

By the Committee on Judiciary and Senator Campbell

308-1828-99

1                                   A bill to be entitled  
2           An act relating to judicial proceedings;  
3           amending ss. 48.194, 49.021, F.S.; providing  
4           that personal service on a party outside the  
5           United States may be made by publication in  
6           certain foreclosure proceedings; amending s.  
7           702.01, F.S.; providing that in mortgage  
8           foreclosure proceedings a guardian ad litem  
9           need not be appointed unless it appears in the  
10          public records or the plaintiff otherwise knows  
11          that a defendant is deceased or incompetent or  
12          that the interest of minors or heirs are  
13          involved; amending s. 687.06, F.S.; providing  
14          that it is unnecessary for the court to adjudge  
15          attorney's fees to be reasonable in proceedings  
16          to enforce a note or mortgage when the note or  
17          mortgage provides for the award of reasonable  
18          attorney's fees; providing an effective date.

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

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

24           48.194 Personal service outside state.--  
25           (5) It is unnecessary to obtain personal service under  
26 subsection (1) on a party outside the United States when  
27 in-rem or quasi in-rem relief is sought in a foreclosure  
28 proceeding as defined in s. 702.09.

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

31           49.021 Service of process by publication, upon whom.--

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

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

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

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

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

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26 Unknown parties may be proceeded against exclusively or  
27 together with other parties.

28           (2) It is unnecessary to obtain personal service under  
29 s. 48.194(1) on a party outside the United States when in-rem  
30 or quasi in-rem relief is sought in a foreclosure proceeding  
31 as defined in s. 702.09. A party may choose to serve process

1 under this section without being required to show that  
2 personal service under s. 48.194(1) could not be had. However,  
3 the service by publication must be mailed to the last known  
4 address.

5 Section 3. Section 702.01, Florida Statutes, is  
6 amended to read:

7 702.01 Equity.--All mortgages shall be foreclosed in  
8 equity. In a mortgage foreclosure action, the court shall  
9 sever for separate trial all counterclaims against the  
10 foreclosing mortgagee. The foreclosure claim shall, if tried,  
11 be tried to the court without a jury. A guardian ad litem need  
12 not be appointed unless it affirmatively appears in the public  
13 records in the county where the foreclosure process is  
14 commenced or the plaintiff otherwise knows that a defendant is  
15 deceased or incompetent or that the interests of minors or  
16 heirs are involved.

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

19 687.06 Attorney's fee in enforcing nonusurious  
20 contracts; proviso; insurance premiums; attorney's fee  
21 provided in note.--This chapter shall not be so construed as  
22 to prevent provision for the payment of such attorney's fees  
23 as the court may determine in cases brought before the court  
24 to be reasonable and just for legal services rendered in  
25 enforcing nonusurious contracts, either at law or in equity.  
26 This chapter shall not be construed so as to prohibit  
27 mortgagees from contracting for or collecting premiums for  
28 insurance actually issued on the property mortgaged, with the  
29 usual loss payable or mortgage clause attached thereto;  
30 provided further, that it shall not be necessary for the court  
31 to adjudge an attorney's fee, provided in any note or other

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

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

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
15 COMMITTEE SUBSTITUTE FOR  
16 SB 1506

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17 The CS requires that service of process by mail be attempted  
18 prior to service by publication in an in-rem or quasi in-rem  
foreclosure action.

19 The CS allows the court to forego appointing a guardian ad  
20 litem in a case where the plaintiff does not have knowledge  
21 nor do the county records reflect that the case involves a  
minor or heirs, a person who has been determined to be  
incompetent or someone who is deceased.

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