

1                   A bill to be entitled  
2           An act relating to homeowner relief; creating parts I, II,  
3           III, IV, V, VI, VII, and VIII of chapter 52, F.S.;  
4           providing general provisions for an alternative method of  
5           foreclosures other than under the judicial system;  
6           providing a short title; providing for scope of  
7           applicability; providing definitions; providing for  
8           variation by agreement; providing for application of  
9           supplemental principles of law and equity; providing  
10          criteria for notice and knowledge; providing for  
11          transactions creating a security interest; providing for  
12          time of foreclosure; providing procedures, requirements,  
13          and limitations before foreclosure; specifying a right to  
14          foreclose; requiring a notice of default; providing a  
15          right to cure; providing requirements for a notice of  
16          foreclosure; providing for a meeting and meeting  
17          requirements to object to foreclosure; providing a period  
18          of limitation for foreclosure; providing for judicial  
19          supervision of foreclosure; providing procedures and  
20          limitations for foreclosures brought under the judicial  
21          system; exempting homestead debtors from certain filing  
22          fees under certain circumstances; providing for a right to  
23          redeem collateral; providing authority, requirements,  
24          procedures, and limitations on foreclosures by auction,  
25          foreclosures by negotiated sale, and foreclosures by  
26          appraisal; providing for rights after foreclosure;  
27          providing for application of proceeds, transfer of title,  
28          actions for damages or to set aside a foreclosure,

29 possession after foreclosure, judgments for deficiencies,  
30 and determinations of amounts of a deficiency; providing  
31 for effect of good faith by a debtor; providing  
32 application and construction; providing authority,  
33 requirements, procedures, and limitations on  
34 discontinuation of a foreclosure; providing for uniformity  
35 of application and construction; specifying a relation to  
36 the Electronic Signatures in Global and National Commerce  
37 Act; providing criteria for calculating documentary stamp  
38 taxes for certain purposes; amending s. 702.01, F.S.;

39 revising requirements for mortgage foreclosures in equity;  
40 providing construction; providing an effective date.

41  
42 WHEREAS, Florida is still recovering from the worst housing  
43 bubble in memory, and

44 WHEREAS, many Floridians are left unable to pay their  
45 mortgage debt, taxes, or insurance and fees and face the  
46 prospect of huge deficiency judgments, that is, they are liable  
47 for mortgage debt that exceeds the value of their homes, and

48 WHEREAS, many homeowner and condominium associations are  
49 struggling to maintain common areas because owners are not  
50 paying dues and assessments, and

51 WHEREAS, municipalities, counties, and school districts are  
52 struggling to pay for the valuable services they provide because  
53 so many homeowners are not paying real estate taxes owed, and

54 WHEREAS, Florida's courts are overburdened with foreclosure  
55 cases, with nearly 500,000 backlogged cases as of December 31,

56 2009, and expected delays of 18-24 month periods before  
 57 foreclosure cases are resolved, and

58 WHERE, local community banks are unable to make new loans  
 59 to small businesses to create new jobs because their capital is  
 60 tied up in defaulted real estate mortgages that are bogged down  
 61 in the courts, and

62 WHEREAS, Florida's economy will not bottom out, and  
 63 sustained recovery cannot begin, until real estate supply and  
 64 demand balance and homeowner debt issues are resolved, NOW,  
 65 THEREFORE,

66  
 67 Be It Enacted by the Legislature of the State of Florida:

68  
 69 Section 1. Part I of chapter 52, Florida Statutes,  
 70 consisting of sections 52.101, 52.102, 52.103, 52.104, 52.105,  
 71 52.106, 52.107, and 52.108, is created to read:

72 PART I

73 GENERAL PROVISIONS

74 52.101 Short title; scope of applicability.-

75 (1) This chapter may be cited as the "Homeowner Relief and  
 76 Housing Recovery Act."

77 (2) In lieu of any other foreclosure remedy which may be  
 78 available under the laws of this state under the judicial  
 79 system, this chapter may, at the option of the foreclosing  
 80 creditor, be used to effect a foreclosure of a security  
 81 instrument. However, if the foreclosing creditor does not elect  
 82 to use this chapter to effect a foreclosure, nothing in this

83 chapter is intended to modify any other foreclosure remedy  
 84 available under the laws of this state.

85 52.102 Definitions.—For purposes of this chapter:

86 (1) "Collateral" means property, real or personal, subject  
 87 to a security interest.

