

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to residential foreclosure proceedings;
7 creating s. 45.0311, F.S.; providing a definition;
8 providing requirements and procedures for disbursement of
9 surplus funds from a judicial sale; authorizing a court to
10 determine reasonable attorney's fees for motions to
11 disburse surplus funds; providing a right of certain
12 parties to petition a court to set aside certain deeds or
13 assignments under certain circumstances; entitling certain
14 parties to recover all fees and costs incurred in certain
15 surplus funds proceedings; providing for the court to
16 determine reasonable attorney's fees in such proceedings;
17 creating s. 48.184, F.S.; specifying a required notice
18 form to be served with a summons and complaint in actions
19 to foreclose an interest in a mortgagor's primary
20 dwelling; requiring the notice to be included in the
21 service of process; requiring certain verification of
22 service; amending s. 48.21, F.S.; specifying an additional
23 notice requirement for return of service of process forms

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24 | made for foreclosures of a mortgagor's primary dwelling;
25 | authorizing a clerk of court to collect a fee for attempts
26 | of service of process; requiring the clerk of court to use
27 | fee proceeds for certain public education purposes;
28 | amending s. 49.08, F.S.; requiring certain notices of
29 | action to contain an additional notice of potential
30 | surplus and application procedures information; creating
31 | s. 501.2078, F.S.; providing definitions; providing a
32 | civil penalty for knowingly using unfair or deceptive
33 | homeowner victimization methods, acts, or practices in
34 | residential foreclosure proceedings; specifying a time
35 | period during which a person may not contact a homeowner
36 | for certain purposes; specifying higher priority of an
37 | order of restitution or reimbursement over imposition of a
38 | civil penalty; providing for deposit of civil penalties
39 | into the Legal Affairs Revolving Trust Fund of the
40 | Department of Legal Affairs; allocating such funds for
41 | certain purposes; creating s. 689.251, F.S.; requiring
42 | documents transferring a mortgagor's primary dwelling to
43 | disclose certain information; authorizing a seller to void
44 | a transaction under certain circumstances; requiring the
45 | seller to repay certain amounts to a purchaser, minus
46 | certain amounts, under such circumstances; amending s.
47 | 702.035, F.S.; providing that certain advertisements,
48 | publications, or notices relating to foreclosure
49 | proceedings must include the procedure for collecting
50 | surplus funds or list a telephone number or website at
51 | which the procedure will be explained; amending s.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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52 | 702.065, F.S.; prohibiting a court or clerk of court from
 53 | entering a default or default judgment against a mortgagor
 54 | in a proceeding to foreclose a mortgagor's primary
 55 | dwelling if a return of service does not contain a
 56 | required notice; amending s. 702.10, F.S.; including a
 57 | reference to a required notice for proceedings to
 58 | foreclose a mortgagor's primary dwelling in certain orders
 59 | to show cause in final judgment of foreclosure entries;
 60 | providing an effective date.

61

62 | Be It Enacted by the Legislature of the State of Florida:

63

64 | Section 1. Section 45.0311, Florida Statutes, is created
 65 | to read:

66 | 45.0311 Disbursement of surplus funds.--

67 | (1) As used in this subsection, the term "surplus funds"
 68 | means all funds existing after all valid liens have been paid.
 69 | Any person claiming a right to disbursement of proceeds from a
 70 | judicial sale, other than the original mortgagor, shall produce
 71 | a deed satisfying the requirements of s. 689.251, if applicable,
 72 | or an assignment of the proceeds from the original mortgagor, or
 73 | homeowner if not the original mortgagor, executed with the
 74 | formality of a deed and acknowledged and conspicuously including
 75 | the assessed value of the property, a disclosure that the
 76 | assessed value may be lower than the actual value of the
 77 | property, the approximate amount of any debt encumbering the
 78 | property, the approximate amount of any equity in the property,
 79 | and a statement that the assignor does not need an attorney or

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80 other representative to recover the surplus funds. The deed or
 81 assignment shall conspicuously set forth all forms of
 82 consideration paid for the rights to the property or the
 83 assignment of the rights to any surplus funds.

84 (2) The court shall determine reasonable attorney's fees
 85 charged for a motion to disburse surplus funds.

