also government agencies and nonprofit organizations

477 that you may contact for cost-free information about  
 478 possible options, including trying to work with your  
 479 lender during this process.

480  
 481 FORECLOSURE RESCUE SCAMS:  
 482 Be careful of people who approach you with offers to  
 483 help you keep your home. There are individuals who  
 484 watch for notices of foreclosure actions in order to  
 485 unfairly profit from a homeowner's distress. You  
 486 should be extremely careful about any such promises  
 487 and any suggestions that you pay them a fee or deed  
 488 over your property. State law requires any nonattorney  
 489 offering such services for profit to enter into a  
 490 contract which fully describes the services they will  
 491 perform and fees they will charge, and which prohibits  
 492 them from taking any money from you until they have  
 493 completed all such promised services.

494  
 495 (3) The notice to any tenant required under paragraph  
 496 (1)(b) shall:

497 (a) Be delivered with the summons and complaint. The  
 498 foreclosing party shall provide its name, address, and telephone  
 499 number on the notice. The title of the notice shall be in 14-  
 500 point boldfaced type. The notice shall be on its own page.

501 (b) Appear substantially as follows:

502  
 503 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE  
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505 Florida law requires that we provide you with this  
506 notice about the foreclosure process. Please read it  
507 carefully.

508  
509 We, ...(name of foreclosing party)..., are the  
510 foreclosing party and are located at ...(foreclosing  
511 party's address).... We can be reached at  
512 ...(foreclosing party's telephone number)....

513  
514 The property you are renting is the subject of a  
515 foreclosure proceeding. You should file an answer to  
516 this summons and complaint and deliver a copy of the  
517 answer to the attorney for the plaintiff and file the  
518 original with the court within 20 days after being  
519 served. There is no charge for filing an answer. A  
520 telephone call or an e-mail to the attorney for the  
521 plaintiff will not satisfy the requirement of filing  
522 an answer. If you have a written lease and are not the  
523 owner of the residence, and the lease requires payment  
524 of rent that at the time it was entered into was not  
525 substantially less than the fair market rent for the  
526 property, you may be entitled to remain in occupancy  
527 under the federal Protecting Tenants at Foreclosure  
528 Act of 2009, as amended. If you do not have a written  
529 lease, under the same federal law you may be entitled  
530 to remain in your home until 90 days after the person  
531 or entity that acquires title to the property provides  
532 you with a notice. If you are a subsidized tenant

533 under federal, state, or local law or if you are a  
 534 tenant subject to rent control, rent stabilization, or  
 535 a federal statutory scheme, you may have other rights.  
 536 If the federal Protecting Tenants at Foreclosure Act  
 537 of 2009, as amended, and these other laws do not apply  
 538 to your situation, you may be required to vacate the  
 539 property upon completion of the foreclosure. The  
 540 filing of a foreclosure action does not automatically  
 541 cease your obligation to pay rent to your landlord.  
 542 You should contact a licensed Florida attorney to  
 543 understand your rights. If you cannot afford an  
 544 attorney, your local legal aid office may be able to  
 545 assist you at little or no cost to you.

546  
 547 (4) Only a single notice is required under this section  
 548 for any party defendant.

549 (5) Whenever a legal advertisement, publication, or notice  
 550 relating to a foreclosure proceeding is required to be placed in  
 551 a newspaper, it is the responsibility of the petitioner or  
 552 petitioner's attorney to place such advertisement, publication,  
 553 or notice. For counties having ~~with~~ more than 1 million total  
 554 population as reflected in the 2000 Official Decennial Census of  
 555 the United States Census Bureau as shown on the official website  
 556 of the United States Census Bureau, any notice of publication  
 557 required by this section shall be deemed to have been published  
 558 in accordance with the law if the notice is published in a  
 559 newspaper that has been entered as a periodical matter at a post  
 560 office in the county in which the newspaper is published, is

561 published a minimum of 5 days a week, exclusive of legal  
 562 holidays, and has been in existence and published a minimum of 5  
 563 days a week, exclusive of legal holidays, for 1 year or is a  
 564 direct successor to a newspaper that has been in existence for 1  
 565 year that has been published a minimum of 5 days a week,  
 566 exclusive of legal holidays. The advertisement, publication, or  
 567 notice shall be placed directly by the attorney for the  
 568 petitioner, by the petitioner if acting pro se, or by the clerk  
 569 of the court. Only the actual costs charged by the newspaper for  
 570 the advertisement, publication, or notice may be charged as  
 571 costs in the action.

