

1 A bill to be entitled
2 An act relating to residential foreclosure proceedings;
3 amending s. 45.031, F.S.; specifying an additional
4 judicial sale notice-of-sale requirement for collecting
5 surplus funds; creating s. 45.0311, F.S.; providing
6 requirements and procedures for disbursement of surplus
7 funds from a judicial sale; authorizing a court to
8 determine reasonable attorney fees for motions to disburse
9 surplus funds; providing a right of certain parties to
10 petition a court to set aside certain deeds or assignments
11 under certain circumstances; creating s. 48.184, F.S.;
12 specifying a required notice form to be served with a
13 summons and complaint in actions to foreclose an interest
14 in residential real estate; requiring the notice to be
15 included in the service of process; requiring certain
16 verification of service; amending s. 48.21, F.S.;
17 specifying an additional notice requirement for return of
18 service of process forms made for foreclosures of
19 residential real estate; authorizing a clerk of court to
20 charge a fee for attempts of service of process; requiring
21 the clerk of court to use fee proceeds for certain public
22 education purposes; amending s. 49.08, F.S.; requiring
23 certain notices of action to contain an additional notice
24 of potential surplus and application procedures
25 information; amending s. 57.105, F.S.; entitling certain
26 parties to recover all fees and costs incurred in certain
27 surplus funds actions; providing for the court to
28 determine reasonable attorney fees in such actions;

29 creating s. 501.2078, F.S.; providing definitions;
30 providing a civil penalty for knowingly using unfair or
31 deceptive homeowner victimization methods, acts, or
32 practices in residential foreclosure proceedings;
33 specifying a time period during which companies or
34 attorneys may not contact a homeowner for certain
35 purposes; specifying higher priority of an order of
36 restitution or reimbursement over imposition of a civil
37 penalty; providing for deposit of civil penalties into the
38 Legal Affairs Revolving Trust Fund of the Department of
39 Legal Affairs; allocating such funds for certain purpose;
40 creating s. 689.251, F.S.; requiring documents
41 transferring an interest in real estate to disclose
42 certain information; authorizing a seller to void a
43 transaction under certain circumstances; requiring the
44 seller to repay certain amounts to a purchaser, minus
45 certain amounts, under such circumstances; amending s.
46 702.065, F.S.; prohibiting a court or clerk of court from
47 entering a default or default judgment against a mortgagor
48 in a residential foreclosure proceeding if a return of
49 service does not contain a required notice; amending s.
50 702.10, F.S.; including a reference to a required
51 residential foreclosure proceeding notice in certain
52 orders to show cause in final judgment of foreclosure
53 entries; providing an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:
56

57 Section 1. Paragraph (f) is added to subsection (1) of
 58 section 45.031, Florida Statutes, to read:

59 45.031 Judicial sales procedure.--In any sale of real or
 60 personal property under an order or judgment, the following
 61 procedure may be followed as an alternative to any other sale
 62 procedure if so ordered by the court:

63 (1) SALE BY CLERK.--In the order or final judgment, the
 64 court shall direct the clerk to sell the property at public sale
 65 on a specified day that shall be not less than 20 days or more
 66 than 35 days after the date thereof, on terms and conditions
 67 specified in the order or judgment. A sale may be held more than
 68 35 days after the date of final judgment or order if the
 69 plaintiff or plaintiff's attorney consents to such time. Any
 70 sale held more than 35 days after the final judgment or order
 71 shall not affect the validity or finality of the final judgment
 72 or order or any sale held pursuant thereto. Notice of sale shall
 73 be published once a week for 2 consecutive weeks in a newspaper
 74 of general circulation, as defined in chapter 50, published in
 75 the county where the sale is to be held. The second publication
 76 shall be at least 5 days before the sale. The notice shall
 77 contain: (f) If there are surplus proceeds, the procedure
 78 required for collecting the surplus proceeds, or the phone
 79 number for or the website at which the procedure will be
 80 explained.

81
 82 The clerk shall receive a service charge of up to \$60 for
 83 services in making, recording, and certifying the sale and title
 84 that shall be assessed as costs. The court, in its discretion,

85 may enlarge the time of the sale. Notice of the changed time of
86 sale shall be published as provided herein.