88 (2) "Common interest community" means real property for  
 89 which a person is obligated to pay real property taxes,  
 90 insurance premiums, maintenance, or improvement of other real  
 91 property described in a declaration or other governing  
 92 documents, however denominated, by virtue of the community's or  
 93 association's ownership thereof or the holding of a leasehold  
 94 interest of at least 20 years, including renewal options  
 95 therein. The term "common interest community" includes a  
 96 community governed by one or more condominium associations as  
 97 defined in s. 718.103, by a cooperative association as defined  
 98 in s. 719.103, or by a homeowners' association as defined in s.  
 99 720.301.

100 (3) "Day" means a calendar day.

101 (4) "Debtor" means a person that owes payment or other  
 102 performance of an obligation, whether absolute or conditional,  
 103 primary or secondary, secured under a security instrument,  
 104 whether or not the security instrument imposes personal  
 105 liability on the debtor. The term does not include a person  
 106 whose sole interest in the property is a security interest.

107 (5) "Evidence of title" means a title insurance policy, a  
 108 preliminary title report or binder, a title insurance  
 109 commitment, an attorney's opinion of title based on an  
 110 examination of the public records or an abstract, or any other

111 means of reporting the state of title to real estate that is  
 112 customary in the locality.

113 (6) "Expenses of foreclosure" means the lesser of the  
 114 reasonable costs incurred by a secured creditor or the maximum  
 115 amounts permitted by any other laws of this state in connection  
 116 with a foreclosure for transmission of notices, advertising,  
 117 evidence of title, inspections and examinations of the  
 118 collateral, management and securing of the collateral, liability  
 119 insurance, filing and recording fees, attorneys' fees and  
 120 litigation expenses incurred pursuant to ss. 52.207 and 52.601  
 121 to the extent provided in the security instrument or authorized  
 122 by law, appraisal fees, the fee of the person conducting the  
 123 sale in the case of a foreclosure by auction, fees of court-  
 124 appointed receivers, and other expenses reasonably necessary to  
 125 the foreclosure.

126 (7) "Foreclosing creditor" means a secured creditor who is  
 127 engaged in a foreclosure under this chapter.

128 (8) "Guarantor" means a person liable for the debt of  
 129 another, and includes a surety and an accommodation party.

130 (9) "Interest holder" means a person who owns a legally  
 131 recognized interest in real or personal property that is  
 132 subordinate in priority to a security interest foreclosed under  
 133 this chapter.

134 (10) "Original notice of foreclosure" means the first  
 135 notice of foreclosure sent pursuant to s. 52.204 instituting a  
 136 foreclosure under this chapter.

137 (11) "Purchase-money obligation" means an obligation  
 138 incurred in order to pay part or all of the purchase price of

139 residential real property collateral. An obligation is not a  
 140 purchase-money obligation if any part of the real property  
 141 securing it is not residential real property. A purchase-money  
 142 obligation includes an obligation:

- 143 (a) Incurred to the vendor of the real property;
- 144 (b) Owed to a third-party lender to pay a loan made to pay  
 145 part or all of the purchase price of the real property;
- 146 (c) Incurred to purchase labor and materials for the  
 147 construction of substantial improvements on the real property;  
 148 or
- 149 (d) To pay a loan all of the proceeds of which were used  
 150 to repay in full an obligation of the type described in  
 151 paragraphs (a)-(c).

152 (12) "Real property" means any estate or interest in,  
 153 over, or under land, including minerals, structures, fixtures,  
 154 and other things that by custom, usage, or law pass with a  
 155 conveyance of land though not described or mentioned in the  
 156 contract of sale or instrument of conveyance. The term includes  
 157 the interest of a landlord or tenant and, unless under the law  
 158 of the state in which the property is located that interest is  
 159 personal property, an interest in a common interest community.

160 (13) "Record" when used as a verb, means to take the  
 161 actions necessary to perfect an interest in real property under  
 162 the laws of this state.

163 (14) "Record" used as a noun, means information that is  
 164 inscribed on a tangible medium or that is stored in an  
 165 electronic or other medium and is retrievable in perceivable  
 166 form.

167        (15) "Residential" means:

168        (a) As applied to an interest holder, an individual who  
169 holds a possessory interest, other than a leasehold interest  
170 with a duration of 1 year or less, in residential real property  
171 in which a security interest exists, and any person that is  
172 wholly owned and controlled by such an individual or  
173 individuals.

174        (b) As applied to a debtor, an individual who is  
175 obligated, primarily or secondarily, on an obligation secured in  
176 whole or in part by residential real property, and any person  
177 that is wholly owned and controlled by such an individual or  
178 individuals.