572 Section 9. Section 702.036, Florida Statutes, is created  
 573 to read:

574 702.036 Finality of mortgage foreclosure judgment.—

575 (1) (a) In any action or proceeding in which a party seeks  
 576 to set aside, invalidate, or challenge the validity of a final  
 577 judgment of foreclosure of a mortgage or to establish or  
 578 reestablish a lien or encumbrance on the property in abrogation  
 579 of the final judgment of foreclosure of a mortgage, the court  
 580 shall treat such request solely as a claim for monetary damages  
 581 and may not grant relief that adversely affects the quality or  
 582 character of the title to the property, if:

583 1. A final judgment of foreclosure of a mortgage was  
 584 entered as to a property;

585 2. All applicable appeals periods have run as to the final  
 586 judgment of foreclosure of a mortgage with no appeals having  
 587 been taken, or any appeals having been finally resolved;

588 3. The property has been acquired for value, by a person

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589 not affiliated with the foreclosing lender, at a time in which  
590 no lis pendens regarding the suit to set aside, invalidate, or  
591 challenge the foreclosure appears in the official records of the  
592 county where the property was located; and

593 4. The party seeking relief from the final judgment of  
594 foreclosure of a mortgage was properly served in the foreclosure  
595 lawsuit as provided in chapter 48 or chapter 49.

596 (b) This subsection does not limit the right to pursue any  
597 other relief to which a person may be entitled, including, but  
598 not limited to, compensatory damages, punitive damages,  
599 statutory damages, consequential damages, injunctive relief, or  
600 fees and costs, which does not adversely affect the ownership of  
601 the title to the property as vested in the unaffiliated  
602 purchaser for value.

603 (2) For purposes of this section, the following, without  
604 limitation, shall be considered persons affiliated with the  
605 foreclosing lender:

606 (a) The foreclosing lender or any loan servicer for the  
607 loan being foreclosed;

608 (b) Any past or present owner or holder of the loan being  
609 foreclosed;

610 (c) Any maintenance company, holding company, foreclosure  
611 services company, or law firm under contract to any entity  
612 listed in paragraph (a), paragraph (b), or this paragraph, with  
613 regard to the loan being foreclosed; or

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

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617 any entity listed in paragraph (a), paragraph (b), or paragraph  
618 (c).

619 (3) After foreclosure of a mortgage based upon the  
620 enforcement of a lost, destroyed, or stolen note, a person who  
621 is not a party to the underlying foreclosure action but who  
622 claims to be the actual holder of the promissory note secured by  
623 the foreclosed mortgage shall have no claim against the  
624 foreclosed property after it has been conveyed for valuable  
625 consideration to a person not affiliated with the foreclosing  
626 lender. This section does not preclude the actual holder of the  
627 note from pursuing recovery from any adequate protection given  
628 pursuant to s. 673.3091 or from the party who wrongfully claimed  
629 to be the owner or holder of the promissory note, the maker of  
630 the note, or any other person against whom it may have a claim  
631 relating to the note.

632 Section 10. Section 702.04, Florida Statutes, is amended  
633 to read:

634 702.04 ~~Mortgaged~~ Lands in different counties.—When a  
635 mortgage or other lien includes lands, railroad track, right-of-  
636 way, or terminal facilities and station grounds, lying in two or  
637 more counties, it may be foreclosed in any one of those ~~said~~  
638 counties, and all proceedings shall be had in that county as if  
639 all the ~~mortgaged~~ land, railroad track, right-of-way, or  
640 terminal facilities and station grounds lay therein, except that  
641 any notice of the sale must be published in every county wherein  
642 any of the lands, railroad track, right-of-way, or terminal  
643 facilities and station grounds to be sold lie. After final  
644 disposition of the suit, the clerk of the circuit court shall

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645 prepare and forward a certified copy of the decree of  
 646 foreclosure, and the certificates of title, if any, ~~and sale and~~  
 647 ~~of the decree of confirmation of sale~~ to the clerk of the  
 648 circuit court of every county wherein any of the ~~mortgaged~~  
 649 lands, railroad tracks, right-of-way, or terminal facilities and  
 650 station grounds lie, to be recorded in the official records  
 651 ~~foreign judgment book~~ of each such county, and the costs of such  
 652 copies and of the recording record ~~record~~ thereof shall be taxed as  
 653 costs in the cause.

654 Section 11. Section 702.06, Florida Statutes, is amended  
 655 to read:

656 702.06 Deficiency decree; ~~common-law~~ suit to recover  
 657 deficiency.-

658 (1) In all suits for the foreclosure of mortgages  
 659 heretofore or hereafter executed, the entry of a deficiency  
 660 decree for any portion of a deficiency, should one exist, shall  
 661 be within the sound judicial discretion of the court, but the  
 662 complainant shall also have the right to sue ~~at common law~~ to  
 663 recover such deficiency, unless the court in the foreclosure  
 664 action has granted or denied a deficiency judgment ~~provided no~~  
 665 ~~suit at law to recover such deficiency shall be maintained~~  
 666 ~~against the original mortgagor in cases where the mortgage is~~  
 667 ~~for the purchase price of the property involved and where the~~  
 668 ~~original mortgagee becomes the purchaser thereof at foreclosure~~  
 669 ~~sale and also is granted a deficiency decree against the~~  
 670 ~~original mortgagor.~~

671 (2) (a) In respect to an owner-occupied one-family to four-  
 672 family dwelling unit, the party to whom a deficiency is owing



673 may move for the entry of a deficiency judgment in the  
 674 foreclosure action or file a separate action for collection of  
 675 the deficiency, no later than 1 year after the property has  
 676 vested in the foreclosing lender or other purchaser at the  
 677 foreclosure sale, or October 1, 2013, whichever is later.

