

By the Committee on Banking and Insurance; and Senator Campbell

311-1699-01

1                                   A bill to be entitled  
2           An act relating to mortgages; amending s.  
3           697.07, F.S.; providing that rents in the  
4           control of a mortgagor are subject to  
5           assignment of rents; correcting provisions  
6           relating to assignment of rents; providing for  
7           expedited procedure under certain conditions;  
8           providing that a hearing and an adjudication  
9           that requested attorney's fees are reasonable  
10          are not necessary under certain conditions;  
11          providing that attorney's fees when provided in  
12          a note or mortgage constitute liquidated  
13          damages; amending s. 702.10, F.S.; specifying  
14          information to be included in an order to show  
15          cause why a final judgment of foreclosure  
16          should not be entered; providing that a hearing  
17          on attorney's fees is unnecessary under certain  
18          circumstances; requiring the court to enter a  
19          final judgment of foreclosure under certain  
20          circumstances; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24           Section 1. Section 697.07, Florida Statutes, is  
25 amended to read:

26           697.07 Assignment of rents.--

27           (1) A mortgage or separate instrument may provide for  
28 an assignment of rents of real property or any interest  
29 therein as security for repayment of an indebtedness.

30           (2) If such an assignment is made, the mortgagee shall  
31 hold a lien on the rents, and the lien created by the

1 assignment shall be perfected and effective against third  
2 parties upon recordation of the mortgage or separate  
3 instrument in the public records of the county in which the  
4 real property is located, according to law.

5 (3) Unless otherwise agreed to in writing by the  
6 mortgagee and mortgagor, the assignment of rents shall be  
7 enforceable upon the mortgagor's default and written demand  
8 for the rents made by the mortgagee to the mortgagor,  
9 whereupon the mortgagor shall turn over all rents in the  
10 possession or control of the mortgagor at the time of the  
11 written demand or collected thereafter (the "collected rents")  
12 to the mortgagee less payment of any expenses authorized by  
13 the mortgagee in writing.

14 (4) Upon application by the mortgagee or mortgagor, in  
15 a foreclosure action, and notwithstanding any asserted  
16 defenses or counterclaims of the mortgagor, a court of  
17 competent jurisdiction, pending final adjudication of any  
18 action, may require the mortgagor to deposit the collected  
19 rents into the registry of the court, or in such other  
20 depository as the court may designate. However, the court may  
21 authorize the use of the collected rents, before deposit into  
22 the registry of the court or other depository, to:

23 (a) Pay the reasonable expenses solely to protect,  
24 preserve, and operate the real property, including, without  
25 limitation, real estate taxes and insurance;

26 (b) Escrow sums required by the mortgagee ~~mortgagor~~ or  
27 separate assignment of rents ~~assignment-of-rents~~ instrument;  
28 and

29 (c) Make payments to the mortgagee.  
30  
31

1 The court shall require the mortgagor to account to the court  
2 and the mortgagee for the receipt and use of the collected  
3 rents and may also impose other conditions on the mortgagor's  
4 use of the collected rents.

5 (5) Nothing herein shall preclude the court from  
6 granting any other appropriate relief regarding the collected  
7 rents pending final adjudication of the action. The  
8 undisbursed collected rents remaining in the possession of the  
9 mortgagor or in the registry of the court, or in such other  
10 depository as ordered by the court, shall be disbursed at the  
11 conclusion of the action in accordance with the court's final  
12 judgment or decree.

13 (6) The court shall expedite the hearing on the  
14 application by the mortgagee or mortgagor to enforce the its  
15 assignment of rents. The procedures authorized by this  
16 statute are in addition to any other rights or remedies of the  
17 mortgagee or mortgagor under the mortgage, separate assignment  
18 of rents ~~assignment-of-rents~~ instrument, promissory note, at  
19 law, or in equity.

20 (7) Nothing herein shall alter the lien priorities,  
21 rights, or interests among mortgagees or other lienholders or  
22 alter the rights of the mortgagee under the mortgage, separate  
23 assignment of rents ~~assignment-of-rents~~ instrument, at law or  
24 in equity, concerning rents collected before the written  
25 demand by the mortgagee. A mortgagee's enforcement of its  
26 assignment ~~assignments~~ of rents under this statute shall not  
27 operate to transfer title to any rents not received by the  
28 mortgagee.

29 (8) Any moneys received by the mortgagee pursuant to  
30 this statute shall be applied by the mortgagee in accordance  
31 with the mortgage, separate assignment of rents

1 ~~assignment of rents~~ instrument, or promissory note, and the  
2 mortgagee shall account to the mortgagor for such application.

3       Section 2. (1) In uncontested mortgage-foreclosure  
4 proceedings in which the mortgagee waives the right to recoup  
5 any deficiency judgment, the court shall enter final judgment  
6 within 90 days from the date of the close of pleadings. For  
7 the purposes of this subsection a mortgage-foreclosure  
8 proceeding is uncontested if an answer not contesting the  
9 foreclosure has been filed or a default judgment has been  
10 entered by the court.

