

1 A bill to be entitled
2 An act relating to residential foreclosure proceedings;
3 creating s. 45.0311, F.S.; providing a definition;
4 providing requirements and procedures for disbursement of
5 surplus funds from a judicial sale; authorizing a court to
6 determine reasonable attorney's fees for motions to
7 disburse surplus funds; providing a right of certain
8 parties to petition a court to set aside certain deeds or
9 assignments under certain circumstances; entitling certain
10 parties to recover all fees and costs incurred in certain
11 surplus funds proceedings; providing for the court to
12 determine reasonable attorney's fees in such proceedings;
13 creating s. 48.184, F.S.; specifying a required notice
14 form to be served with a summons and complaint in actions
15 to foreclose an interest in a mortgagor's primary
16 dwelling; requiring the notice to be included in the
17 service of process; requiring certain verification of
18 service; amending s. 48.21, F.S.; specifying an additional
19 notice requirement for return of service of process forms
20 made for foreclosures of a mortgagor's primary dwelling;
21 authorizing a clerk of court to collect a fee for attempts
22 of service of process; requiring the clerk of court to use
23 fee proceeds for certain public education purposes;
24 amending s. 49.08, F.S.; requiring certain notices of
25 action to contain an additional notice of potential
26 surplus and application procedures information; creating
27 s. 501.2078, F.S.; providing definitions; providing a
28 civil penalty for knowingly using unfair or deceptive

29 | homeowner victimization methods, acts, or practices in
30 | residential foreclosure proceedings; specifying a time
31 | period during which a person may not contact a homeowner
32 | for certain purposes; specifying higher priority of an
33 | order of restitution or reimbursement over imposition of a
34 | civil penalty; providing for deposit of civil penalties
35 | into the Legal Affairs Revolving Trust Fund of the
36 | Department of Legal Affairs; allocating such funds for
37 | certain purposes; creating s. 689.251, F.S.; requiring
38 | documents transferring a mortgagor's primary dwelling to
39 | disclose certain information; authorizing a seller to void
40 | a transaction under certain circumstances; requiring the
41 | seller to repay certain amounts to a purchaser, minus
42 | certain amounts, under such circumstances; amending s.
43 | 702.035, F.S.; providing that certain advertisements,
44 | publications, or notices relating to foreclosure
45 | proceedings must include the procedure for collecting
46 | surplus funds or list a telephone number or website at
47 | which the procedure will be explained; amending s.
48 | 702.065, F.S.; prohibiting a court or clerk of court from
49 | entering a default or default judgment against a mortgagor
50 | in a proceeding to foreclose a mortgagor's primary
51 | dwelling if a return of service does not contain a
52 | required notice; amending s. 702.10, F.S.; including a
53 | reference to a required notice for proceedings to
54 | foreclose a mortgagor's primary dwelling in certain orders
55 | to show cause in final judgment of foreclosure entries;
56 | providing an effective date.

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

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

45.0311 Disbursement of surplus funds.--

(1) As used in this subsection, the term "surplus funds" means all funds existing after all valid liens have been paid. Any person claiming a right to disbursement of proceeds from a judicial sale, other than the original mortgagor, shall produce a deed satisfying the requirements of s. 689.251, if applicable, or an assignment of the proceeds from the original mortgagor, or homeowner if not the original mortgagor, executed with the formality of a deed and acknowledged and conspicuously including the assessed value of the property, a disclosure that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, the approximate amount of any equity in the property, and a statement that the assignor does not need an attorney or other representative to recover the surplus funds. The deed or assignment shall conspicuously set forth all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.

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

(3) A party who has executed an assignment or deed that does not conform to the requirements of this section or s. 689.251 has the right to petition the court presiding over the

85 foreclosure proceeding to set aside the nonconforming deed or
 86 assignment. In any such proceeding in which the mortgagor, or
 87 original homeowner if not the same as the mortgagor, is the
 88 prevailing party, he or she is entitled to recover all fees and
 89 costs incurred in connection with such proceeding. The court
 90 shall determine reasonable attorney's fees in such proceedings.