678 (b) If a deficiency is not pursued within the time periods  
 679 specified in this section, the vesting of the property pursuant  
 680 to s. 702.068 or proceeds of the sale, regardless of the amount,  
 681 shall be deemed to be in full satisfaction of the mortgage debt  
 682 and a right to recover any deficiency in any subsequent action  
 683 or proceeding shall be extinguished.

684 (c) This subsection does not restrict the authority of the  
 685 court to determine the entitlement to any assets held by any  
 686 receiver or any assignee of the rents and profits of the  
 687 property.

688 Section 12. Section 702.062, Florida Statutes, is created  
 689 to read:

690 702.062 Notice of extensions; defaults; case management  
 691 conference.-

692 (1) In any mortgage foreclosure proceeding, other than a  
 693 proceeding seeking foreclosure of a timeshare interest under  
 694 part III of chapter 721, the plaintiff's counsel shall cause to  
 695 be filed with the clerk of the court a notice of any extensions  
 696 of time for a party to respond to an initial complaint which may  
 697 be granted. Such notice shall be filed within the later of 5  
 698 days after the granting of such extension or 60 days after the  
 699 effective date of this act and may be made by copy of the letter  
 700 confirming the extension. This requirement is not intended to

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701 discourage any party from requesting or granting such extensions  
702 of time.

703 (2) Any party may notify the court and all parties as to  
704 any foreclosure proceeding in which the file indicates:

705 (a) All parties defendant have been served personally by  
706 substituted service or by publication; and

707 (b) No party defendant has filed an answer or other  
708 response denying, contesting, or asserting defenses to the  
709 plaintiff's entitlement to the foreclosure, and the time has run  
710 for the entry of defaults against all nonresponding parties  
711 defendant.

712 (3) The court, on its own motion or motion of any party,  
713 may enter defaults against nonresponding parties in accordance  
714 with the Florida Rules of Civil Procedure and shall direct the  
715 plaintiff in the foreclosure action to file all affidavits,  
716 certifications, and proofs necessary or appropriate for the  
717 entry of a summary judgment of foreclosure within a time certain  
718 or show cause why such a filing should not be made. The filing  
719 of these materials shall be construed as a motion for summary  
720 judgment, and the court may thereafter enter final summary  
721 judgment or set the case for trial in accord with its sound  
722 judicial discretion. This subsection does not restrict the  
723 authority of the court to set aside a default or a judgment  
724 granted thereon pursuant to the Florida Rules of Civil  
725 Procedure.

726 (4) After all parties have been served and not earlier  
727 than 48 days after the filing of the foreclosure case, any party  
728 may request a case management conference at which the court

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729 shall set definite timetables for moving the case forward.

730 (5) The court may grant extensions or stays in the  
731 proceedings on a showing that the plaintiff and property owner  
732 defendant are engaged in mediation or good faith negotiations  
733 with regard to a loan modification or other settlement or  
734 otherwise as justice may require. The court may condition an  
735 extension or stay on the property owner or the lender, if it so  
736 chooses, paying any condominium or homeowners' association  
737 assessments coming due after the date of the extension or stay  
738 and keeping such assessments paid current through the conclusion  
739 of the foreclosure action.

740 Section 13. Section 702.065, Florida Statutes, is amended  
741 to read:

742 702.065 Final judgment in uncontested mortgage foreclosure  
743 proceedings ~~where deficiency judgment waived; attorney~~  
744 ~~attorney's~~ fees when default judgment entered.-

745 (1) In uncontested mortgage foreclosure proceedings in  
746 which the mortgagee waives the right to recoup any deficiency  
747 judgment, the court shall enter final judgment within 90 days  
748 after ~~from~~ the date of the close of pleadings. For the purposes  
749 of this subsection, a mortgage foreclosure proceeding is  
750 uncontested if a default has been entered against all defendants  
751 or no response ~~an answer not~~ contesting the foreclosure has been  
752 timely filed ~~or a default judgment has been entered by the~~  
753 ~~court.~~

754 (2) In a mortgage foreclosure proceeding, when ~~a default~~  
755 ~~judgment has been entered against the mortgagor and the note or~~  
756 mortgage provides for the award of reasonable attorney

757 ~~attorney's~~ fees, it is not necessary for the court to hold a  
 758 hearing or adjudge the requested attorney ~~attorney's~~ fees to be  
 759 reasonable if the fees do not exceed the greater of 1.5 ~~3~~  
 760 percent of the principal amount owed at the time of filing the  
 761 complaint or \$1,500, even if the note or mortgage does not  
 762 specify the percentage of the original amount that would be paid  
 763 ~~as liquidated damages. Such fees constitute liquidated damages~~  
 764 ~~in any proceeding to enforce the note or mortgage.~~ This section  
 765 does not preclude a challenge to the reasonableness of the  
 766 attorney ~~attorney's~~ fees.