179        (16) "Residential real property" means real property that,  
180 when a security instrument is entered into, is used or is  
181 intended by its owner to be used primarily for the personal,  
182 family, or household purposes of its owner and is improved, or  
183 is intended by its owner to be improved, by one to four dwelling  
184 units.

185        (17) "Secured creditor" means a creditor that has the  
186 right to foreclose a security interest in real property under  
187 this chapter.

188        (18) "Security instrument" means a mortgage, deed of  
189 trust, security deed, contract for deed, agreement for deed,  
190 land sale contract, lease creating a security interest, or other  
191 contract or conveyance that creates or provides for an interest  
192 in real property to secure payment or performance of an  
193 obligation, whether by acquisition or retention of a lien, a  
194 lessor's interest under a lease, or title to the real property.

195 A security instrument may also create a security interest in  
 196 personal property. If a security instrument makes a default  
 197 under any other agreement a default under the security  
 198 instrument, the security instrument includes the other  
 199 agreement. The term includes any modification or amendment of a  
 200 security instrument, and includes a lien on real property  
 201 created by a record to secure an obligation owed by an owner of  
 202 the real property to an association in a common interest  
 203 community or under covenants running with the real property.

204 (19) "Security interest" means an interest in real or  
 205 personal property that secures payment or performance of an  
 206 obligation.

207 (20) "Sign" means:

208 (a) Execute or adopt a tangible symbol with the present  
 209 intent to authenticate a record; or

210 (b) Attach or logically associate an electronic symbol,  
 211 sound, or process to or with a record with the present intent to  
 212 authenticate a record.

213 (21) "State" means a state of the United States, the  
 214 District of Columbia, Puerto Rico, the United States Virgin  
 215 Islands, or any territory or insular possession subject to the  
 216 jurisdiction of the United States.

217 (22) "Time of foreclosure" means the time that title to  
 218 real property collateral passes to the person acquiring it by  
 219 virtue of foreclosure under this chapter.

220 52.103 Application.—

221 (1) Except as otherwise provided in subsection (2), this  
 222 chapter authorizes the nonjudicial foreclosure of every form of



223 security interest in real property located in this state and  
 224 related personal property, regardless of when the security  
 225 interest was entered into, if the original notice of foreclosure  
 226 is given after July 1, 2010, and if the debtor has agreed in  
 227 substance in the security instrument or in a separate written  
 228 document that the security interest may be foreclosed using a  
 229 nonjudicial process.

230 (2) This chapter may not be used to foreclose:

231 (a) A lien created by statute or operation of law, except  
 232 a lien of an owners' association on property in a common  
 233 interest community;

234 (b) A security interest in property in a common interest  
 235 community if under the law of this state that interest is  
 236 personal property; or

237 (c) A security interest in rents or proceeds of real  
 238 property.

239 (3) This chapter does not preclude or govern foreclosure  
 240 or other enforcement of security interests in real property by  
 241 judicial or other action permitted by any other laws of this  
 242 state.

243 (a) A secured creditor may not take action in pursuance of  
 244 foreclosure under this chapter if a judicial proceeding is  
 245 pending in this state to foreclose the security interest or to  
 246 enforce the secured obligation against a person primarily liable  
 247 for the obligation.

248 (b) A secured creditor may not commence or pursue  
 249 foreclosure under this chapter if a judicial proceeding is

250 pending in this state to challenge the existence, validity, or  
 251 enforceability of the security interest to be foreclosed.

252 (c) Except as provided in s. 52.208(2), foreclosure under  
 253 this chapter may proceed even if a judicial proceeding is  
 254 pending or a judicial order has been obtained for appointment or  
 255 supervision of a receiver of the collateral, possession of the  
 256 collateral, enforcement of an assignment of rents or other  
 257 proceeds of the collateral, or collection or sequestration of  
 258 rents or other proceeds of the collateral or to enforce the  
 259 secured obligation against a guarantor.

260 (4) If a security instrument covers both real property and  
 261 personal property, the secured creditor may proceed under this  
 262 chapter as to both the real property and personal property to  
 263 the extent permitted by chapter 679.

264 52.104 Variation by agreement.—

265 (1) Except as otherwise provided in subsections (2)-(4),  
 266 the parties to a security instrument may not vary by agreement  
 267 the effect of a provision of this chapter.

268 (2) The time within which a person must respond to a  
 269 notice sent by a secured creditor may be extended by agreement.

