

1 A bill to be entitled
 2 An act relating to homestead property foreclosure actions;
 3 providing a short title; specifying application to
 4 homestead property; providing procedural requirements and
 5 limitations for plaintiffs, defendants, and courts in
 6 certain foreclosure actions; specifying document
 7 production requirements; requiring mediation; specifying
 8 settlement negotiation requirements; providing criteria
 9 for commercial reasonableness of renegotiated loans;
 10 requiring the Department of Business and Professional
 11 Regulation to adopt rules relating to appraisal methods;
 12 providing for forbearance liens under certain
 13 circumstances; providing lien limitations; providing for
 14 satisfaction of such liens; requiring the Supreme Court to
 15 determine certain forms; specifying application to certain
 16 foreclosure actions; providing for future repeal;
 17 providing an effective date.

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

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 21 Section 1. (1) This act may be cited as the "Foreclosure
 22 Bill of Rights."

23 (2) This act shall apply exclusively to actions to
 24 foreclose a mortgage on real estate used and owned as a
 25 homestead as defined in s. 196.012, Florida Statutes.

26 (3) In any action to foreclose a mortgage on homestead
 27 property, a defendant may invoke the protections of this section
 28 by filing and serving a notice to invoke the Foreclosure Bill of

29 Rights, which shall include a sworn statement that the property
30 in foreclosure is the defendant's homestead property. The form
31 for a notice to invoke shall be provided to the defendant,
32 together with the summons and complaint, with the original
33 service of process for the foreclosure action. The Supreme Court
34 shall determine the form of the notice to invoke.

35 (4) After the protections of this section have been
36 invoked by a defendant, a plaintiff is not entitled to a final
37 judgment against that defendant until all of the requirements of
38 this section have been satisfied.

39 (5) If a default is entered against a defendant, the
40 defendant is not entitled to the protections of this section
41 until the default is set aside.

42 (6) (a) Within 45 days after the filing and service of the
43 notice to invoke, the plaintiffs shall provide for a new
44 appraisal of the property in foreclosure. Such appraisal shall
45 consider ordinary transactions, short sales, and foreclosure
46 sales of similarly situated properties within a reasonable
47 surrounding area in determining the actual current market value
48 of the property. The Department of Business and Professional
49 Regulation shall adopt rules necessary to develop appraisal
50 methods that accurately determine the actual current market
51 value of the property.

52 (b) Within 60 days after filing the notice to invoke, each
53 plaintiff shall provide to the defendant the results of all
54 appraisals conducted pursuant to paragraph (a), together with
55 true copies of all closing documents relating to the mortgage
56 under foreclosure, including, but not limited to:

57 1. Any loan application used to determine the defendant's
58 creditworthiness.

59 2. Any settlement statement.

60 3. The mortgage being foreclosed.

61 4. Any promissory note related to the mortgage.

62 5. Any assignments of the mortgage or note.

63 (c)1. If any closing document is not in the actual
64 possession of the plaintiff, the plaintiff, in order to comply
65 with paragraph (b), must make reasonable efforts to obtain the
66 documents and, if the documents cannot be obtained, serve on the
67 defendant an affidavit detailing the efforts made to obtain the
68 documents, the person or entity in whose possession the
69 documents are believed to be, and the last known address,
70 location, and telephone number of the person or entity in whose
71 possession the documents are believed to be. The plaintiff shall
72 file a certificate of compliance with the requirements of this
73 paragraph. The Supreme Court shall determine the form of the
74 certificate.

75 2. Within 30 days after the filing and serving of the
76 certificate of compliance under subparagraph 1., the defendant
77 shall provide to the plaintiff a sworn financial affidavit, a
78 copy of the defendant's tax returns for the immediately
79 preceding 3 years, and a copy of the defendant's bank statements
80 for the immediately preceding 3 months. Upon motion, the court
81 may issue any protective orders deemed to be necessary and, in
82 the interest of justice, to protect the privacy rights of the
83 defendant. The Supreme Court shall determine the form of the
84 financial affidavit.

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85 (7) By agreement of the parties or with prior court
86 approval, including by administrative order, service of any
87 documents under this section may be made in electronic format or
88 upon such other terms as may be agreed to or ordered in the
89 interests of justice and judicial economy.

90 (8) All actions to foreclose a mortgage shall be subject
91 to court-ordered mediation pursuant to s. 44.102, Florida
92 Statutes. The mediation shall be coordinated and scheduled by
93 the parties no sooner than 60 days after completion of all other
94 requirements of this section.

95 (9) The plaintiffs shall make a good faith effort to
96 negotiate a settlement, which shall include efforts to
97 renegotiate the loan at a principal equivalent to the actual
98 market value as determined under paragraph (6) (a). In
99 determining good faith, the court shall consider:

100 (a) Whether a renegotiated loan is commercially
101 reasonable.

102 (b) Whether the plaintiff has made any offer.

103 (c) The reasonableness of any offer made.

104 (d) Any other factor the court deems relevant.

105 (10) In determining the commercial reasonableness of a
106 renegotiated loan, the court shall consider the following
107 factors:

108 (a) The income, savings, and other assets of the
109 defendants.

110 (b) The reasonableness of the terms of the original loan,
111 including whether issues of fraud are presented in the
112 negotiation and closing of the original loan.

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- 113 (c) Whether the loan term can be extended.
- 114 (d) Whether the interest rate can be reduced.
- 115 (e) Whether the repayment terms can be changed.
- 116 (f) The creditworthiness of the defendants, other than as
117 affected by the foreclosure and any related nonpayments.
- 118 (11) (a) If the loan is refinanced with a reduced principal
119 at the property's actual market value, the plaintiff shall be
120 entitled to a forbearance lien on the property for an amount
121 equal to the difference between the original principal and the
122 new principal. The forbearance lien shall not grant any other
123 right to foreclose on the property or otherwise collect the
124 moneys other than as provided in this act.
- 125 (b) The forbearance lien shall be recorded in the public
126 records of the county in which the property is located. The
127 Supreme Court shall determine the form of the forbearance lien.
- 128 (c)1. Upon the first resale, refinance, or transfer by
129 operation of law or otherwise, the beneficiary of the
130 forbearance lien shall be entitled to any proceeds of the
131 resale, refinance, or transfer in excess of the renegotiated
132 loan balance to be applied to satisfaction of the lien.
- 133 2. Upon any subsequent resale, refinance, or transfer by
134 operation of law or otherwise, the beneficiary of the
135 forbearance lien shall have the right to foreclose the lien.
- 136 (12) The clerks of the circuit courts shall provide forms,
137 together with instructions in English and Spanish, to pro se
138 defendants seeking assistance in any foreclosure action. Such
139 forms shall be provided at no cost to the defendants. The

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140 Supreme Court shall determine the content of the forms and
141 instructions to be provided.

142 (13) This act applies to foreclosure actions initiated on
143 or after July 1, 2009, and to all active foreclosure actions in
144 which a final judgment has not been rendered as of July 1, 2009.

145 (14) This act expires July 1, 2014.

146 Section 2. This act shall take effect July 1, 2009.