91 Section 2. Section 48.184, Florida Statutes, is created to
 92 read:

93 48.184 Notice form for actions to foreclose an interest in
 94 a mortgagor's primary dwelling.--In any action to foreclose an
 95 interest in a mortgagor's primary dwelling, a notice, in
 96 substantially the following form and printed on orange paper,
 97 shall be served with the summons and complaint and shall be
 98 included in the service of process. The return of service shall
 99 verify that such notice was served with the summons and the
 100 complaint:

101
 102 (Caption of Action) _____

103 ATTENTION
 104 TO ALL NAMED PARTIES LISTED
 105 IN THIS FORECLOSURE LAWSUIT:

106
 107 A FORECLOSURE ACTION HAS BEEN FILED AGAINST YOU FOR FAILURE TO
 108 MAKE TIMELY MORTGAGE PAYMENTS ON YOUR RESIDENCE. IF A JUDGMENT
 109 OF FORECLOSURE IS ENTERED AND YOUR PROPERTY IS SOLD AT PUBLIC
 110 AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE THAT
 111 BELONGS TO YOU AFTER PAYMENT OF LIENHOLDERS.

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

117
 118 PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT INFORMATION
 119 FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE SALE TO SEE
 120 IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE
 121 CLERK HAS IN THE REGISTRY OF THE COURT.

122
 123 IF THERE IS ADDITIONAL MONEY, YOU MAY ASK THE COURT TO INSTRUCT
 124 THE CLERK TO GIVE YOU THE MONEY THAT BELONGS TO YOU.

125
 126 IT IS POSSIBLE THAT YOU WILL BE CONTACTED BY COMPANIES OR
 127 LAWYERS OFFERING TO HELP YOU COLLECT THIS MONEY OR OFFERING TO
 128 HELP YOU WITH THE FORECLOSURE BY BUYING YOUR HOUSE, LENDING YOU
 129 MONEY, OR TAKING AN ASSIGNMENT. THESE COMPANIES OR LAWYERS MAY
 130 NOT CONTACT YOU UNTIL AFTER 30 DAYS AFTER YOU RECEIVED THIS
 131 NOTICE. IF YOU WANT TO CHECK WHETHER THE PERSON OR COMPANY
 132 CALLING YOU HAS A COMPLAINT HISTORY WITH THE STATE, YOU MAY CALL
 133 [INSERT CONTACT INFORMATION, INCLUDING ANY HOT OR WEBSITE].
 134 [PLEASE CALL THE ATTORNEY GENERAL'S HOTLINE AT 1-866-9-NO-SCAM
 135 (966-7226) OR GO TO WWW.MYFLORIDALEGAL.COM.]

136
 137 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
 138 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
 139 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
 140 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,

141 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
 142 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
 143 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO
 144 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL
 145 AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY
 146 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
 147 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR
 148 SUGGEST OTHER OPTIONS. THEIR MAILING ADDRESS IS: (INSERT
 149 ADDRESS). IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST
 150 LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS
 151 POSSIBLE AFTER RECEIPT OF THIS NOTICE.

152 Section 3. Section 48.21, Florida Statutes, is amended to
 153 read:

154 48.21 Return of execution of process.--Each person who
 155 effects service of process shall note on a return-of-service
 156 form attached thereto, the date and time when it comes to hand,
 157 the date and time when it is served, the manner of service, the
 158 name of the person on whom it was served and, if the person is
 159 served in a representative capacity, the position occupied by
 160 the person. A failure to state the foregoing facts invalidates
 161 the service, but the return is amendable to state the truth at
 162 any time on application to the court from which the process
 163 issued. On amendment, service is as effective as if the return
 164 had originally stated the omitted facts. A failure to state all
 165 the facts in the return shall subject the person effecting
 166 service to a fine not exceeding \$10, in the court's discretion.
 167 When service of process is made for foreclosure of an interest
 168 in a mortgagor's primary dwelling, the return of service form

169 shall include a confirmation that the notice required by s.
 170 48.184 is included in the service of process. The clerk of court
 171 may collect a fee of \$25 from any surplus funds remaining in the
 172 court registry following a foreclosure sale for each attempt of
 173 service upon the mortgagor. The fee may be collected after all
 174 valid liens have been paid but before any surplus funds have
 175 been distributed to a mortgagor. The clerk shall use the
 176 proceeds of such fee solely for purposes of educating the public
 177 as to the rights of homeowners regarding foreclosure
 178 proceedings.