270 (3) The parties to a security instrument may vary the  
 271 effect of any provision of this chapter that by its terms  
 272 permits the parties to do so.

273 (4) The parties by agreement may determine the standards  
 274 by which performance of obligations under this chapter is to be  
 275 measured if those standards are not manifestly unreasonable.

276 (5) If every debtor under a security instrument is not a  
 277 residential debtor, an agreement by a guarantor waiving the

278 right to receive notices under this chapter with respect to the  
 279 foreclosure of the property of a debtor who is not a guarantor  
 280 is enforceable unless a waiver is unenforceable under other  
 281 applicable law.

282 52.105 Supplemental principles of law and equity  
 283 applicable.—Unless displaced by a particular provision of this  
 284 chapter, the principles of law and equity affecting security  
 285 interests in real property supplement this chapter.

286 52.106 Notice and knowledge.—For purposes of this section:

287 (1) The following definitions apply:

288 (a) "Address" means a physical or an electronic address,  
 289 or both, as the security instrument requires.

290 (b) "Address for notice" means:

291 1. With respect to a notice given by a secured creditor:

292 a. For a recipient that has given to the secured creditor  
 293 a security instrument or other document in connection with a  
 294 security instrument, the address, if any, specified in the  
 295 security instrument or document.

296 b. For a recipient not described in sub-subparagraph a.  
 297 that is identifiable from examination of the public records of  
 298 the county or counties in which the collateral is located, or,  
 299 if personal property is being foreclosed together with real  
 300 property, the Uniform Commercial Code financing statement  
 301 filings, the address, if any, specified in the recorded or filed  
 302 document.

303 c. For a recipient not described in sub-subparagraph a. or  
 304 sub-subparagraph b. that the secured creditor knows is a tenant,  
 305 subtenant, or leasehold assignee of all or part of the real

306 property collateral, the most recent address made known to the  
307 secured creditor by that person or, if none, the address of the  
308 real property collateral, including the designation of any  
309 office, apartment, or other unit that the secured creditor knows  
310 is possessed by the recipient, with the notice directed to the  
311 recipient's name, if known, or otherwise "To Tenant occupying  
312 property at" the physical address or description of the real  
313 property collateral.

314 d. For a recipient not described in sub-subparagraphs a.-  
315 c., the physical address of the real property collateral.

316 2. With respect to notices given by persons other than a  
317 secured creditor, the most recent address given in a document  
318 provided by the recipient to the person giving notice.

319 (c) "Electronic" means relating to technology having  
320 electrical, digital, magnetic, wireless, optical,  
321 electromagnetic, or similar capabilities.

322 (d) "Electronic notice" means an electronic record signed  
323 by the person sending the notice.

324 (e) "Electronic record" means a record created, generated,  
325 sent, communicated, received, or stored by electronic means.

326 (f) "Electronic signature" means an electronic sound,  
327 symbol, or process attached to or logically associated with a  
328 record and executed or adopted by a person with intent to  
329 authenticate the record.

330 (g) "Recipient" means a person to whom a notice is sent.

331 (h) "Written notice" means a written record signed by the  
332 person giving the notice.

333 (2) A person knows a fact if:

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- 334        (a) The person has actual knowledge of the fact;  
335        (b) The person has received a notice or notification of  
336 the fact; or  
337        (c) From all the facts and circumstances known to the  
338 person at the time in question the person has reason to know the  
339 fact.
- 340        (3) Notice is sent or given, or a recipient is notified,  
341 subject to the limitations of subsection (4):
- 342        (a) By hand delivering a written notice to the recipient  
343 or to an individual authorized to receive service of civil  
344 process under applicable Florida law who is found at the  
345 recipient's address for notice;
- 346        (b) By depositing written notice, properly addressed to  
347 the recipient's address for notice, with cost of delivery paid:
- 348        1. With the United States Postal Service, registered or  
349 certified mail, return receipt requested;
- 350        2. With the United States Postal Service by regular mail;  
351 or
- 352        3. With a commercially reasonable carrier other than the  
353 United States Postal Service; or
- 354        (c) Subject to subsection (7), by initiating operations  
355 that in the ordinary course will cause the notice to come into  
356 existence at the recipient's address for notice in the  
357 recipient's information processing system in a form capable of  
358 being processed by the recipient.
- 359        (4) If the recipient is an individual and the security  
360 interest covers the recipient's primary residence, use of the

361 methods of notice specified in subsection (3) is limited as  
362 follows:

363 (a) If the notice is a notice of default pursuant to s.  
364 52.202 or a notice of foreclosure pursuant to s. 52.203, both of  
365 the methods of giving notice specified in subparagraphs (3)(b)2.  
366 and 3. must be used.