86 (3) A party who has executed an assignment or deed that
 87 does not conform to the requirements of this section or s.
 88 689.251 has the right to petition the court presiding over the
 89 foreclosure proceeding to set aside the nonconforming deed or
 90 assignment. In any such proceeding in which the mortgagor, or
 91 original homeowner if not the same as the mortgagor, is the
 92 prevailing party, he or she is entitled to recover all fees and
 93 costs incurred in connection with such proceeding. The court
 94 shall determine reasonable attorney's fees in such proceedings.

95 Section 2. Section 48.184, Florida Statutes, is created to
 96 read:

97 48.184 Notice form for actions to foreclose an interest in
 98 a mortgagor's primary dwelling.--In any action to foreclose an
 99 interest in a mortgagor's primary dwelling, a notice, in
 100 substantially the following form and printed on orange paper,
 101 shall be served with the summons and complaint and shall be
 102 included in the service of process. The return of service shall
 103 verify that such notice was served with the summons and the
 104 complaint:

105
 106 (Caption of Action)

107 ATTENTION

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108 TO ALL NAMED PARTIES LISTED
109 IN THIS FORECLOSURE LAWSUIT:

110
111 A FORECLOSURE ACTION HAS BEEN FILED AGAINST YOU FOR FAILURE TO
112 MAKE TIMELY MORTGAGE PAYMENTS ON YOUR RESIDENCE. IF A JUDGMENT
113 OF FORECLOSURE IS ENTERED AND YOUR PROPERTY IS SOLD AT PUBLIC
114 AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE THAT
115 BELONGS TO YOU AFTER PAYMENT OF LIENHOLDERS.

116
117 YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE
118 A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO
119 ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY
120 MONEY TO WHICH YOU ARE ENTITLED.

121
122 PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT INFORMATION
123 FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE SALE TO SEE
124 IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE
125 CLERK HAS IN THE REGISTRY OF THE COURT.

126
127 IF THERE IS ADDITIONAL MONEY, YOU MAY ASK THE COURT TO INSTRUCT
128 THE CLERK TO GIVE YOU THE MONEY THAT BELONGS TO YOU.

129
130 IT IS POSSIBLE THAT YOU WILL BE CONTACTED BY COMPANIES OR
131 LAWYERS OFFERING TO HELP YOU COLLECT THIS MONEY OR OFFERING TO
132 HELP YOU WITH THE FORECLOSURE BY BUYING YOUR HOUSE, LENDING YOU
133 MONEY, OR TAKING AN ASSIGNMENT. THESE COMPANIES OR LAWYERS MAY
134 NOT CONTACT YOU UNTIL AFTER 30 DAYS AFTER YOU RECEIVED THIS
135 NOTICE. IF YOU WANT TO CHECK WHETHER THE PERSON OR COMPANY

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136 CALLING YOU HAS A COMPLAINT HISTORY WITH THE STATE, YOU MAY CALL
 137 [INSERT CONTACT INFORMATION, INCLUDING ANY HOT OR WEBSITE].
 138 [PLEASE CALL THE ATTORNEY GENERAL'S HOTLINE AT 1-866-9-NO-SCAM
 139 (966-7226) OR GO TO WWW.MYFLORIDALEGAL.COM.]

140
 141 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
 142 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
 143 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
 144 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
 145 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
 146 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
 147 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO
 148 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL
 149 AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY
 150 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
 151 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR
 152 SUGGEST OTHER OPTIONS. THEIR MAILING ADDRESS IS: (INSERT
 153 ADDRESS). IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST
 154 LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS
 155 POSSIBLE AFTER RECEIPT OF THIS NOTICE.

156 Section 3. Section 48.21, Florida Statutes, is amended to
 157 read:

158 48.21 Return of execution of process.--Each person who
 159 effects service of process shall note on a return-of-service
 160 form attached thereto, the date and time when it comes to hand,
 161 the date and time when it is served, the manner of service, the
 162 name of the person on whom it was served and, if the person is
 163 served in a representative capacity, the position occupied by

