

By the Committee on Judiciary and Senator Campbell

308-2083A-00

1 A bill to be entitled
2 An act relating to mortgage-foreclosure
3 proceedings; amending s. 702.10, F.S.;
4 requiring hearing within 90 days from date of
5 service; providing that a hearing and an
6 adjudication that requested attorney's fees are
7 reasonable are not necessary under certain
8 conditions; providing an 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 (1) 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 (1) After a complaint in a foreclosure proceeding has
17 been filed, the mortgagee may request an order to show cause
18 for the entry of final judgment and the court shall
19 immediately review the complaint. If, upon examination of the
20 complaint, the court finds that the complaint is verified and
21 alleges a cause of action to foreclose on real property, the
22 court shall promptly issue an order directed to the defendant
23 to show cause why a final judgment of foreclosure should not
24 be entered.

25 (a) The order shall:

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

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1 publication. The hearing shall be held no later than 90 days
2 from the date of service.

3 2. Direct the time within which service of the order
4 to show cause and the complaint shall be made upon the
5 defendant.

6 3. State that the filing of defenses by a motion or by
7 a verified or sworn answer at or before the hearing to show
8 cause constitutes cause for the court not to enter the
9 attached final judgment.

10 4. State that the defendant has the right to file
11 affidavits or other papers at the time of the hearing and may
12 appear personally or by way of an attorney at the hearing.

13 5. State that, if the defendant files defenses by a
14 motion, the hearing time may be used to hear the defendant's
15 motion.

16 6. State that, if the defendant fails to appear at the
17 hearing to show cause or fails to file defenses by a motion or
18 by a verified or sworn answer or files an answer not
19 contesting the foreclosure, the defendant may be deemed to
20 have waived the right to a hearing and in such case the court
21 may enter a final judgment of foreclosure ordering the clerk
22 of the court to conduct a foreclosure sale.

23 7. State that when the mortgage provides for
24 reasonable attorney's fees and the requested attorney's fees
25 do not exceed 3 percent of the principal amount owed at the
26 time of filing the complaint, it is unnecessary for the court
27 to hold a hearing or adjudge the requested attorney's fees to
28 be reasonable.

29 ~~8.7.~~ Attach the final judgment of foreclosure the
30 court will enter, if the defendant waives the right to be
31 heard at the hearing on the order to show cause.

1 9.8. Require the mortgagee to serve a copy of the
2 order to show cause on the mortgagor in the following manner:

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

6 b. If the mortgagor has not been served with the
7 complaint and original process, the order to show cause,
8 together with the summons and a copy of the complaint, shall
9 be served on the mortgagor in the same manner as provided by
10 law for original process.

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12 Any final judgment of foreclosure entered under this
13 subsection shall be for in rem relief only. ~~Nothing in this~~
14 ~~subsection shall preclude the entry of a deficiency judgment~~
15 ~~where otherwise allowed by law.~~

16 (b) The right to be heard at the hearing to show cause
17 is waived if the defendant, after being served as provided by
18 law with an order to show cause, engages in conduct that
19 clearly shows that the defendant has relinquished the right to
20 be heard on that order. The defendant's failure to file
21 defenses by a motion or by a sworn or verified answer or to
22 appear at the hearing duly scheduled on the order to show
23 cause presumptively constitutes conduct that clearly shows
24 that the defendant has relinquished the right to be heard. If
25 a defendant files defenses by a motion or by a verified or
26 sworn answer at or before the hearing, such action constitutes
27 cause and shall preclude the entry of a final judgment at the
28 hearing to show cause.

29 (c) In a mortgage foreclosure proceeding, when a
30 default judgment has been entered against the mortgagor and
31 the note or mortgage provides for the award of reasonable

1 attorney's fees, it is not necessary for the court to hold a
2 hearing or adjudge the requested attorney's fees to be
3 reasonable if the fees do not exceed 3 percent of the
4 principal amount owed on the note or mortgage at the time of
5 filing, even if the note or mortgage does not specify the
6 percentage of the original amount that would be paid as
7 liquidated damages.

8 (d)~~(c)~~ If the court finds that the defendant has
9 waived the right to be heard as provided in paragraph (b), the
10 court shall ~~may~~ promptly enter a final judgment of
11 foreclosure. If the court finds that the defendant has not
12 waived the right to be heard on the order to show cause, the
13 court shall then determine whether there is cause not to enter
14 a final judgment of foreclosure. If the court finds that the
15 defendant has not shown cause, the court shall ~~may~~ promptly
16 enter a judgment of foreclosure.

17 Section 2. This act shall take effect upon becoming a
18 law.

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20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 SB 2594

23 Section 702.10, F.S., is amended to provide that a hearing on
24 the order to show cause must be held within 90 days of service
25 of the order on the defendant. The section is further amended
26 to provide notice to the defendant that if an answer that does
27 not contest the foreclosure is filed the court may determine
28 that the defendant waived the right to a hearing and the court
29 may enter a final judgment of foreclosure. Further, where a
30 default judgment has been entered and the note or mortgage
31 provides for reasonable attorney's fees, the court is not
required to hold a hearing or to adjudge the requested
attorney fees as reasonable where the fees do not exceed 3
percent of the principal amount owed at the time of filing.