367 (b) If the notice is not a notice of default pursuant to  
368 s. 52.202 or a notice of foreclosure pursuant to s. 52.203, a  
369 method of giving notice specified in paragraph (3)(a) or  
370 paragraph (3)(b) must be used.

371 (5) If a person giving a notice pursuant to this chapter  
372 and the recipient have agreed to limit the methods of giving  
373 notice otherwise permitted by subsections (3) and (4), that  
374 limitation is enforceable to the extent that it is consistent  
375 with subsection (4) and is otherwise permitted by law.

376 (6) A person may not give an electronic notice unless the  
377 recipient uses, designates by agreement, or otherwise has  
378 designated or holds out an information processing system or  
379 address within that system as a place for the receipt of  
380 communications of that kind. An electronic notice is not sent if  
381 the sender or its information processing system inhibits the  
382 ability of the recipient to print or store the record.

383 (7) If, at the time of giving a required notice, a person  
384 knows that the recipient's address for notice is incorrect or  
385 that notices cannot be delivered to the recipient at that  
386 address, the person that sent the notice shall make a reasonable  
387 effort to determine a correct address for the recipient and send  
388 the notice to the address so determined. Compliance with the

389 provisions of chapter 49 satisfies the requirement to make  
390 reasonable effort to locate the party entitled to notice.

391 (8) If, after giving a notice, a person acquires knowledge  
392 that the address of the recipient to which the notice was  
393 directed is incorrect or that notices cannot be delivered to the  
394 recipient at that address, the person that sent the notice shall  
395 promptly make a reasonable effort to determine a correct address  
396 for the recipient and send another copy of the notice to the  
397 address so determined, if any. The first notice, if timely sent  
398 and properly directed to the recipient's address for notice,  
399 complies with the time requirements of this chapter.

400 (9) A person may use methods of giving notice in addition  
401 to, but not in place of, the methods required by subsections (3)  
402 and (4).

403 (10) A notice is sufficient even if it includes  
404 information not required by law or contains minor errors that  
405 are not seriously misleading.

406 (11) Receipt of a notice within the time in which it would  
407 have been received if properly sent has the effect of a proper  
408 giving of notice.

409 (12) If the recipient is an individual, a notice is  
410 received when it comes to the recipient's attention or is  
411 delivered to and available at the recipient's address for  
412 notice. If the recipient is not an individual, a notice is  
413 received when it is brought to the attention of the individual  
414 conducting the transaction, or in any event when it would have  
415 been brought to that individual's attention if the recipient had  
416 exercised due diligence. An organization exercises due diligence

417 if it maintains reasonable routines for communicating  
418 significant information with the person conducting the  
419 transaction and there is reasonable compliance with the  
420 routines. Due diligence does not require an individual acting  
421 for the organization to communicate information unless such  
422 communication is part of the individual's regular duties or  
423 unless the individual has reason to know of the transaction and  
424 that the transaction would be materially affected by the  
425 information.

426 (13) Subject to subsection (12), a person that has sent a  
427 notice may revoke it by a subsequent notice unless the recipient  
428 has materially changed its position in reliance on the notice  
429 before receiving the revocation.

430 52.107 Transaction creating security interest.—A  
431 transaction that is intended to create a security interest does  
432 so irrespective of the caption of the documents.

433 52.108 Time of foreclosure.—The time of foreclosure is the  
434 time the affidavit required by:

435 (1) Section 52.312 is recorded, in the case of a  
436 foreclosure by auction.

437 (2) Section 52.405 is recorded, in the case of a  
438 foreclosure by negotiated sale.

439 (3) Section 52.505 is recorded, in the case of a  
440 foreclosure by appraisal.

441 Section 2. Part II of chapter 52, Florida Statutes,  
442 consisting of sections 52.201, 52.202, 52.203, 52.204, 52.205,  
443 52.206, 52.207, 52.208, and 52.209, is created to read:

444 PART II



PROCEDURES BEFORE FORECLOSURE

52.201 Right to foreclose.—

(1) A secured creditor has a right to foreclose under this chapter if:

(a) All conditions that, by law and the terms of the security instrument, are prerequisites to foreclosure have been satisfied.

(b) All notices to the debtor required by the security instrument and by this chapter as prerequisites to foreclosure have been given.