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164 the person. A failure to state the foregoing facts invalidates
 165 the service, but the return is amendable to state the truth at
 166 any time on application to the court from which the process
 167 issued. On amendment, service is as effective as if the return
 168 had originally stated the omitted facts. A failure to state all
 169 the facts in the return shall subject the person effecting
 170 service to a fine not exceeding \$10, in the court's discretion.
 171 When service of process is made for foreclosure of an interest
 172 in a mortgagor's primary dwelling, the return of service form
 173 shall include a confirmation that the notice required by s.
 174 48.184 is included in the service of process. The clerk of court
 175 may collect a fee of \$25 from any surplus funds remaining in the
 176 court registry following a foreclosure sale for each attempt of
 177 service upon the mortgagor. The fee may be collected after all
 178 valid liens have been paid but before any surplus funds have
 179 been distributed to a mortgagor. The clerk shall use the
 180 proceeds of such fee solely for purposes of educating the public
 181 as to the rights of homeowners regarding foreclosure
 182 proceedings.

183 Section 4. Subsection (5) is added to section 49.08,
 184 Florida Statutes, to read:

185 49.08 Notice of action, form.--On filing the sworn
 186 statement, and otherwise complying with the foregoing
 187 requirements, the plaintiff is entitled to have issued by the
 188 clerk or judge, not later than 60 days after filing the sworn
 189 statement, a notice of action which notice shall set forth:

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190 (5) Notice of a potential surplus and information advising
 191 the defendant of the procedures to apply for the surplus, in
 192 substantially the following form:

193
 194 If you are the owner of real estate that is being
 195 foreclosed, there may be money owed to you after the
 196 sale. You may contact [insert contact information for
 197 clerk's office until hotline and website are set up]
 198 for information on what you need to do to get the
 199 funds. You do not need to hire an attorney or other
 200 representative to get this money.

201
 202 Section 5. Section 501.2078, Florida Statutes, is created
 203 to read:

204 501.2078 Violations involving individual homeowners during
 205 the course of residential foreclosure proceedings; civil
 206 penalties.--

207 (1) As used in this section:

208 (a) "Residential foreclosure proceeding" means any action
 209 in a circuit court of this state in which a party seeks to
 210 foreclose on a mortgage encumbering the mortgagor's primary
 211 dwelling.

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

214 (2)(a) Any person who willfully uses, or has willfully
 215 used, a method, act, or practice in violation of this part,
 216 which method, act, or practice victimizes or attempts to
 217 victimize homeowners during the course of a residential

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218 foreclosure proceeding, and in committing such violation knew or
 219 should have known that such conduct was unfair or deceptive, is
 220 liable for a civil penalty of not more than \$15,000 for each
 221 such violation. The act of encumbering the dwelling subject to a
 222 residential foreclosure proceeding with a substitute or
 223 additional lien shall not constitute a violation of this
 224 section.

225 (b) Any person desiring to contact a homeowner to offer to
 226 help the homeowner collect any surplus money or to help with a
 227 foreclosure by buying the homeowner's house, lend the homeowner
 228 money, or take an assignment may not contact the homeowner until
 229 after 30 days after the homeowner receives the notice provided
 230 in s. 48.184. Any such contact before such 30-day period has
 231 elapsed constitutes a violation of this part, subject to the
 232 penalty provided in paragraph (a).

233 (3) Any order of restitution or reimbursement based on a
 234 violation of this part committed against a homeowner in a
 235 residential foreclosure proceeding has priority over the
 236 imposition of any civil penalty for such violation pursuant to
 237 this section.

238 (4) Civil penalties collected pursuant to this section
 239 shall be deposited into the Legal Affairs Revolving Trust Fund
 240 of the Department of Legal Affairs and allocated solely to the
 241 Department of Legal Affairs for the purpose of preparing and
 242 distributing consumer education materials, programs, and
 243 seminars to benefit homeowners in residential foreclosure
 244 proceedings or to further enforcement efforts.

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245 Section 6. Section 689.251, Florida Statutes, is created
246 to read:

247 689.251 Transfer of mortgagor's primary dwelling subject
248 to default.--

249 (1) Any document other than a deed in lieu of foreclosure
250 prepared by or on behalf of a purchaser of legal or equitable
251 title to a mortgagor's primary dwelling when the mortgagor is in
252 default of his or her obligations must disclose, in the
253 instrument itself or in a separate writing executed by the
254 seller and the purchaser with the formality of a deed and
255 acknowledged by a notary public or civil notary of this state,
256 the assessed value of the property, that the assessed value may
257 be lower than the actual value of the property, the approximate
258 amount of any debt encumbering the property, and the approximate
259 amount of any equity in the property. The deed or assignment
260 shall conspicuously set forth any and all forms of consideration
261 paid for the rights to the property or the assignment of the
262 rights to any surplus funds.

