

1 entitling certain parties to recover all fees
2 and costs incurred in certain surplus-funds
3 actions; providing for the court to determine
4 reasonable attorney's fees in such actions;
5 creating s. 501.2078, F.S.; providing
6 definitions; providing a civil penalty for
7 knowingly using unfair or deceptive homeowner
8 victimization methods, acts, or practices in
9 residential foreclosure proceedings; specifying
10 a period during which companies or attorneys
11 may not contact a homeowner for certain
12 purposes; specifying higher priority of an
13 order of restitution or reimbursement over
14 imposition of a civil penalty; providing for
15 deposit of civil penalties into the Legal
16 Affairs Revolving Trust Fund of the Department
17 of Legal Affairs; allocating such funds for
18 certain purpose; creating s. 689.251, F.S.;
19 requiring documents transferring an interest in
20 real estate to disclose certain information;
21 authorizing a seller to void a transaction
22 under certain circumstances; requiring the
23 seller to repay certain amounts to a purchaser,
24 minus certain amounts, under such
25 circumstances; amending s. 702.065, F.S.;
26 prohibiting a court or clerk of court from
27 entering a default or default judgment against
28 a mortgagor in a residential foreclosure
29 proceeding if a return of service does not
30 contain a required notice; amending s. 702.10,
31 F.S.; including a reference to a required

1 residential foreclosure proceeding notice in
2 certain orders to show cause in final judgment
3 of foreclosure entries; providing an effective
4 date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Paragraph (f) is added to subsection (1) of
9 section 45.031, Florida Statutes, to read:

10 45.031 Judicial sales procedure.--In any sale of real
11 or personal property under an order or judgment, the following
12 procedure may be followed as an alternative to any other sale
13 procedure if so ordered by the court:

14 (1) SALE BY CLERK.--In the order or final judgment,
15 the court shall direct the clerk to sell the property at
16 public sale on a specified day that shall be not less than 20
17 days or more than 35 days after the date thereof, on terms and
18 conditions specified in the order or judgment. A sale may be
19 held more than 35 days after the date of final judgment or
20 order if the plaintiff or plaintiff's attorney consents to
21 such time. Any sale held more than 35 days after the final
22 judgment or order shall not affect the validity or finality of
23 the final judgment or order or any sale held pursuant thereto.
24 Notice of sale shall be published once a week for 2
25 consecutive weeks in a newspaper of general circulation, as
26 defined in chapter 50, published in the county where the sale
27 is to be held. The second publication shall be at least 5 days
28 before the sale. The notice shall contain:

29 (f) If there are surplus proceeds, the procedure
30 required for collecting the surplus proceeds, or the phone
31

1 number for or the website at which the procedure will be
2 explained.

3
4 The clerk shall receive a service charge of up to \$60 for
5 services in making, recording, and certifying the sale and
6 title that shall be assessed as costs. The court, in its
7 discretion, may enlarge the time of the sale. Notice of the
8 changed time of sale shall be published as provided herein.

9 Section 2. Section 45.0311, Florida Statutes, is
10 created to read:

11 45.0311 Disbursement of surplus funds.--

12 (1) Any person claiming a right to disbursement of
13 proceeds from a judicial sale, other than the original
14 mortgagor, shall produce a deed satisfying the requirements of
15 s. 689.251, if applicable, or an assignment of the proceeds
16 from the original mortgagor, or homeowner if not the original
17 mortgagor, executed with the formality of a deed and
18 acknowledged and conspicuously including the assessed value of
19 the property, a disclosure that the assessed value may be
20 lower than the actual value of the property, the approximate
21 amount of any debt encumbering the property, the approximate
22 amount of any equity in the property, and a statement that the
23 assignor does not need an attorney or other representative to
24 recover the surplus funds. The deed or assignment shall
25 conspicuously set forth all forms of consideration paid for
26 the rights to the property or the assignment of the rights to
27 any surplus funds.

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

30 (3) A party who has executed an assignment or deed
31 that does not conform with the requirements of this section or

1 s. 689.251 has the right to petition the court presiding over
2 the foreclosure proceeding to set aside the nonconforming deed
3 or assignment.