(c) All periods for cure available to the debtor by the terms of the security instrument and law as prerequisites to foreclosure have elapsed and no cure has been made.

(2) A foreclosing creditor may pursue foreclosure exclusively by auction, by negotiated sale, or by appraisal, or may simultaneously pursue, together with foreclosure by auction, either foreclosure by negotiated sale or by appraisal, but not both. If the creditor pursues two methods of foreclosure simultaneously, the notice of foreclosure must state both methods.

52.202 Notice of default and right to cure.—

(1) Subject to subsection (2) and paragraph (6)(a), a notice of default must be given to each debtor and each interest holder whose interest gives right of possession of the real property collateral, and the cure period provided by this section must expire without cure being made, before the original notice of foreclosure may be given.

472       (2) Except as provided in the security instrument, notice  
473 of default need not be given and no cure period is applicable if  
474 the default cannot be cured.

475       (3) A notice of default must contain:

476       (a) The facts establishing that a default has occurred.

477       (b) The amount to be paid or other performance required to  
478 cure the default, including the daily rate of accrual for  
479 amounts accruing over time, and the time within which cure must  
480 be made.

481       (c) The name, address, and telephone number of an  
482 individual who is or represents the secured creditor and who can  
483 be contacted for further information concerning the default.

484       (d) A statement that foreclosure may be initiated if the  
485 default is not cured in a timely manner.

486       (4) Within 30 days after notice of default is given to the  
487 last person entitled to such notice, any person may:

488       (a) Cure the default if the default is curable by the  
489 payment of money; or

490       (b) Commence to cure the default if the default cannot be  
491 cured by the payment of money, diligently proceed to cure the  
492 default, and complete the cure of the default within 90 days  
493 after the notice of default was given.

494       (5) If no person is proceeding diligently to cure a  
495 default that cannot be cured by the payment of money after 30  
496 days from the date the notice of default was sent to the last  
497 person entitled to such notice, the secured creditor may  
498 immediately terminate the period allowed for cure by

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499 accelerating payment of the principal amount owing on the  
500 secured obligation or giving an original notice of foreclosure.

501 (6) If none of the real property to be foreclosed is  
502 residential real property:

503 (a) If a default cannot be cured by the payment of money  
504 and a notice of default was given by the secured creditor within  
505 1 year before the date of the present default on account of a  
506 default of the same kind, a notice of default is not required  
507 and a right to cure does not exist except as agreed by the  
508 parties.

509 (b) The periods specified in subsection (4) to cure a  
510 default may be reduced as the parties agree in the security  
511 instrument.

512 (7) A notice of default may be given notwithstanding that  
513 a notice of default has previously been given on account of a  
514 different default and is still pending.

515 (8) The right to cure a default provided in this section  
516 does not impair or limit any other right to notice of default or  
517 to cure a default provided to any person by the security  
518 instrument. The period to cure provided in this section and any  
519 period to cure provided in the security instrument run  
520 concurrently unless the security instrument provides otherwise.

521 (9) Unless precluded from doing so by law other than this  
522 chapter, a secured creditor shall cooperate with any debtor or  
523 interest holder that attempts to cure a default by promptly  
524 providing upon request reasonable information concerning the  
525 amount or other performance due and expenses necessary for cure.

526       (10) If a default is cured within a period allowed by this  
527 section, or after the expiration of that period but before  
528 acceleration of the principal amount owing on the secured  
529 obligation or the giving of an original notice of foreclosure,  
530 an acceleration by the secured creditor of the principal amount  
531 owing on the secured obligation on account of that default is  
532 ineffective.

533       (11) During a period allowed for cure of a default under  
534 this section, a secured creditor may enforce any remedy other  
535 than foreclosure provided for by the security instrument and  
536 enforceable under the laws of this state other than this chapter  
537 if enforcement does not unreasonably interfere with the ability  
538 of a debtor to cure a default under this section.

539       52.203 Notice of foreclosure; manner of giving.—

540       (1) If a secured creditor has a right to foreclose under  
541 s. 52.201, the secured creditor may commence foreclosure by  
542 giving notice of foreclosure. The notice must comply with  
543 subsections (2) and (3) and s. 52.204 and is a prerequisite to  
544 foreclosure.

545       (2) A foreclosing creditor shall record a copy of the  
546 notice of foreclosure in the public records of each county in  
547 which the real property collateral is located. A recorded notice  
548 of foreclosure is notice of its existence and contents to any  
549 person acquiring an interest in the real property collateral  
550 after the notice of foreclosure is recorded. In the absence of  
551 recording of the notice of foreclosure, any purported  
552 foreclosure under this chapter is void.