767 Section 14. Section 702.068, Florida Statutes, is created  
 768 to read:

769 702.068 Election by foreclosing lender to proceed without  
 770 public sale.—

771 (1) When the amount of principal and interest, exclusive  
 772 of fees and costs, owed to a foreclosing lender equals or  
 773 exceeds 120 percent of the just value of the property subject to  
 774 foreclosure, as determined by the county property appraiser in  
 775 the most recent certified tax roll, the foreclosing lender may  
 776 elect to foreclose without a public sale of the property under  
 777 chapter 45. Except as otherwise provided in this subsection,  
 778 nothing in this section alters any aspect of the judicial  
 779 foreclosure proceeding; the rights, remedies, and defenses  
 780 available to the parties; the court rules and procedures to be  
 781 followed; or the authority of the court to supervise and manage  
 782 the foreclosure case.

783 (2) A plaintiff electing to proceed without a public sale  
 784 may include the request to proceed under this section in any

785 complaint or amended complaint filed, or the plaintiff or any  
 786 other party may file a motion to proceed under this section at  
 787 any time prior to the entry of a final judgment of foreclosure.

788 (3) Upon making the election to foreclose without a public  
 789 sale, the party making the election shall cause notices to be  
 790 sent to each party, other than the party sending the notice, as  
 791 follows:

792 (a) If the election to proceed without a public sale is  
 793 made in the complaint, the notice shall be served together with  
 794 the complaint on the defendants as provided in chapter 48 or  
 795 chapter 49. If the election is made after the initial service of  
 796 the complaint, the notice shall be served on any party against  
 797 whom a default has been entered as provided in chapter 48 or  
 798 chapter 49 and served on other parties as provided in the  
 799 Florida Rules of Civil Procedure. If service is by publication,  
 800 the published notice shall indicate that "the plaintiff has  
 801 elected to proceed without a public sale as provided under  
 802 section 702.068, Florida Statutes."

803 (b) The notice provided to the owners of the property,  
 804 tenants, holders of subordinate liens and other interests in the  
 805 property, and any other defendants shall be on its own page, in  
 806 14-point boldfaced type and the title of the notice shall be in  
 807 20-point boldfaced type, and in substantially the following  
 808 form:

809  
 810 NOTICE OF FORECLOSURE WITHOUT PUBLIC SALE

811  
 812 Florida Law requires that we provide you notice

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813 that this foreclosure may proceed without a public  
814 sale. Please read it carefully.

815  
816 You have been identified as the owner of, the  
817 holder of a mortgage or lien on, or otherwise having  
818 an interest in property located at ...(property  
819 address)... which is subject to foreclosure. You are  
820 hereby notified that ...(name and address of  
821 plaintiff)... has filed a foreclosure lawsuit with  
822 regard to the property and has elected to proceed  
823 without a public sale pursuant to section 702.068,  
824 Florida Statutes. Under this provision, after the  
825 entry of a final judgment of foreclosure the property  
826 will vest automatically in the foreclosing lender.  
827 There will not be a public sale of the property, and  
828 you may lose your equity in this property or any  
829 equity that would be available to pay subordinate  
830 liens you may hold.

831 At any time prior to the entry of a final  
832 judgment of foreclosure, you may demand a traditional  
833 public sale in order to protect any equity in the  
834 property, but anyone making such a demand will  
835 initially be responsible for paying \$450 towards the  
836 costs of advertising, notice, and other expenses  
837 relating to that public sale. Under certain  
838 circumstances, those costs may be repaid from the  
839 proceeds of the public sale.

840 NOTE: The right to demand a public sale at any

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841 time prior to the entry of a final judgment does not  
842 extend the 20-day period to initially respond to the  
843 complaint.

844 If you have any questions about this notice or  
845 the lawsuit, you should immediately consult a licensed  
846 Florida attorney.

847  
848 (c) The notice in paragraph (b) is informational only.  
849 Nonmaterial defects in the content of this notice do not  
850 invalidate any title vested without a public sale under this  
851 section, as long as proper service has been obtained.

852 (d) The election to proceed without a public sale and the  
853 delivery of notices may occur not later than 15 days before the  
854 entry of a final judgment of foreclosure.

855 (4) At any time before the entry of a final order of  
856 foreclosure without a public sale, any party may demand a public  
857 sale by filing a demand for such with the clerk of the court. If  
858 a public sale is demanded, the court shall proceed with the  
859 foreclosure and sale under other applicable law. The party  
860 demanding a public sale under this section shall  
861 contemporaneously deposit with the clerk \$450 conditioned to pay  
862 all costs of noticing and advertising the public sale and any  
863 clerk's fee or other service fees charged in connection with the  
864 public sale.

865 (a) If the price returned at the public sale exceeds the  
866 amount determined in the final judgment to be owed under the  
867 mortgage to the foreclosing lender, including principal, accrued  
868 interest, expenses, attorney fees and costs, and the costs of

869 noticing and advertising the sale, any clerk's fees or other  
 870 service fees shall be taxed as costs and reimbursed to the party  
 871 making the cost deposit, up to the amount of such deposit.

872 (b) If the price returned at the public sale does not  
 873 exceed the amount owed under the mortgage to the foreclosing  
 874 lender, the cost deposit shall be applied to repay the  
 875 foreclosing lender for the actual costs of noticing and  
 876 advertising the public sale and any clerk's fees and other  
 877 service fees, with any excess being returned to the party making  
 878 the cost deposit.