263 (2) If such document fails to comply with the requirements
264 of subsection (1), the seller may void the transaction. If the
265 seller voids the transaction, the seller shall repay any
266 consideration paid by the purchaser to the seller, less,
267 however, all costs incurred by the seller as a result of the
268 purchaser's failure to comply with subsection (1), including
269 attorney's fees and costs.

270 Section 7. Section 702.035, Florida Statutes, is amended
271 to read:

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272 702.035 Legal notice concerning foreclosure proceedings;
273 procedure for collection of surplus funds.--Whenever a legal
274 advertisement, publication, or notice relating to a foreclosure
275 proceeding is required to be placed in a newspaper, it is the
276 responsibility of the petitioner or petitioner's attorney to
277 place such advertisement, publication, or notice. The
278 advertisement, publication, or notice shall be placed directly
279 by the attorney for the petitioner, by the petitioner if acting
280 pro se, or by the clerk of the court. The advertisement,
281 publication, or notice must state the procedure for collecting
282 surplus funds, if any, or list a telephone number or website at
283 which the procedure will be explained.

284 Section 8. Subsection (3) is added to section 702.065,
285 Florida Statutes, to read:

286 702.065 Final judgment in uncontested proceedings where
287 deficiency judgment waived; attorney's fees when default
288 judgment entered.--

289 (3) In a proceeding to foreclose a mortgage encumbering a
290 mortgagor's primary dwelling, a court or a clerk of the court
291 may not enter a default or default judgment against the
292 mortgagor if the return of service does not include evidence
293 that the notice required by s. 48.184 was served on the
294 mortgagor.

295 Section 9. Paragraph (a) of subsection (1) of section
296 702.10, Florida Statutes, is amended to read:

297 702.10 Order to show cause; entry of final judgment of
298 foreclosure; payment during foreclosure.--

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

307 (a) The order shall:

308 1. Set the date and time for hearing on the order to show
 309 cause. However, the date for the hearing may not be set sooner
 310 than 20 days after the service of the order. When service is
 311 obtained by publication, the date for the hearing may not be set
 312 sooner than 30 days after the first publication. The hearing
 313 must be held within 60 days after the date of service. Failure
 314 to hold the hearing within such time does not affect the
 315 validity of the order to show cause or the jurisdiction of the
 316 court to issue subsequent orders.

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

319 3. State that the filing of defenses by a motion or by a
 320 verified or sworn answer at or before the hearing to show cause
 321 constitutes cause for the court not to enter the attached final
 322 judgment.

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

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

329 6. State that, if the defendant fails to appear at the
330 hearing to show cause or fails to file defenses by a motion or
331 by a verified or sworn answer or files an answer not contesting
332 the foreclosure, the defendant may be considered to have waived
333 the right to a hearing and in such case the court may enter a
334 final judgment of foreclosure ordering the clerk of the court to
335 conduct a foreclosure sale.

336 7. State that if the mortgage provides for reasonable
337 attorney's fees and the requested attorney's fees do not exceed
338 3 percent of the principal amount owed at the time of filing the
339 complaint, it is unnecessary for the court to hold a hearing or
340 adjudge the requested attorney's fees to be reasonable.

341 8. Attach the final judgment of foreclosure the court will
342 enter, if the defendant waives the right to be heard at the
343 hearing on the order to show cause.

344 9. Require the mortgagee to serve a copy of the order to
345 show cause on the mortgagor in the following manner:

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

349 b. If the mortgagor has not been served with the complaint
350 and original process, the order to show cause, together with the
351 summons and a copy of the complaint and, in the case of a
352 proceeding to foreclose a mortgagor's primary dwelling, the

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353 | notice required by s. 48.184, shall be served on the mortgagor
354 | in the same manner as provided by law for original process.

355

356 | Any final judgment of foreclosure entered under this subsection
357 | is for in rem relief only. Nothing in this subsection shall
358 | preclude the entry of a deficiency judgment where otherwise
359 | allowed by law.

360 | Section 10. This act shall take effect July 1, 2005.