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

181 49.08 Notice of action, form.--On filing the sworn
 182 statement, and otherwise complying with the foregoing
 183 requirements, the plaintiff is entitled to have issued by the
 184 clerk or judge, not later than 60 days after filing the sworn
 185 statement, a notice of action which notice shall set forth:

186 (5) Notice of a potential surplus and information advising
 187 the defendant of the procedures to apply for the surplus, in
 188 substantially the following form:

189
 190 If you are the owner of real estate that is being
 191 foreclosed, there may be money owed to you after the
 192 sale. You may contact [insert contact information for
 193 clerk's office until hotline and website are set up]
 194 for information on what you need to do to get the
 195 funds. You do not need to hire an attorney or other
 196 representative to get this money.

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

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

(1) As used in this section:

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

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

(2)(a) Any person who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation. The act of encumbering the dwelling subject to a residential foreclosure proceeding with a substitute or additional lien shall not constitute a violation of this section.

(b) Any person desiring to contact a homeowner to offer to help the homeowner collect any surplus money or to help with a foreclosure by buying the homeowner's house, lend the homeowner money, or take an assignment may not contact the homeowner until

225 after 30 days after the homeowner receives the notice provided
 226 in s. 48.184. Any such contact before such 30-day period has
 227 elapsed constitutes a violation of this part, subject to the
 228 penalty provided in paragraph (a).

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

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

241 Section 6. Section 689.251, Florida Statutes, is created
 242 to read:

243 689.251 Transfer of mortgagor's primary dwelling subject
 244 to default.--

245 (1) Any document other than a deed in lieu of foreclosure
 246 prepared by or on behalf of a purchaser of legal or equitable
 247 title to a mortgagor's primary dwelling when the mortgagor is in
 248 default of his or her obligations must disclose, in the
 249 instrument itself or in a separate writing executed by the
 250 seller and the purchaser with the formality of a deed and
 251 acknowledged by a notary public or civil notary of this state,
 252 the assessed value of the property, that the assessed value may

253 be lower than the actual value of the property, the approximate
 254 amount of any debt encumbering the property, and the approximate
 255 amount of any equity in the property. The deed or assignment
 256 shall conspicuously set forth any and all forms of consideration
 257 paid for the rights to the property or the assignment of the
 258 rights to any surplus funds.

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

266 Section 7. Section 702.035, Florida Statutes, is amended
 267 to read:

268 702.035 Legal notice concerning foreclosure proceedings;
 269 procedure for collection of surplus funds.--Whenever a legal
 270 advertisement, publication, or notice relating to a foreclosure
 271 proceeding is required to be placed in a newspaper, it is the
 272 responsibility of the petitioner or petitioner's attorney to
 273 place such advertisement, publication, or notice. The
 274 advertisement, publication, or notice shall be placed directly
 275 by the attorney for the petitioner, by the petitioner if acting
 276 pro se, or by the clerk of the court. The advertisement,
 277 publication, or notice must state the procedure for collecting
 278 surplus funds, if any, or list a telephone number or website at
 279 which the procedure will be explained.

280 Section 8. Subsection (3) is added to section 702.065,

281 Florida Statutes, to read:

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

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

291 Section 9. Paragraph (a) of subsection (1) of section
 292 702.10, Florida Statutes, is amended to read:

293 702.10 Order to show cause; entry of final judgment of
 294 foreclosure; payment during foreclosure.--

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

303 (a) The order shall:

304 1. Set the date and time for hearing on the order to show
 305 cause. However, the date for the hearing may not be set sooner
 306 than 20 days after the service of the order. When service is
 307 obtained by publication, the date for the hearing may not be set
 308 sooner than 30 days after the first publication. The hearing

309 must be held within 60 days after the date of service. Failure
 310 to hold the hearing within such time does not affect the
 311 validity of the order to show cause or the jurisdiction of the
 312 court to issue subsequent orders.

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

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

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

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

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

332 7. State that if the mortgage provides for reasonable
 333 attorney's fees and the requested attorney's fees do not exceed
 334 3 percent of the principal amount owed at the time of filing the
 335 complaint, it is unnecessary for the court to hold a hearing or
 336 adjudge the requested attorney's fees to be reasonable.

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

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

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

345 b. If the mortgagor has not been served with the complaint
 346 and original process, the order to show cause, together with the
 347 summons and a copy of the complaint and, in the case of a
 348 proceeding to foreclose a mortgagor's primary dwelling, the
 349 notice required by s. 48.184, shall be served on the mortgagor
 350 in the same manner as provided by law for original process.

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

356 Section 10. This act shall take effect July 1, 2006.