879 (5) Upon finding that all requirements of this section and  
 880 conditions for the granting of a final judgment of foreclosure  
 881 have been satisfied, and no public sale has been demanded, the  
 882 court may, as is consistent with justice and sound judicial  
 883 discretion, enter a final judgment in foreclosure.

884 (a) The final judgment shall take effect no sooner than 10  
 885 days after the entry thereof and, upon the recording of the  
 886 certificate of title issued pursuant to paragraph (d), shall  
 887 vest all of the owners' right, title, and interest in and to the  
 888 property subject to foreclosure in the plaintiff or plaintiff's  
 889 designee as identified in the final judgment, and, if so found  
 890 by the court, that each defendant and all persons claiming under  
 891 or against each defendant since the filing of the notice of lis  
 892 pendens shall be foreclosed of all estate or claim in the  
 893 property, except as to claims or rights under chapter 718 or  
 894 chapter 720, if any.

895 (b) The owner or any party defendant may redeem the  
 896 property at any time prior to the final judgment becoming



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897 effective. Upon redemption:

898 1. The clerk shall cause a notice of redemption to be  
899 filed in the court records and in the official records and to  
900 cause an order, if any, approving or ratifying the redemption to  
901 be filed in the official records; and

902 2. The plaintiff shall cause the mortgage to be satisfied  
903 of record.

904 (c) The final judgment shall recite the just value of the  
905 property as determined by the county property appraiser and  
906 include a finding that the principal and accrued interest owed  
907 to the foreclosing lender equals or exceeds 120 percent of the  
908 just value.

909 (d) After the time provided in the final judgment for  
910 redemption, and provided redemption has not occurred, the clerk  
911 shall issue a certificate of title vesting title to the property  
912 in the foreclosing plaintiff or its designee.

913 (6) When the foreclosing lender elects to foreclose  
914 without a public sale, upon entry of a judgment and issuing the  
915 certificate of title under this section, the debt that was  
916 secured by the foreclosed mortgage shall be deemed satisfied and  
917 any right to pursue a deficiency decree or other action to  
918 enforce such note is waived. When a party defendant elects to  
919 proceed without a public sale, the plaintiff may pursue a  
920 deficiency if and as otherwise permitted by law.

921 Section 15. Section 702.10, Florida Statutes, is amended  
922 to read:

923 702.10 ~~Order to Show cause; entry of final judgment of~~  
924 ~~foreclosure; payment during foreclosure.-~~

925 (1) After a complaint in a foreclosure proceeding has been  
 926 filed which is verified in the form of an affidavit sufficient  
 927 to support a motion for summary judgment, the plaintiff  
 928 ~~mortgagee~~ may request a hearing to show cause ~~an order to show~~  
 929 ~~cause for the entry of final judgment and the court shall~~  
 930 ~~immediately review the complaint.~~ Upon such request, the clerk  
 931 ~~If, upon examination of the complaint, the court finds that the~~  
 932 ~~complaint is verified and alleges a cause of action to foreclose~~  
 933 ~~on real property, the court~~ shall promptly issue a summons ~~an~~  
 934 ~~order~~ directed to each ~~the~~ defendant to show cause why a final  
 935 judgment of foreclosure should not be entered.

936 (a) The summons ~~order~~ shall:

937 1. Set the date and time for a hearing ~~on the order~~ to  
 938 show cause. However, the date for the hearing may not occur ~~be~~  
 939 ~~set~~ sooner than the later of 20 days after the service of the  
 940 summons or 45 days after the service of the complaint ~~order~~.

941 When service is obtained by publication, the date for the  
 942 hearing may not be set sooner than 55 ~~30~~ days after the first  
 943 publication. ~~The hearing must be held within 60 days after the~~  
 944 ~~date of service. Failure to hold the hearing within such time~~  
 945 ~~does not affect the validity of the order to show cause or the~~  
 946 ~~jurisdiction of the court to issue subsequent orders.~~

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

949 ~~2.3.~~ State that the filing of defenses by a motion or by a  
 950 responsive pleading verified or sworn answer at or before the  
 951 hearing to show cause may constitute ~~constitutes~~ cause for the  
 952 court not to enter ~~the attached~~ final judgment.

953            3.4. State that any ~~the~~ defendant has the right to file  
 954 affidavits or other papers at or before the time of the hearing  
 955 to show cause and may appear personally or by way of an attorney  
 956 at the hearing.

957            4.5. State that, if any ~~the~~ defendant files defenses by a  
 958 motion, the hearing time may be used to hear the defendant's  
 959 motion.

960            5.6. State that, if any ~~the~~ defendant fails to appear at  
 961 the hearing to show cause or fails to file a response ~~defenses~~  
 962 ~~by a motion or by a verified or sworn answer~~ or files an answer  
 963 not contesting the foreclosure, ~~the~~ defendant shall ~~may~~ be  
 964 deemed ~~considered~~ to have waived the right to a hearing and in  
 965 such case the court shall, unless the record shows that the  
 966 relief is unavailable, ~~may~~ enter a final judgment of foreclosure  
 967 ordering the clerk of the court to conduct a foreclosure sale.