87 Section 2. Section 45.0311, Florida Statutes, is created
88 to read:

89 45.0311 Disbursement of surplus funds.--

90 (1) Any person claiming a right to disbursement of
91 proceeds from a judicial sale, other than the original
92 mortgagor, shall produce a deed satisfying the requirements of
93 s. 689.251, if applicable, or an assignment of the proceeds from
94 the original mortgagor, or homeowner if not the original
95 mortgagor, executed with the formality of a deed and
96 acknowledged and conspicuously including the assessed value of
97 the property, a disclosure that the assessed value may be lower
98 than the actual value of the property, the approximate amount of
99 any debt encumbering the property, the approximate amount of any
100 equity in the property, and a statement that the assignor does
101 not need an attorney or other representative to recover the
102 surplus funds. The deed or assignment shall conspicuously set
103 forth all forms of consideration paid for the rights to the
104 property or the assignment of the rights to any surplus funds.

105 (2) The court shall determine reasonable attorney fees
106 charged for a motion to disburse surplus funds.

107 (3) A party who has executed an assignment or deed that
108 does not conform with the requirements of this section or s.
109 689.251 has the right to petition the court presiding over the
110 foreclosure proceeding to set aside the nonconforming deed or
111 assignment.

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112 Section 3. Section 48.184, Florida Statutes, is created to
 113 read:

114 48.184 Notice form for actions to foreclose an interest in
 115 residential real estate.--In any action to foreclose an interest
 116 in real estate, a notice, in substantially the following form
 117 and printed on orange paper, shall be served with the summons
 118 and complaint and shall be included in the service of process.
 119 The return of service shall verify that such notice was served
 120 with the summons and the complaint:

121
 122 (Caption of Action)

123 ATTENTION
 124 TO ALL NAMED PARTIES LISTED
 125 IN THIS FORECLOSURE LAWSUIT:

126
 127 A FORECLOSURE ACTION HAS BEEN FILED AGAINST YOU FOR FAILURE TO
 128 MAKE TIMELY MORTGAGE PAYMENTS ON YOUR RESIDENCE. IF A JUDGMENT
 129 OF FORECLOSURE IS ENTERED AND YOUR PROPERTY IS SOLD AT PUBLIC
 130 AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE THAT
 131 BELONGS TO YOU AFTER PAYMENT OF LIENHOLDERS.

132
 133 YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE
 134 A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO
 135 ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY
 136 MONEY TO WHICH YOU ARE ENTITLED.

137
 138 PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT INFORMATION
 139 FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE SALE TO SEE

140 IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE
 141 CLERK HAS IN THE REGISTRY OF THE COURT.

143 IF THERE IS ADDITIONAL MONEY, YOU MAY ASK THE COURT TO INSTRUCT
 144 THE CLERK TO GIVE YOU THE MONEY THAT BELONGS TO YOU.

146 IT IS POSSIBLE THAT YOU WILL BE CONTACTED BY COMPANIES OR
 147 LAWYERS OFFERING TO HELP YOU COLLECT THIS MONEY OR OFFERING TO
 148 HELP YOU WITH THE FORECLOSURE BY BUYING YOUR HOUSE, LENDING YOU
 149 MONEY, OR TAKING AN ASSIGNMENT. THESE COMPANIES OR LAWYERS MAY
 150 NOT CONTACT YOU UNTIL AFTER 30 DAYS AFTER YOU RECEIVED THIS
 151 NOTICE. IF YOU WANT TO CHECK WHETHER THE PERSON OR COMPANY
 152 CALLING YOU HAS A COMPLAINT HISTORY WITH THE STATE, YOU MAY CALL
 153 [INSERT CONTACT INFORMATION, INCLUDING ANY HOT OR WEBSITE].
 154 [PLEASE CALL THE ATTORNEY GENERAL'S HOTLINE AT 1-866-9-NO-SCAM
 155 (966-7226) OR GO TO WWW.MYFLORIDALEGAL.COM.]

157 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
 158 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
 159 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
 160 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
 161 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
 162 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
 163 PROPERTY WITHOUT THE PROPER INFORMATION.