553       (3) Except as otherwise provided in subsection (4), a  
554 foreclosing creditor shall give a notice of foreclosure to the  
555 following persons no later than 5 days after recording the  
556 original notice of foreclosure pursuant to subsection (2) if  
557 such persons can be identified as of the time of recording of  
558 the notice of foreclosure:

559       (a) A person that the foreclosing creditor knows to be a  
560 debtor.

561       (b) A person specified by the debtor in the security  
562 instrument to receive notice on the debtor's behalf.

563       (c) A person that is shown by the public records of each  
564 county in which any part of the real property collateral is  
565 located to be an interest holder in the real property  
566 collateral.

567       (d) If the foreclosing creditor holds and intends to  
568 foreclose on a security interest in personal property, a person  
569 who is entitled to notice with respect to the disposition of the  
570 personal property collateral under chapter 679.

571       (e) A person who the foreclosing creditor knows is an  
572 interest holder in the real property collateral.

573       (f) A person that has recorded in the public records of a  
574 county in which any part of the real property collateral is  
575 located a request for notice of foreclosure satisfying the  
576 requirements of s. 52.205.

577       (g) If the public records of the county in which the real  
578 property being foreclosed is located show that the real property  
579 may be obligated to a common interest community, a person who is  
580 an officer, director, or registered agent of such common

581 interest community.

582 (4) After the time of recording of the notice of  
583 foreclosure, if the foreclosing creditor obtains actual  
584 knowledge that a person holds an interest in the collateral that  
585 is subordinate in priority to the security instrument, the  
586 foreclosing creditor must give a notice of foreclosure to that  
587 person no later than 5 days after obtaining such knowledge.

588 (5) A foreclosing creditor may give a special notice of  
589 foreclosure to any person described in subsection (3) or  
590 subsection (4) to avoid the termination of that person's  
591 interest in the collateral by the foreclosure. The special  
592 notice shall give the information required by s. 52.204, but  
593 state that the recipient's interest in the collateral will not  
594 be terminated by the foreclosure.

595 (6) A foreclosing creditor, within 10 days before or after  
596 recording a notice of foreclosure, shall affix a copy of the  
597 notice of foreclosure at a conspicuous place on the real  
598 property collateral.

599 (7) An original notice of foreclosure is ineffective if  
600 given after the limitation period for foreclosure of a security  
601 interest in real property by judicial proceeding has expired.

602 52.204 Notice of foreclosure: content.—

603 (1) The heading of a notice of foreclosure must be  
604 conspicuous and must read as follows:

605 "NOTICE OF FORECLOSURE. YOU ARE HEREBY NOTIFIED THAT YOU  
606 MAY LOSE YOUR RIGHTS TO CERTAIN PROPERTY. READ THIS  
607 NOTICE IMMEDIATELY AND CAREFULLY."

608 (2) A notice of foreclosure must contain:

609        (a) The date of the notice, the name of the owner of the  
610 collateral as identified in the security instrument, a legally  
611 sufficient description and, at the secured creditor's option,  
612 the street address, if any, stated in the security instrument of  
613 the real property collateral or portion thereof being  
614 foreclosed, and a description of any personal property  
615 collateral to be included in the foreclosure.

616        (b) Information concerning the recording of the security  
617 instrument, including the recording date, and the official  
618 records book and page number or the official recording number  
619 for the security instrument.

620        (c) A statement that a default exists under the security  
621 instrument, and the facts establishing the default.

622        (d) A statement that the foreclosing creditor is  
623 initiating foreclosure.

624        (e) A statement that the foreclosing creditor has  
625 accelerated or, by virtue of the notice, is accelerating the due  
626 date of the principal amount owing on the secured obligation or  
627 a statement that the foreclosing creditor elects not to  
628 accelerate the due date.

629        (f) A statement that the collateral may be redeemed from  
630 the security interest by payment in full or performance of the  
631 secured obligation in full before foreclosure and the amount to  
632 be paid or other action necessary to redeem, including a per  
633 diem amount that will allow calculation of the total balance  
634 owed as of future dates and any further amount the foreclosing  
635 creditor anticipates expending to protect the collateral.

636 (g) A statement of the method or methods of foreclosure  
637 the foreclosing creditor elects to use and the earliest date on  
638 which foreclosure will occur if no redemption is made.