968            6.7. State that if the mortgage provides for reasonable  
 969 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
 970 fees do not exceed the greater of 1.5 ~~3~~ percent of the principal  
 971 amount owed at the time of filing the complaint or \$1,500, it is  
 972 unnecessary for the court to hold a hearing or adjudge the  
 973 requested attorney ~~attorney's~~ fees to be reasonable.

974            7.8. Attach the proposed final judgment of foreclosure the  
 975 plaintiff requests the court to ~~will~~ enter, ~~if the defendant~~  
 976 ~~waives the right to be heard~~ at the hearing on the order to show  
 977 cause.

978            8.9. Require the plaintiff ~~mortgagee~~ to serve a copy of  
 979 the summons ~~order~~ to show cause on each defendant ~~the mortgagor~~  
 980 in the following manner:

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981           a. If a defendant ~~the mortgagor~~ has been served with the  
 982 complaint and original process, service of the summons to show  
 983 cause on that defendant ~~order~~ may be made in the manner provided  
 984 in the Florida Rules of Civil Procedure.

985           b. If a defendant ~~the mortgagor~~ has not been served with  
 986 the complaint and original process, the summons ~~order~~ to show  
 987 cause, together with ~~the summons and~~ a copy of the complaint,  
 988 shall be served on the defendant ~~mortgagor~~ in the same manner as  
 989 provided by law for original process.

990  
 991 Any final judgment of foreclosure entered under this subsection  
 992 is for in rem relief only. Nothing in this subsection shall  
 993 preclude the entry of a deficiency judgment where otherwise  
 994 allowed by law.

995           (b) The right to be heard at the hearing to show cause is  
 996 waived if a ~~the~~ defendant, after being served as provided by law  
 997 with a ~~an order to show cause~~ summons, fails to file a response  
 998 contesting the foreclosure ~~engages in conduct that clearly shows~~  
 999 ~~that the defendant has relinquished the right to be heard on~~  
 1000 ~~that order. The defendant's failure to file defenses by a motion~~  
 1001 ~~or by a sworn or verified answer or~~ fails to appear at the  
 1002 hearing duly scheduled on the ~~order to show cause~~ summons  
 1003 ~~presumptively constitutes conduct that clearly shows that the~~  
 1004 ~~defendant has relinquished the right to be heard. If a defendant~~  
 1005 files a response contesting the foreclosure ~~defenses by a motion~~  
 1006 ~~or by a verified or sworn answer at or before the hearing, such~~  
 1007 response may constitute ~~action constitutes~~ cause upon the  
 1008 determination of the court as set forth in paragraph (d) and may

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1009 preclude ~~precludes~~ the entry of a final judgment at the hearing  
 1010 to show cause.

1011 (c) In a mortgage foreclosure proceeding, when a default  
 1012 judgment has been entered against the mortgagor and the note or  
 1013 mortgage provides for the award of reasonable attorney  
 1014 ~~attorney's~~ fees, it is unnecessary for the court to hold a  
 1015 hearing or adjudge the requested attorney ~~attorney's~~ fees to be  
 1016 reasonable if the fees do not exceed the greater of 1.5 ~~3~~  
 1017 percent of the principal amount owed on the note or mortgage at  
 1018 the time of filing of the complaint or \$1,500, even if the note  
 1019 or mortgage does not specify the percentage of the original  
 1020 amount that would be paid ~~as liquidated damages~~.

1021 (d) If the court finds that each ~~the~~ defendant has waived  
 1022 the right to be heard as provided in paragraph (b), the court  
 1023 shall promptly enter a final judgment of foreclosure without the  
 1024 need for a further hearing upon either the filing with the court  
 1025 of the original note or satisfaction of the conditions for  
 1026 establishment of the lost note pursuant to law. If the court  
 1027 finds that a ~~the~~ defendant has not waived the right to be heard  
 1028 on the order to show cause, the court shall then determine  
 1029 whether there is cause not to enter a final judgment of  
 1030 foreclosure. If the court finds that a ~~the~~ defendant has not  
 1031 shown cause, the court shall promptly enter a judgment of  
 1032 foreclosure.

1033 (2) In an action for a mortgage foreclosure, on properties  
 1034 other than a homestead ~~other than residential real estate~~, the  
 1035 mortgagee may request that the court enter an order directing  
 1036 the mortgagor defendant to show cause why an order to make

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1037 | payments during the pendency of the foreclosure proceedings or  
 1038 | an order to vacate the premises should not be entered.

1039 | (a) The order shall:

1040 | 1. Set the date and time for hearing on the order to show  
 1041 | cause. However, the date for the hearing shall not be set sooner  
 1042 | than 20 days after the service of the order. Where service is  
 1043 | obtained by publication, the date for the hearing shall not be  
 1044 | set sooner than 30 days after the first publication.

1045 | 2. Direct the time within which service of the order to  
 1046 | show cause and the complaint shall be made upon each ~~the~~  
 1047 | defendant.