164 Section 4. Section 48.21, Florida Statutes, is amended to
 165 read:

166 48.21 Return of execution of process.--Each person who
 167 effects service of process shall note on a return-of-service

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168 form attached thereto, the date and time when it comes to hand,
169 the date and time when it is served, the manner of service, the
170 name of the person on whom it was served and, if the person is
171 served in a representative capacity, the position occupied by
172 the person. A failure to state the foregoing facts invalidates
173 the service, but the return is amendable to state the truth at
174 any time on application to the court from which the process
175 issued. On amendment, service is as effective as if the return
176 had originally stated the omitted facts. A failure to state all
177 the facts in the return shall subject the person effecting
178 service to a fine not exceeding \$10, in the court's discretion.
179 When service of process is made for foreclosure of an interest
180 in residential real estate, the return of service form shall
181 include a confirmation that the notice required by s. 48.184 is
182 included in the service of process. The clerk of court may
183 charge a fee of \$25 for each attempt of service upon a
184 homeowner. The clerk shall use the proceeds of such fee solely
185 for purposes of educating the public as to the rights of
186 homeowners regarding foreclosure proceedings.

187 Section 5. Subsection (5) is added to section 49.08,
188 Florida Statutes, to read:

189 49.08 Notice of action, form.--On filing the sworn
190 statement, and otherwise complying with the foregoing
191 requirements, the plaintiff is entitled to have issued by the
192 clerk or judge, not later than 60 days after filing the sworn
193 statement, a notice of action which notice shall set forth:

194 (5) Notice of a potential surplus and information advising
 195 the defendant of the procedures to apply for the surplus, in
 196 substantially the following form:

197
 198 If you are the owner of real estate that is being
 199 foreclosed, there may be money owed to you after the
 200 sale. You may contact [insert contact information for
 201 clerk's office until hotline and website are set up]
 202 for information on what you need to do to get the
 203 funds. You do not need to hire an attorney or other
 204 representative to get this money.

205
 206 Section 6. Subsection (8) is added to section 57.105,
 207 Florida Statutes, to read:

208 57.105 Attorney's fee; sanctions for raising unsupported
 209 claims or defenses; service of motions; damages for delay of
 210 litigation.--

211 (8) In any action under s. 45.0311(3) the mortgagor, or
 212 original homeowner if not the same as the mortgagor, shall be
 213 entitled to recover all fees and costs incurred in connection
 214 with such action. The court shall determine reasonable attorney
 215 fees in such actions.

216 Section 7. Section 501.2078, Florida Statutes, is created
 217 to read:

218 501.2078 Violations involving individual homeowners during
 219 the course of residential foreclosure proceedings; civil
 220 penalties.--

221 (1) As used in this section:

222 (a) "Residential foreclosure proceeding" means any action
 223 in a circuit court of this state in which a party seeks to
 224 foreclose on a mortgage and sell the residential property
 225 covered by the mortgage.

226 (b) "Homeowner" means any individual who is the owner of
 227 the property subject to a residential foreclosure proceeding.

228 (2)(a) Any person who willfully uses, or has willfully
 229 used, a method, act, or practice in violation of this part,
 230 which method, act, or practice victimizes or attempts to
 231 victimize homeowners during the course of a residential
 232 foreclosure proceeding, and in committing such violation knew or
 233 should have known that such conduct was unfair or deceptive, is
 234 liable for a civil penalty of not more than \$15,000 for each
 235 such violation.

236 (b) Any company or attorney desiring to contact a
 237 homeowner to offer to help the homeowner collect any surplus
 238 money or to help with a foreclosure by buying the homeowner's
 239 house, lend the homeowner money, or take an assignment may not
 240 contact the homeowner until after 30 days after the homeowner
 241 receives the notice provided in s. 48.184. Any such contact
 242 before such 30-day period has elapsed constitutes a violation of
 243 this part, subject to the penalty provided in paragraph (a).

244 (3) Any order of restitution or reimbursement based on a
 245 violation of this part committed against a homeowner in a
 246 residential foreclosure proceeding has priority over the
 247 imposition of any civil penalty for such violation pursuant to
 248 this section.

249 (4) Civil penalties collected pursuant to this section
 250 shall be deposited into the Legal Affairs Revolving Trust Fund
 251 of the Department of Legal Affairs and allocated solely to the
 252 Department of Legal Affairs for the purpose of preparing and
 253 distributing consumer education materials, programs, and
 254 seminars to benefit homeowners in residential foreclosure
 255 proceedings or to further enforcement efforts.