11       (2) In a mortgage foreclosure proceeding, when a  
12 default judgment has been entered against the mortgagor and  
13 the note or mortgage provides for the award of reasonable  
14 attorney's fees, it is not necessary for the court to hold a  
15 hearing or adjudge the requested attorney's fees to be  
16 reasonable if the fees do not exceed 3 percent of the  
17 principal amount owed at the time of filing the complaint,  
18 even if the note or mortgage does not specify the percentage  
19 of the original amount that would be paid as liquidated  
20 damages. Such fees constitute liquidated damages in any  
21 proceeding to enforce the note or mortgage. This section does  
22 not preclude a challenge to the reasonableness of the  
23 attorney's fees.

24       Section 3. Subsection (1) of section 702.10, Florida  
25 Statutes, is amended to read:

26       702.10 Order to show cause; entry of final judgment of  
27 foreclosure; payment during foreclosure.--

28       (1) After a complaint in a foreclosure proceeding has  
29 been filed, the mortgagee may request an order to show cause  
30 for the entry of final judgment and the court shall  
31 immediately review the complaint. If, upon examination of the

1 complaint, the court finds that the complaint is verified and  
2 alleges a cause of action to foreclose on real property, the  
3 court shall promptly issue an order directed to the defendant  
4 to show cause why a final judgment of foreclosure should not  
5 be entered.

6 (a) The order shall:

7 1. Set the date and time for hearing on the order to  
8 show cause. However, the date for the hearing may ~~shall~~ not  
9 be set sooner than 20 days after the service of the order.  
10 When ~~where~~ service is obtained by publication, the date for  
11 the hearing may ~~shall~~ not be set sooner than 30 days after the  
12 first publication. The hearing must be held within 60 days  
13 after the date of service.

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

17 3. State that the filing of defenses by a motion or by  
18 a verified or sworn answer at or before the hearing to show  
19 cause constitutes cause for the court not to enter the  
20 attached final judgment.

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

24 5. State that, if the defendant files defenses by a  
25 motion, the hearing time may be used to hear the defendant's  
26 motion.

27 6. State that, if the defendant fails to appear at the  
28 hearing to show cause or fails to file defenses by a motion or  
29 by a verified or sworn answer or files an answer not  
30 contesting the foreclosure, the defendant may be considered  
31 ~~deemed~~ to have waived the right to a hearing and in such case

1 the court may enter a final judgment of foreclosure ordering  
2 the clerk of the court to conduct a foreclosure sale.

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

9 8.7. Attach the final judgment of foreclosure the  
10 court will enter, if the defendant waives the right to be  
11 heard at the hearing on the order to show cause.

12 9.8. Require the mortgagee to serve a copy of the  
13 order to show cause on the mortgagor in the following manner:

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

17 b. If the mortgagor has not been served with the  
18 complaint and original process, the order to show cause,  
19 together with the summons and a copy of the complaint, shall  
20 be served on the mortgagor in the same manner as provided by  
21 law for original process.

22  
23 Any final judgment of foreclosure entered under this  
24 subsection is ~~shall be~~ for in rem relief only. Nothing in this  
25 subsection shall preclude the entry of a deficiency judgment  
26 where otherwise allowed by law.

27 (b) The right to be heard at the hearing to show cause  
28 is waived if the defendant, after being served as provided by  
29 law with an order to show cause, engages in conduct that  
30 clearly shows that the defendant has relinquished the right to  
31 be heard on that order. The defendant's failure to file

1 defenses by a motion or by a sworn or verified answer or to  
2 appear at the hearing duly scheduled on the order to show  
3 cause presumptively constitutes conduct that clearly shows  
4 that the defendant has relinquished the right to be heard. If  
5 a defendant files defenses by a motion or by a verified or  
6 sworn answer at or before the hearing, such action constitutes  
7 cause and precludes ~~shall preclude~~ the entry of a final  
8 judgment at the hearing to show cause.

9 (c) In a mortgage foreclosure proceeding, when a  
10 default judgment has been entered against the mortgagor and  
11 the note or mortgage provides for the award of reasonable  
12 attorney's fees, it is unnecessary for the court to hold a  
13 hearing or adjudge the requested attorney's fees to be  
14 reasonable if the fees do not exceed 3 percent of the  
15 principal amount owed on the note or mortgage at the time of  
16 filing, even if the note or mortgage does not specify the  
17 percentage of the original amount that would be paid as  
18 liquidated damages.

19 (d)(c) If the court finds that the defendant has  
20 waived the right to be heard as provided in paragraph (b), the  
21 court shall ~~may~~ promptly enter a final judgment of  
22 foreclosure. If the court finds that the defendant has not  
23 waived the right to be heard on the order to show cause, the  
24 court shall then determine whether there is cause not to enter  
25 a final judgment of foreclosure. If the court finds that the  
26 defendant has not shown cause, the court shall ~~may~~ promptly  
27 enter a judgment of foreclosure.

28 Section 4. This act shall take effect July 1, 2001.  
29  
30  
31

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 890

Amends s. 702.10, F.S., which provides an expedited process for mortgage foreclosure proceedings, to require, rather than allow, the court to promptly enter a judgment of foreclosure, if the defendant has not shown cause not to enter a final judgment.