1048 | 3. State that a ~~the~~ defendant has the right to file  
 1049 | affidavits or other papers at the time of the hearing and may  
 1050 | appear personally or by way of an attorney at the hearing.

1051 | 4. State that, if a ~~the~~ defendant fails to appear at the  
 1052 | hearing to show cause and fails to file defenses by a motion or  
 1053 | by a verified or sworn answer, ~~the~~ defendant may be deemed to  
 1054 | have waived the right to a hearing and in such case the court  
 1055 | may enter an order to make payment or vacate the premises.

1056 | 5. Require the mortgagee to serve a copy of the order to  
 1057 | show cause on the mortgagor in the following manner:

1058 | a. If the mortgagor has been served with the complaint and  
 1059 | original process, service of the order may be made in the manner  
 1060 | provided in the Florida Rules of Civil Procedure.

1061 | b. If the mortgagor has not been served with the complaint  
 1062 | and original process, the order to show cause, together with the  
 1063 | summons and a copy of the complaint, shall be served on the  
 1064 | mortgagor in the same manner as provided by law for original

1065 process.

1066 (b) The right of a defendant to be heard at the hearing to  
 1067 show cause is waived if the defendant, after being served as  
 1068 provided by law with an order to show cause, engages in conduct  
 1069 that clearly shows that the defendant has relinquished the right  
 1070 to be heard on that order. A ~~The~~ defendant's failure to file  
 1071 defenses by a motion or by a sworn or verified answer or to  
 1072 appear at the hearing duly scheduled on the order to show cause  
 1073 presumptively constitutes conduct that clearly shows that the  
 1074 defendant has relinquished the right to be heard.

1075 (c) If the court finds that a ~~the~~ defendant has waived the  
 1076 right to be heard as provided in paragraph (b), the court may  
 1077 promptly enter an order requiring payment in the amount provided  
 1078 in paragraph (f) or an order to vacate.

1079 (d) If the court finds that the mortgagor has not waived  
 1080 the right to be heard on the order to show cause, the court  
 1081 shall, at the hearing on the order to show cause, consider the  
 1082 affidavits and other showings made by the parties appearing and  
 1083 make a determination of the probable validity of the underlying  
 1084 claim alleged against the mortgagor and the mortgagor's  
 1085 defenses. If the court determines that the mortgagee is likely  
 1086 to prevail in the foreclosure action, the court shall enter an  
 1087 order requiring the mortgagor to make the payment described in  
 1088 paragraph (e) to the mortgagee and provide for a remedy as  
 1089 described in paragraph (f). However, the order shall be stayed  
 1090 pending final adjudication of the claims of the parties if the  
 1091 mortgagor files with the court a written undertaking executed by  
 1092 a surety approved by the court in an amount equal to the unpaid

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1093 balance of the mortgage on the property, including all  
1094 principal, interest, unpaid taxes, and insurance premiums paid  
1095 by the mortgagee.

1096 (e) In the event the court enters an order requiring the  
1097 mortgagor to make payments to the mortgagee, payments shall be  
1098 payable at such intervals and in such amounts provided for in  
1099 the mortgage instrument before acceleration or maturity. The  
1100 obligation to make payments pursuant to any order entered under  
1101 this subsection shall commence from the date of the motion filed  
1102 hereunder. The order shall be served upon the mortgagor no later  
1103 than 20 days before the date specified for the first payment.  
1104 The order may permit, but shall not require the mortgagee to  
1105 take all appropriate steps to secure the premises during the  
1106 pendency of the foreclosure action.

1107 (f) In the event the court enters an order requiring  
1108 payments the order shall also provide that the mortgagee shall  
1109 be entitled to possession of the premises upon the failure of  
1110 the mortgagor to make the payment required in the order unless  
1111 at the hearing on the order to show cause the court finds good  
1112 cause to order some other method of enforcement of its order.

1113 (g) All amounts paid pursuant to this section shall be  
1114 credited against the mortgage obligation in accordance with the  
1115 terms of the loan documents, provided, however, that any  
1116 payments made under this section shall not constitute a cure of  
1117 any default or a waiver or any other defense to the mortgage  
1118 foreclosure action.

1119 (h) Upon the filing of an affidavit with the clerk that  
1120 the premises have not been vacated pursuant to the court order,



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1121 the clerk shall issue to the sheriff a writ for possession which  
 1122 shall be governed by the provisions of s. 83.62.

1123 (i) For purposes of this section, there is a rebuttable  
 1124 presumption that a residential property for which a homestead  
 1125 exemption for taxation was granted according to the certified  
 1126 rolls of the latest assessment by the county property appraiser,  
 1127 before the filing of the foreclosure action, is a homestead  
 1128 residence.

1129 (3) This section does not supersede or limit other  
 1130 procedures adopted by the court, including, but not limited to,  
 1131 mandatory mediation and alternative dispute resolution  
 1132 processes.

