

By Senator Campbell

33-339A-01

1                                   A bill to be entitled  
 2           An act relating to mortgage-foreclosure  
 3           proceedings; providing for expedited procedure  
 4           under certain conditions; providing that a  
 5           hearing and an adjudication that requested  
 6           attorney's fees are reasonable are not  
 7           necessary under certain conditions; providing  
 8           that attorney's fees when provided in a note or  
 9           mortgage constitute liquidated damages;  
 10          amending s. 702.10, F.S.; specifying  
 11          information to be included in an order to show  
 12          cause why a final judgment of foreclosure  
 13          should not be entered; providing that a hearing  
 14          on attorney's fees is unnecessary under certain  
 15          circumstances; requiring the court to enter a  
 16          final judgment of foreclosure under certain  
 17          circumstances; providing an effective date.

18

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

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21           Section 1. (1) In uncontested mortgage-foreclosure  
 22 proceedings in which the mortgagee waives the right to recoup  
 23 any deficiency judgment, the court shall enter final judgment  
 24 within 90 days from the date of the close of pleadings. For  
 25 the purposes of this subsection a mortgage-foreclosure  
 26 proceeding is uncontested if an answer not contesting the  
 27 foreclosure has been filed or a default judgment has been  
 28 entered by the court.

29

30           (2) In a mortgage foreclosure proceeding, when a  
 31 default judgment has been entered against the mortgagor and  
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 original  
4 principal amount stated in the note or mortgage, even if the  
5 note or mortgage does not specify the percentage of the  
6 original amount that would be paid as liquidated damages. Such  
7 fees constitute liquidated damages in any proceeding to  
8 enforce the note or mortgage. This section does not preclude a  
9 challenge to the reasonableness of the attorney's fees.

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

12 702.10 Order to show cause; entry of final judgment of  
13 foreclosure; payment during foreclosure.--

14 (1) After a complaint in a foreclosure proceeding has  
15 been filed, the mortgagee may request an order to show cause  
16 for the entry of final judgment and the court shall  
17 immediately review the complaint. If, upon examination of the  
18 complaint, the court finds that the complaint is verified and  
19 alleges a cause of action to foreclose on real property, the  
20 court shall promptly issue an order directed to the defendant  
21 to show cause why a final judgment of foreclosure should not  
22 be entered.

23 (a) The order shall:

24 1. Set the date and time for hearing on the order to  
25 show cause. However, the date for the hearing may ~~shall~~ not  
26 be set sooner than 20 days after the service of the order.  
27 When ~~where~~ service is obtained by publication, the date for  
28 the hearing may ~~shall~~ not be set sooner than 30 days after the  
29 first publication. The hearing must be held within 60 days  
30 after the date of service.

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

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

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

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

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

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

27           ~~8.7.~~ Attach the final judgment of foreclosure the  
28 court will enter, if the defendant waives the right to be  
29 heard at the hearing on the order to show cause.

30           ~~9.8.~~ Require the mortgagee to serve a copy of the  
31 order to show cause on the mortgagor in the following manner:

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

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

9  
10 Any final judgment of foreclosure entered under this  
11 subsection is ~~shall be~~ for in rem relief only. Nothing in this  
12 subsection shall preclude the entry of a deficiency judgment  
13 where otherwise allowed by law.

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

27 (c) In a mortgage foreclosure proceeding, when a  
28 default judgment has been entered against the mortgagor and  
29 the note or mortgage provides for the award of reasonable  
30 attorney's fees, it is unnecessary for the court to hold a  
31 hearing or adjudge the requested attorney's fees to be

1 reasonable if the fees do not exceed 3 percent of the  
2 principal amount owed on the note or mortgage at the time of  
3 filing, even if the note or mortgage does not specify the  
4 percentage of the original amount that would be paid as  
5 liquidated damages.

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

15 Section 3. This act shall take effect July 1, 2001.

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18 SENATE SUMMARY

19 Provides that in certain uncontested mortgage-foreclosure  
20 proceedings the court must enter final judgment within 90  
21 days from the date of the close of pleadings. Provides  
22 that when a default judgment has been entered against a  
23 mortgagor and the note or mortgage provides for the award  
24 of reasonable attorney's fees, the court need not hold a  
25 hearing or adjudge the requested fees to be reasonable if  
26 the fees do not exceed 3 percent of the original  
27 principal amount. Such attorney's fees constitute  
28 liquidated damages in any proceeding to enforce the note  
29 or mortgage. Specifies information to be included in an  
30 order to show cause why a final judgment of foreclosure  
31 should not be entered. Provides that a hearing on  
attorney's fees is unnecessary when a default judgment  
has been entered against a mortgagor under certain  
circumstances. Requires the court to enter a final  
judgment of foreclosure under certain circumstances.