256 Section 8. Section 689.251, Florida Statutes, is created
 257 to read:

258 689.251 Transfer of real estate subject to default.--

259 (1) Any document prepared by a purchaser of an interest in
 260 real property purporting to transfer such interest as described
 261 in s. 697.08(1) must disclose, in the instrument itself or in a
 262 separate writing executed by the seller and the purchaser with
 263 the formality of a deed and acknowledged by a notary public or
 264 civil notary of this state, the assessed value of the property,
 265 that the assessed value may be lower than the actual value of
 266 the property, the approximate amount of any debt encumbering the
 267 property, and the approximate amount of any equity in the
 268 property. The deed or assignment shall conspicuously set forth
 269 any and all forms of consideration paid for the rights to the
 270 property or the assignment of the rights to any surplus funds.

271 (2) If such document fails to comply with the requirements
 272 of subsection (1), the seller may void the transaction. If the
 273 seller voids the transaction, the seller shall repay any
 274 consideration paid by the purchaser to the seller, less,
 275 however, all costs incurred by the seller as a result of the

276 purchaser's failure to comply with subsection (1), including
 277 attorney's fees and costs.

278 Section 9. Subsection (3) is added to section 702.065,
 279 Florida Statutes, to read:

280 702.065 Final judgment in uncontested proceedings where
 281 deficiency judgment waived; attorney's fees when default
 282 judgment entered.--

283 (3) In a residential foreclosure proceeding, a court or a
 284 clerk of the court may not enter a default or default judgment
 285 against the mortgagor if the return of service does not include
 286 evidence that the notice required by s. 48.184 was served on the
 287 mortgagor.

288 Section 10. Paragraph (a) of subsection (1) of section
 289 702.10, Florida Statutes, is amended to read:

290 702.10 Order to show cause; entry of final judgment of
 291 foreclosure; payment during foreclosure.--

292 (1) After a complaint in a foreclosure proceeding has been
 293 filed, the mortgagee may request an order to show cause for the
 294 entry of final judgment and the court shall immediately review
 295 the complaint. If, upon examination of the complaint, the court
 296 finds that the complaint is verified and alleges a cause of
 297 action to foreclose on real property, the court shall promptly
 298 issue an order directed to the defendant to show cause why a
 299 final judgment of foreclosure should not be entered.

300 (a) The order shall:

301 1. Set the date and time for hearing on the order to show
 302 cause. However, the date for the hearing may not be set sooner
 303 than 20 days after the service of the order. When service is

304 obtained by publication, the date for the hearing may not be set
 305 sooner than 30 days after the first publication. The hearing
 306 must be held within 60 days after the date of service. Failure
 307 to hold the hearing within such time does not affect the
 308 validity of the order to show cause or the jurisdiction of the
 309 court to issue subsequent orders.

310 2. Direct the time within which service of the order to
 311 show cause and the complaint must be made upon the defendant.

312 3. State that the filing of defenses by a motion or by a
 313 verified or sworn answer at or before the hearing to show cause
 314 constitutes cause for the court not to enter the attached final
 315 judgment.

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

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

322 6. State that, if the defendant fails to appear at the
 323 hearing to show cause or fails to file defenses by a motion or
 324 by a verified or sworn answer or files an answer not contesting
 325 the foreclosure, the defendant may be considered to have waived
 326 the right to a hearing and in such case the court may enter a
 327 final judgment of foreclosure ordering the clerk of the court to
 328 conduct a foreclosure sale.

329 7. State that if the mortgage provides for reasonable
 330 attorney's fees and the requested attorney's fees do not exceed
 331 3 percent of the principal amount owed at the time of filing the

332 | complaint, it is unnecessary for the court to hold a hearing or
 333 | adjudge the requested attorney's fees to be reasonable.

334 | 8. Attach the final judgment of foreclosure the court will
 335 | enter, if the defendant waives the right to be heard at the
 336 | hearing on the order to show cause.

337 | 9. Require the mortgagee to serve a copy of the order to
 338 | show cause on the mortgagor in the following manner:

339 | a. If the mortgagor has been served with the complaint and
 340 | original process, service of the order may be made in the manner
 341 | provided in the Florida Rules of Civil Procedure.

342 | b. If the mortgagor has not been served with the complaint
 343 | and original process, the order to show cause, together with the
 344 | summons and a copy of the complaint, and in the case of a
 345 | residential foreclosure proceeding, the notice required by s.
 346 | 48.184, shall be served on the mortgagor in the same manner as
 347 | provided by law for original process.

348 |
 349 | Any final judgment of foreclosure entered under this subsection
 350 | is for in rem relief only. Nothing in this subsection shall
 351 | preclude the entry of a deficiency judgment where otherwise
 352 | allowed by law.

353 | Section 11. This act shall take effect July 1, 2005.