4 Section 3. Section 48.184, Florida Statutes, is
5 created to read:

6 48.184 Notice form for actions to foreclose an
7 interest in residential real estate.--In any action to
8 foreclose an interest in real estate, a notice, in
9 substantially the following form and printed on orange paper,
10 shall be served with the summons and complaint and shall be
11 included in the service of process. The return of service
12 shall verify that such notice was served with the summons and
13 the complaint:

14
15 (Caption of Action) _____

16 ATTENTION

17 TO ALL NAMED PARTIES LISTED

18 IN THIS FORECLOSURE LAWSUIT:

19
20 A FORECLOSURE ACTION HAS BEEN FILED AGAINST YOU FOR FAILURE TO
21 MAKE TIMELY MORTGAGE PAYMENTS ON YOUR RESIDENCE. IF A JUDGMENT
22 OF FORECLOSURE IS ENTERED AND YOUR PROPERTY IS SOLD AT PUBLIC
23 AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE THAT
24 BELONGS TO YOU AFTER PAYMENT OF LIENHOLDERS.

25
26 YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO
27 HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE
28 TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM
29 ANY MONEY TO WHICH YOU ARE ENTITLED.

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

5
6 IF THERE IS ADDITIONAL MONEY, YOU MAY ASK THE COURT TO
7 INSTRUCT THE CLERK TO GIVE YOU THE MONEY THAT BELONGS TO YOU.

8
9 IT IS POSSIBLE THAT YOU WILL BE CONTACTED BY COMPANIES OR
10 LAWYERS OFFERING TO HELP YOU COLLECT THIS MONEY OR OFFERING TO
11 HELP YOU WITH THE FORECLOSURE BY BUYING YOUR HOUSE, LENDING
12 YOU MONEY, OR TAKING AN ASSIGNMENT. THESE COMPANIES OR LAWYERS
13 MAY NOT CONTACT YOU UNTIL AT LEAST 30 DAYS AFTER YOU RECEIVED
14 THIS NOTICE. IF YOU WANT TO CHECK WHETHER THE PERSON OR
15 COMPANY CALLING YOU HAS A COMPLAINT HISTORY WITH THE STATE,
16 YOU MAY CALL [INSERT CONTACT INFORMATION, INCLUDING ANY HOT OR
17 WEBSITE]. [PLEASE CALL THE ATTORNEY GENERAL'S HOTLINE AT
18 1-866-9-NO-SCAM (966-7226) OR GO TO WWW.MYFLORIDALEGAL.COM.]

19
20 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
21 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
22 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY
23 AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP
24 YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND
25 THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN
26 YOUR PROPERTY WITHOUT THE PROPER INFORMATION.

27 Section 4. Section 48.21, Florida Statutes, is amended
28 to read:

29 48.21 Return of execution of process.--Each person who
30 effects service of process shall note on a return-of-service
31 form attached thereto, the date and time when it comes to

1 hand, the date and time when it is served, the manner of
2 service, the name of the person on whom it was served and, if
3 the person is served in a representative capacity, the
4 position occupied by the person. A failure to state the
5 foregoing facts invalidates the service, but the return is
6 amendable to state the truth at any time on application to the
7 court from which the process issued. On amendment, service is
8 as effective as if the return had originally stated the
9 omitted facts. A failure to state all the facts in the return
10 shall subject the person effecting service to a fine not
11 exceeding \$10, in the court's discretion. When service of
12 process is made for foreclosure of an interest in residential
13 real estate, the return-of-service form shall include a
14 confirmation that the notice required by s. 48.184 is included
15 in the service of process. The clerk of court may charge a fee
16 of \$25 for each attempt of service upon a homeowner. The clerk
17 shall use the proceeds of such fee solely for purposes of
18 educating the public as to the rights of homeowners regarding
19 foreclosure proceedings.

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

22 49.08 Notice of action, form.--On filing the sworn
23 statement, and otherwise complying with the foregoing
24 requirements, the plaintiff is entitled to have issued by the
25 clerk or judge, not later than 60 days after filing the sworn
26 statement, a notice of action which notice shall set forth:

27 (5) Notice of a potential surplus and information
28 advising the defendant of the procedures to apply for the
29 surplus, in substantially the following form:
30
31

1 "If you are the owner of real estate that is
2 being foreclosed, there may be money owed to
3 you after the sale. You may contact [insert
4 contact information for clerk's office until
5 hotline and website are set up] for information
6 on what you need to do to get the funds. You do
7 not need to hire an attorney or other
8 representative to get this money."

9 Section 6. Subsection (8) is added to section 57.105,
10 Florida Statutes, to read:

11 57.105 Attorney's fee; sanctions for raising
12 unsupported claims or defenses; service of motions; damages
13 for delay of litigation.--

14 (8) In any action under s. 45.0311(3) the mortgagor,
15 or original homeowner if not the same as the mortgagor, shall
16 be entitled to recover all fees and costs incurred in
17 connection with such action. The court shall determine
18 reasonable attorney's fees in such actions.

