

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 that the petitioner or
21 petitioner's attorney is responsible for
22 placing the legal advertisement, publication,
23 or notice of a foreclosure proceeding;
24 providing an effective date.

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

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28 Section 1. Section 697.07, Florida Statutes, is
29 amended to read:

30 697.07 Assignment of rents.--
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1 (1) A mortgage or separate instrument may provide for
2 an assignment of rents of real property or any interest
3 therein as security for repayment of an indebtedness.

4 (2) If such an assignment is made, the mortgagee shall
5 hold a lien on the rents, and the lien created by the
6 assignment shall be perfected and effective against third
7 parties upon recordation of the mortgage or separate
8 instrument in the public records of the county in which the
9 real property is located, according to law.

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

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

28 (a) Pay the reasonable expenses solely to protect,
29 preserve, and operate the real property, including, without
30 limitation, real estate taxes and insurance;

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1 (b) Escrow sums required by the mortgagee ~~mortgagor~~ or
2 separate assignment of rents ~~assignment-of-rents~~ instrument;
3 and

4 (c) Make payments to the mortgagee.
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6 The court shall require the mortgagor to account to the court
7 and the mortgagee for the receipt and use of the collected
8 rents and may also impose other conditions on the mortgagor's
9 use of the collected rents.

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

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

25 (7) Nothing herein shall alter the lien priorities,
26 rights, or interests among mortgagees or other lienholders or
27 alter the rights of the mortgagee under the mortgage, separate
28 assignment of rents ~~assignment-of-rents~~ instrument, at law or
29 in equity, concerning rents collected before the written
30 demand by the mortgagee. A mortgagee's enforcement of its
31 assignment ~~assignments~~ of rents under this statute shall not

1 operate to transfer title to any rents not received by the
2 mortgagee.

3 (8) Any moneys received by the mortgagee pursuant to
4 this statute shall be applied by the mortgagee in accordance
5 with the mortgage, separate assignment of rents
6 ~~assignment of rents~~ instrument, or promissory note, and the
7 mortgagee shall account to the mortgagor for such application.

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

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

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

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1 702.10 Order to show cause; entry of final judgment of
2 foreclosure; payment during foreclosure.--

3 (1) After a complaint in a foreclosure proceeding has
4 been filed, the mortgagee may request an order to show cause
5 for the entry of final judgment and the court shall
6 immediately review the complaint. If, upon examination of the
7 complaint, the court finds that the complaint is verified and
8 alleges a cause of action to foreclose on real property, the
9 court shall promptly issue an order directed to the defendant
10 to show cause why a final judgment of foreclosure should not
11 be entered.

12 (a) The order shall:

13 1. Set the date and time for hearing on the order to
14 show cause. However, the date for the hearing may ~~shall~~ not
15 be set sooner than 20 days after the service of the order.
16 When ~~where~~ service is obtained by publication, the date for
17 the hearing may ~~shall~~ not be set sooner than 30 days after the
18 first publication. The hearing must be held within 60 days
19 after the date of service. Failure to hold the hearing within
20 such time does not affect the validity of the order to show
21 cause or the jurisdiction of the court to issue subsequent
22 orders.

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

26 3. State that the filing of defenses by a motion or by
27 a verified or sworn answer at or before the hearing to show
28 cause constitutes cause for the court not to enter the
29 attached final judgment.

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

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

7 6. State that, if the defendant fails to appear at the
8 hearing to show cause or fails to file defenses by a motion or
9 by a verified or sworn answer or files an answer not
10 contesting the foreclosure, the defendant may be considered
11 ~~deemed~~ to have waived the right to a hearing and in such case
12 the court may enter a final judgment of foreclosure ordering
13 the clerk of the court to conduct a foreclosure sale.

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

20 8.7. Attach the final judgment of foreclosure the
21 court will enter, if the defendant waives the right to be
22 heard at the hearing on the order to show cause.

23 9.8. Require the mortgagee to serve a copy of the
24 order to show cause on the mortgagor in the following manner:

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

28 b. If the mortgagor has not been served with the
29 complaint and original process, the order to show cause,
30 together with the summons and a copy of the complaint, shall
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1 be served on the mortgagor in the same manner as provided by
2 law for original process.

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4 Any final judgment of foreclosure entered under this
5 subsection is ~~shall be~~ for in rem relief only. Nothing in this
6 subsection shall preclude the entry of a deficiency judgment
7 where otherwise allowed by law.

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

21 (c) In a mortgage foreclosure proceeding, when a
22 default judgment has been entered against the mortgagor and
23 the note or mortgage provides for the award of reasonable
24 attorney's fees, it is unnecessary for the court to hold a
25 hearing or adjudge the requested attorney's fees to be
26 reasonable if the fees do not exceed 3 percent of the
27 principal amount owed on the note or mortgage at the time of
28 filing, even if the note or mortgage does not specify the
29 percentage of the original amount that would be paid as
30 liquidated damages.

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

10 Section 4. Whenever a legal advertisement,
11 publication, or notice relating to a foreclosure proceeding is
12 required to be placed in a newspaper, it is the responsibility
13 of the petitioner or petitioner's attorney to place such
14 advertisement, publication, or notice. The advertisement,
15 publication, or notice shall be placed directly by the
16 attorney for the petitioner, by the petitioner if acting pro
17 se, or by the clerk of the court.

18 Section 5. This act shall take effect July 1, 2001.
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