

By Senator Campbell

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A bill to be entitled
An act relating to judicial proceedings;
amending ss. 48.194, 49.021, F.S.; providing
that personal service on a party outside the
United States is unnecessary in certain
foreclosure proceedings; amending s. 702.01,
F.S.; providing that in mortgage foreclosure
proceedings a guardian ad litem must not be
appointed unless it appears in the public
records that a defendant is deceased or
incompetent or that the interest of minors or
heirs are involved; amending s. 687.06, F.S.;
providing that it is unnecessary for the court
to adjudge attorney's fees to be reasonable in
proceedings to enforce a note or mortgage when
the note or mortgage provides for the award of
reasonable attorney's fees; providing an
effective date.

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

Section 1. Subsection (5) is added to section 48.194,
Florida Statutes, to read:

48.194 Personal service outside state.--

(5) It is unnecessary to obtain personal service on a
party outside the United States when in-rem or quasi in-rem
relief is sought in a foreclosure proceeding as defined in s.
702.09. A party may choose to serve process under this section
without being required to show that personal service could not
be had.

1 Section 2. Section 49.021, Florida Statutes, is
2 amended to read:

3 49.021 Service of process by publication, upon whom.--

4 (1) Where personal service of process or, if
5 appropriate, service of process under s. 48.194 cannot be had,
6 service of process by publication may be had upon any party,
7 natural or corporate, known or unknown, including:

8 (a)~~(1)~~ Any known or unknown natural person, and, when
9 described as such, the unknown spouse, heirs, devisees,
10 grantees, creditors, or other parties claiming by, through,
11 under, or against any known or unknown person who is known to
12 be dead or is not known to be either dead or alive;

13 (b)~~(2)~~ Any corporation or other legal entity, whether
14 its domicile be foreign, domestic, or unknown, and whether
15 dissolved or existing, including corporations or other legal
16 entities not known to be dissolved or existing, and, when
17 described as such, the unknown assigns, successors in
18 interest, trustees, or any other party claiming by, through,
19 under, or against any named corporation or legal entity;

20 (c)~~(3)~~ Any group, firm, entity, or persons who operate
21 or do business, or have operated or done business, in this
22 state, under a name or title which includes the word
23 "corporation," "company," "incorporated," "inc.," or any
24 combination thereof, or under a name or title which indicates,
25 tends to indicate or leads one to think that the same may be a
26 corporation or other legal entity; and

27 (d)~~(4)~~ All claimants under any of such parties.

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29 Unknown parties may be proceeded against exclusively or
30 together with other parties.

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1 (2) It is unnecessary to obtain personal service on a
2 party outside the United States when in-rem or quasi in-rem
3 relief is sought in a foreclosure proceeding as defined in s.
4 702.09. A party may choose to serve process under this section
5 without being required to show that personal service could not
6 be had.

7 Section 3. Section 702.01, Florida Statutes, is
8 amended to read:

9 702.01 Equity.--All mortgages shall be foreclosed in
10 equity. In a mortgage foreclosure action, the court shall
11 sever for separate trial all counterclaims against the
12 foreclosing mortgagee. The foreclosure claim shall, if tried,
13 be tried to the court without a jury. A guardian ad litem must
14 not be appointed unless it affirmatively appears in the public
15 records in the county where the foreclosure process is
16 commenced that a defendant is deceased or incompetent or that
17 the interests of minors or heirs are involved.

18 Section 4. Section 687.06, Florida Statutes, is
19 amended to read:

20 687.06 Attorney's fee in enforcing nonusurious
21 contracts; proviso; insurance premiums; attorney's fee
22 provided in note.--This chapter shall not be so construed as
23 to prevent provision for the payment of such attorney's fees
24 as the court may determine in cases brought before the court
25 to be reasonable and just for legal services rendered in
26 enforcing nonusurious contracts, either at law or in equity.
27 This chapter shall not be construed so as to prohibit
28 mortgagees from contracting for or collecting premiums for
29 insurance actually issued on the property mortgaged, with the
30 usual loss payable or mortgage clause attached thereto;
31 provided further, that it shall not be necessary for the court

1 to adjudge an attorney's fee, provided in any note or other
2 instrument of writing, to be reasonable and just, when such
3 fee does not exceed 10 percent of the principal sum named in
4 said note, or other instrument in writing. When a note or
5 mortgage provides for the award of reasonable attorney's fees,
6 whether or not there is any reference to a specific percentage
7 in the note or mortgage, it is unnecessary for the court to
8 adjudge attorney's fees to be reasonable and just when such
9 fees do not exceed 3 percent of the original principal sum
10 stated in the note or other instrument, and such amount shall
11 be considered to be liquidated damages in any proceedings for
12 the enforcement of the note or mortgage.

13 Section 5. This act shall take effect July 1, 1999.

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15 SENATE SUMMARY

16 Provides that personal service on a party outside the
17 United States is unnecessary in certain foreclosure
18 proceedings. Provides that in mortgage foreclosure
19 proceedings a guardian ad litem must not be appointed
20 unless it appears in the public records that a defendant
21 is deceased or incompetent or that the interest of minors
22 or heirs are involved. Provides that it is unnecessary
23 for the court to adjudge attorney's fees to be reasonable
24 in proceedings to enforce a note or mortgage when the
25 note or mortgage provides for the award of reasonable
26 attorney's fees.
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