19 Section 7. Section 501.2078, Florida Statutes, is
20 created to read:

21 501.2078 Violations involving individual homeowners
22 during the course of residential foreclosure proceedings;
23 civil penalties.--

24 (1) As used in this section, the term:

25 (a) "Residential foreclosure proceeding" means any
26 action in a circuit court of this state in which a party seeks
27 to foreclose on a mortgage and sell the residential property
28 covered by the mortgage.

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

1 (2)(a) Any person who willfully uses, or has willfully
2 used, a method, act, or practice in violation of this part,
3 which method, act, or practice victimizes or attempts to
4 victimize homeowners during the course of a residential
5 foreclosure proceeding, and in committing such violation knew
6 or should have known that such conduct was unfair or
7 deceptive, is liable for a civil penalty of not more than
8 \$15,000 for each such violation.

9 (b) Any company or attorney desiring to contact a
10 homeowner to offer to help the homeowner collect any surplus
11 money or to help with a foreclosure by buying the homeowner's
12 house, lend the homeowner money, or take an assignment may not
13 contact the homeowner until at least 30 days after the
14 homeowner receives the notice provided in s. 48.184. Any such
15 contact before such 30-day period has elapsed constitutes a
16 violation of this part, subject to the penalty provided in
17 paragraph (a).

18 (3) Any order of restitution or reimbursement based on
19 a violation of this part committed against a homeowner in a
20 residential foreclosure proceeding has priority over the
21 imposition of any civil penalty for such violation pursuant to
22 this section.

23 (4) Civil penalties collected pursuant to this section
24 shall be deposited into the Legal Affairs Revolving Trust Fund
25 of the Department of Legal Affairs and allocated solely to the
26 Department of Legal Affairs for the purpose of preparing and
27 distributing consumer education materials, programs, and
28 seminars to benefit homeowners in residential foreclosure
29 proceedings or to further enforcement efforts.

30 Section 8. Section 689.251, Florida Statutes, is
31 created to read:

1 689.251 Transfer of real estate subject to default.--
2 (1) Any document prepared by a purchaser of an
3 interest in real property purporting to transfer such interest
4 as described in s. 697.08(1) must disclose, in the instrument
5 itself or in a separate writing executed by the seller and the
6 purchaser with the formality of a deed and acknowledged by a
7 notary public or civil notary of this state, the assessed
8 value of the property, that the assessed value may be lower
9 than the actual value of the property, the approximate amount
10 of any debt encumbering the property, and the approximate
11 amount of any equity in the property. The deed or assignment
12 shall conspicuously set forth any and all forms of
13 consideration paid for the rights to the property or the
14 assignment of the rights to any surplus funds.

15 (2) If such document fails to comply with the
16 requirements of subsection (1), the seller may void the
17 transaction. If the seller voids the transaction, the seller
18 shall repay any consideration paid by the purchaser to the
19 seller, less, however, all costs incurred by the seller as a
20 result of the purchaser's failure to comply with subsection
21 (1), including attorney's fees and costs.

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

24 702.065 Final judgment in uncontested proceedings
25 where deficiency judgment waived; attorney's fees when default
26 judgment entered.--

27 (3) In a residential foreclosure proceeding, a court
28 or a clerk of the court may not enter a default or default
29 judgment against the mortgagor if the return of service does
30 not include evidence that the notice required by s. 48.184 was
31 served on the mortgagor.

1 Section 10. Paragraph (a) of subsection (1) of section
2 702.10, Florida Statutes, is amended to read:

3 702.10 Order to show cause; entry of final judgment of
4 foreclosure; payment during foreclosure.--

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

14 (a) The order shall:

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

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

27 3. State that the filing of defenses by a motion or by
28 a verified or sworn answer at or before the hearing to show
29 cause constitutes cause for the court not to enter the
30 attached final judgment.
31

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 to
11 have waived the right to a hearing and in such case the court
12 may enter a final judgment of foreclosure ordering the clerk
13 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. Attach the final judgment of foreclosure the court
21 will enter, if the defendant waives the right to be heard at
22 the hearing on the order to show cause.

23 9. Require the mortgagee to serve a copy of the order
24 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, and in
31 the case of a residential foreclosure proceeding, the notice

1 required by s. 48.184, shall be served on the mortgagor in the
2 same manner as provided by law for original process.

3
4 Any final judgment of foreclosure entered under this
5 subsection is 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 Section 11. This act shall take effect July 1, 2005.

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