

THE FLORIDA SENATE
2023 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/SB 286 — Legal Instruments

by Banking and Insurance Committee and Senator Powell

The bill amends laws relating to various legal instruments.

The bill defines the term “witness” in the statute authorizing electronic signatures, specifying that the term means a person whose electronic signature is affixed to an electronic record to attest or subscribe to a principal’s signature.

Regarding statutes governing foreclosures on mortgages and liens, the bill:

- Expands the scope of existing law on the finality of a clerk's deed following foreclosure sale to apply to any form of lien. Currently, only foreclosure of a mortgage is governed by the statute on finality of a clerk’s deed.
- Requires the foreclosure court to award attorney fees to a senior lienholder when a junior lienholder wrongfully tries to foreclose a senior lien. The bill also reaffirms the common law rule that a superior lien may not be foreclosed by a junior lienholder.
- Expands application of an assignment of rents to apply to a successor landowner and adds that regular association fees (e.g. homeowner association, condominium or co-op) may be paid from the rent collected. An assignment of rents (if authorized by the mortgage terms) is a temporary relief allowing a foreclosing lienholder to collect rents from the property during the pendency of the foreclosure case and use those rents for upkeep of the property.
- Expands application of an order to show cause procedure in foreclosure law to allow use of the procedure when a successor landowner is being foreclosed. The current order to show cause procedure compels the defendant to either resume making regular payments or vacate the premises, but is only applicable when the mortgagor still holds title to the property.

If approved by the Governor, or allowed to become law without the Governor’s signature, these provisions take effect July 1, 2023.

Vote: Senate 38-0; House 119-0