

By Senator Simmons

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1 A bill to be entitled
2 An act relating to actions for foreclosure; amending
3 s. 702.10, F.S.; deleting a restriction on a mortgagee
4 to request a court to order a mortgagor defendant to
5 make payments or to vacate the premises during an
6 action to foreclose on residential real estate; making
7 technical and grammatical changes; providing an
8 effective date.

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

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12 Section 1. Subsection (2) of section 702.10, Florida
13 Statutes, is amended to read:

14 702.10 Order to show cause; entry of final judgment of
15 foreclosure; payment during foreclosure.—

16 (2) In an action for foreclosure, ~~other than residential~~
17 ~~real estate~~, the mortgagee may request that the court enter an
18 order directing the mortgagor defendant to show cause why an
19 order to make payments during the pendency of the foreclosure
20 proceedings or an order to vacate the premises should not be
21 entered.

22 (a) The order shall:

23 1. Set the date and time for hearing on the order to show
24 cause. However, the date for the hearing may ~~shall~~ not be set
25 sooner than 20 days after the service of the order. If ~~Where~~
26 service is obtained by publication, the date for the hearing may
27 ~~shall~~ not be set sooner than 30 days after the first
28 publication.

29 2. Direct the time within which service of the order to

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30 show cause and the complaint shall be made upon the defendant.

31 3. State that the defendant has the right to file
32 affidavits or other papers at the time of the hearing and may
33 appear personally or by way of an attorney at the hearing.

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

39 5. Require the mortgagee to serve a copy of the order to
40 show cause on the mortgagor in the following manner:

41 a. If the mortgagor has been served with the complaint and
42 original process, service of the order may be made in the manner
43 provided in the Florida Rules of Civil Procedure.

44 b. If the mortgagor has not been served with the complaint
45 and original process, the order to show cause, together with the
46 summons and a copy of the complaint, shall be served on the
47 mortgagor in the same manner as provided by law for original
48 process.

49 (b) The right to be heard at the hearing to show cause is
50 waived if the defendant, after being served as provided by law
51 with an order to show cause, engages in conduct that clearly
52 shows that the defendant has relinquished the right to be heard
53 on that order. The defendant's failure to file defenses by a
54 motion or by a sworn or verified answer or to appear at the
55 hearing duly scheduled on the order to show cause presumptively
56 constitutes conduct that clearly shows that the defendant has
57 relinquished the right to be heard.

58 (c) If the court finds that the defendant has waived the

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59 right to be heard as provided in paragraph (b), the court may
60 promptly enter an order requiring payment in the amount provided
61 in paragraph (f) or an order to vacate.

62 (d) If the court finds that the mortgagor has not waived
63 the right to be heard on the order to show cause, the court
64 shall, at the hearing on the order to show cause, consider the
65 affidavits and other showings made by the parties appearing and
66 make a determination of the probable validity of the underlying
67 claim alleged against the mortgagor and the mortgagor's
68 defenses. If the court determines that the mortgagee is likely
69 to prevail in the foreclosure action, the court shall enter an
70 order requiring the mortgagor to make the payment described in
71 paragraph (e) to the mortgagee and provide for a remedy as
72 described in paragraph (f). However, the order shall be stayed
73 pending final adjudication of the claims of the parties if the
74 mortgagor files with the court a written undertaking executed by
75 a surety approved by the court in an amount equal to the unpaid
76 balance of the mortgage on the property, including all
77 principal, interest, unpaid taxes, and insurance premiums paid
78 by the mortgagee.

79 (e) If ~~In the event~~ the court enters an order requiring the
80 mortgagor to make payments to the mortgagee, payments shall be
81 payable at such intervals and in such amounts provided for in
82 the mortgage instrument before acceleration or maturity. The
83 obligation to make payments pursuant to any order entered under
84 this subsection shall commence from the date of the motion filed
85 under this section hereunder. The order shall be served upon the
86 mortgagor no later than 20 days before the date specified for
87 the first payment. The order may permit, but may ~~shall~~ not

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88 require, the mortgagee to take all appropriate steps to secure
89 the premises during the pendency of the foreclosure action.

90 (f) If ~~In the event~~ the court enters an order requiring
91 payments, the order shall also provide that the mortgagee is
92 ~~shall be~~ entitled to possession of the premises upon the failure
93 of the mortgagor to make the payment required in the order
94 unless at the hearing on the order to show cause the court finds
95 good cause to order some other method of enforcement of its
96 order.

97 (g) All amounts paid pursuant to this section shall be
98 credited against the mortgage obligation in accordance with the
99 terms of the loan documents; ; ~~provided,~~ however, ~~that any~~
100 payments made under this section do ~~shall~~ not constitute a cure
101 of any default or a waiver or any other defense to the mortgage
102 foreclosure action.

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

107 Section 2. This act shall take effect July 1, 2012.