

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 language
6 regarding 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 certain
17 notices be published in a newspaper; providing
18 that a hearing on attorney's fees is
19 unnecessary under certain circumstances;
20 requiring the court to enter a final judgment
21 of foreclosure under certain circumstances;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Section 697.07, Florida Statutes, is
27 amended to read:

28 697.07 Assignment of rents.--

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

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

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

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

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

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

31 (c) Make payments to the mortgagee.

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

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

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

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

30 (8) Any moneys received by the mortgagee pursuant to
31 this statute shall be applied by the mortgagee in accordance

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

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

12 (2) In a mortgage foreclosure proceeding, when a
13 default judgment is entered against the mortgagor and the note
14 or mortgage provides for the award of reasonable attorney's
15 fees, it is not necessary for the court to hold a hearing or
16 adjudge the requested attorney's fees to be reasonable if the
17 fees do not exceed 3 percent of the principal amount owed at
18 the time of filing the complaint, even if the note or mortgage
19 does not specify the percentage of the original amount that
20 would be paid as liquidated damages. Such fees constitute
21 liquidated damages in any proceeding to enforce the note or
22 mortgage. This subsection shall not preclude a challenge to
23 the reasonableness of the 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. Failure to hold the hearing within
14 such time shall affect neither the validity of the order to
15 show cause nor the jurisdiction of the court to issue
16 subsequent orders.

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

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

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

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

30 6. State that, if the defendant fails to appear at the
31 hearing to show cause or fails to file defenses by a motion or

1 by a verified or sworn answer or files an answer not
2 contesting the foreclosure, the defendant may be considered
3 ~~deemed~~ to have waived the right to a hearing and in such case
4 the court may enter a final judgment of foreclosure ordering
5 the clerk of the court to conduct a foreclosure sale.

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

12 ~~8.7.~~ Attach the final judgment of foreclosure the
13 court will enter, if the defendant waives the right to be
14 heard at the hearing on the order to show cause.

15 ~~9.8.~~ Require the mortgagee to serve a copy of the
16 order to show cause on the mortgagor in the following manner:

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

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

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26 Any final judgment of foreclosure entered under this
27 subsection is ~~shall be~~ for in rem relief only. Nothing in
28 this subsection shall preclude the entry of a deficiency
29 judgment where otherwise allowed by law. Whenever a legal
30 advertisement, publication, or notice relating to a
31 foreclosure proceeding is required to be placed in a

1 newspaper, such advertisement, publication, or notice shall be
2 placed directly by the attorney for the party, by the party if
3 it is acting pro se, or by the clerk of the court.

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

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

27 ~~(d)(c)~~ If the court finds that the defendant has
28 waived the right to be heard as provided in paragraph (b), the
29 court shall ~~may~~ promptly enter a final judgment of
30 foreclosure. If the court finds that the defendant has not
31 waived the right to be heard on the order to show cause, the

1 court shall then determine whether there is cause not to enter
2 a final judgment of foreclosure. If the court finds that the
3 defendant has not shown cause, the court shall ~~may~~ promptly
4 enter a judgment of foreclosure.

5 Section 4. This act shall take effect July 1, 2001.
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