1133 Section 16. Section 702.11, Florida Statutes, is created  
 1134 to read:

1135 702.11 Adequate protections for lost, destroyed, or stolen  
 1136 notes in mortgage foreclosure.-

1137 (1) In connection with the mortgage foreclosure of a one-  
 1138 family to four-family residential property, the following  
 1139 constitute reasonable means of providing adequate protection  
 1140 under s. 673.3091:

1141 (a) A written indemnification agreement by a person  
 1142 reasonably believed sufficiently solvent to honor such an  
 1143 obligation;

1144 (b) A surety bond;

1145 (c) A letter of credit issued by a financial institution;

1146 (d) A deposit of cash collateral with the clerk of the  
 1147 court; or

1148 (e) Such other security as the court may deem appropriate

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1149 under the circumstances.

1150

1151 Any security given shall be on terms and in amounts set by the  
1152 court, for a time period through the running of the statute of  
1153 limitations for enforcement of the underlying note, and  
1154 conditioned to indemnify and hold harmless the maker of the note  
1155 against any loss or damage, including principal, interest, and  
1156 attorney fees and costs, that might occur by reason of a claim  
1157 by another person to enforce the note.

1158 (2) Any person who wrongly claimed to be the holder of or  
1159 pursuant to s. 673.3011 to be entitled to enforce a lost,  
1160 stolen, or destroyed note and caused the mortgage secured  
1161 thereby to be foreclosed shall be liable to the actual holder of  
1162 the note, without limitation to any adequate protections given,  
1163 for actual damages suffered together with attorney fees and  
1164 costs of the actual holder of the note in enforcing rights under  
1165 this subsection.

1166 (a) The actual holder of the note is not required to  
1167 pursue recovery against the maker of the note or any guarantor  
1168 thereof as a condition precedent to pursuing remedies under this  
1169 subsection.

1170 (b) This subsection does not limit or restrict the ability  
1171 of the actual holder of the note to pursue any other claims or  
1172 remedies it may have against the maker, the person who wrongly  
1173 claimed to be the holder, or any person who facilitated or  
1174 participated in the claim to the note or enforcement thereof.

1175 Section 17. Section 702.12, Florida Statutes, is created  
1176 to read:

1177 702.12 Attorney fee as sanctions for raising unsupported  
 1178 claims or defenses; exceptions; service of motions; damages for  
 1179 delay of litigation.—

1180 (1) In any mortgage foreclosure action, upon the court's  
 1181 initiative or motion of any party, the court shall award a  
 1182 reasonable attorney fee, including prejudgment interest, to be  
 1183 paid to the prevailing party in equal amounts by the losing  
 1184 party and the losing party's attorney on any claim or defense at  
 1185 any time during a civil proceeding or action in which the court  
 1186 finds that the losing party or the losing party's attorney knew  
 1187 or should have known that a claim or defense when initially  
 1188 presented to the court or at any time before trial:

1189 (a) Was not supported by the material facts necessary to  
 1190 establish the claim or defense; or

1191 (b) Would not be supported by the application of then-  
 1192 existing law to those material facts.

1193 (2) At any time in any civil proceeding or action in which  
 1194 the moving party proves by a preponderance of the evidence that  
 1195 any action taken by the opposing party, including, but not  
 1196 limited to, the filing of any pleading or part thereof, the  
 1197 assertion of or response to any discovery demand, the assertion  
 1198 of any claim or defense, or the response to any request by any  
 1199 other party, was taken primarily for the purpose of unreasonable  
 1200 delay, the court shall award damages to the moving party for its  
 1201 reasonable expenses incurred in obtaining the order, which may  
 1202 include attorney fees, and other loss resulting from the  
 1203 improper delay.

1204 (3) Notwithstanding subsections (1) and (2), monetary

1205 sanctions may not be awarded:

1206 (a) Under paragraph (1)(b) if the court determines that  
 1207 the claim or defense was initially presented to the court as a  
 1208 good faith argument for the extension, modification, or reversal  
 1209 of existing law or the establishment of new law, as it applied  
 1210 to the material facts, with a reasonable expectation of success.

1211 (b) Under paragraph (1)(a) or paragraph (1)(b) against the  
 1212 losing party's attorney if he or she has acted in good faith,  
 1213 based on the representations of his or her client as to the  
 1214 existence of those material facts.

1215 (c) Under paragraph (1)(b) against a represented party.

1216 (4) A motion by a party seeking sanctions under this  
 1217 section must be served but may not be filed with or presented to  
 1218 the court unless, within 21 days after service of the motion,  
 1219 the challenged paper, claim, defense, contention, allegation, or  
 1220 denial is not withdrawn or appropriately corrected.

1221 (5) The provisions of this section are supplemental to  
 1222 other sanctions or remedies available under law or under court  
 1223 rules.

1224 Section 18. This act does not apply to the foreclosure of  
 1225 liens on timeshare interests under the Timeshare Lien  
 1226 Foreclosure Act, part III of chapter 721, Florida Statutes.

1227 Section 19. The Division of Statutory Revision is directed  
 1228 to replace the phrase "the effective date of this act" wherever  
 1229 it occurs in this act with the date this act becomes a law.

1230 Section 20. This act is intended to be remedial in nature  
 1231 and shall apply to any action filed after the effective date of  
 1232 this act.

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Section 21. This act shall take effect October 1, 2012.