639 (h) A statement that the foreclosure will terminate the  
640 rights in the collateral of the person receiving the notice of  
641 foreclosure.

642 (i) If applicable, an explanation of a debtor's right to  
643 avoid a deficiency claim by compliance with s. 52.605.

644 (j) If the foreclosure is by negotiated sale or by  
645 appraisal, an explanation of the right of the debtor and holders  
646 of subordinate interests to object to the foreclosure as  
647 provided by s. 52.206.

648 (k) If applicable, a statement that, within 15 days after  
649 the date the notice of foreclosure is given, a debtor or an  
650 interest holder having a possessory interest in the real  
651 property collateral may request a meeting with a representative  
652 of the foreclosing creditor to object to the foreclosure as  
653 provided by s. 52.206.

654 (l) The name, address, and telephone number of an  
655 individual who is the foreclosing creditor or a representative  
656 of the foreclosing creditor and who can be contacted for further  
657 information concerning the foreclosure.

658 (m) A statement that any person receiving a notice of  
659 foreclosure may file an action in court objecting to the  
660 foreclosure, which action must be filed within 20 days after  
661 receipt of the original notice of foreclosure unless the debtor  
662 has been granted a homestead exemption pursuant to s. 196.031  
663 for the property being foreclosed, in which case the complaint



664 must be filed no later than 45 days after receipt of the  
665 original notice of foreclosure.

666 52.205 Request for notice of foreclosure.-

667 (1) Any person may record in the public records of any  
668 county or counties a request for notice of foreclosure of a  
669 security instrument that has been recorded in such county or  
670 counties. The request must state:

671 (a) The date of the security interest, the date of its  
672 recording, and the official records book and page, or official  
673 recording number of the security instrument's recording.

674 (b) The names of the parties to the security instrument.

675 (c) A legally sufficient description of the real property  
676 collateral affected by the security instrument.

677 (d) The name and address of the person requesting notice  
678 of foreclosure.

679 (e) The legal interest, if any, held by the person  
680 recording the request for notice.

681 (2) A person that records a request under subsection (1)  
682 prior to the secured party's commencing foreclosure as provided  
683 in s. 52.203(1) is entitled to be given notice of foreclosure  
684 under s. 52.203(1). Recording a request does not affect the  
685 title to the real property collateral and does not constitute  
686 constructive notice to any person with an interest in the real  
687 property collateral held or claimed by the person requesting  
688 notice. A person that records a request for notice under this  
689 section may subsequently record an amendment supplementing or  
690 correcting information in the request or record a withdrawing of  
691 the request.

692       (3) A foreclosing creditor is liable for a penalty of \$500  
693 to a person that is not given timely notice of foreclosure if  
694 that person has recorded a request for notice of foreclosure  
695 meeting the standards of this section. If a recorded request for  
696 notice states that the person recording the request has an  
697 interest in the real property collateral and the person is not  
698 given timely notice of foreclosure, the person's interest in the  
699 collateral, if any, is preserved from termination by the  
700 foreclosure.

701       52.206 Meeting to object to foreclosure.—

702       (1) A debtor may request a meeting to object to a  
703 foreclosure. The request must be made by a notice received by  
704 the foreclosing creditor within 30 days after the notice of  
705 foreclosure is given to that debtor. If the foreclosing creditor  
706 receives a request for a meeting, the foreclosing creditor or a  
707 responsible representative of the foreclosing creditor shall  
708 schedule and attend a meeting with the person requesting it at a  
709 mutually agreeable time. The representative may be an employee,  
710 agent, servicer, or attorney of the foreclosing creditor and  
711 must have authority to terminate the foreclosure if the  
712 representative determines that there is no legal basis for  
713 foreclosure. The meeting may be held in person or by telephone,  
714 video conferencing, or other reasonable means, at the election  
715 of the foreclosing creditor. If the meeting is held in person,  
716 it must be held at a location reasonably convenient to a parcel  
717 of the real property collateral unless the person requesting the  
718 meeting and the representative mutually agree on a different  
719 location. If the foreclosing creditor receives requests from

720 more than one person, the creditor or representative may attempt  
721 to arrange a consolidated meeting, and the persons requesting  
722 meetings must cooperate reasonably with the foreclosing  
723 creditor's effort to do so.

724 (2) A meeting conducted pursuant to this section is  
725 informal and the rules of evidence do not apply. The parties may  
726 be represented by legal counsel. The foreclosing creditor or  
727 representative must have access to records that provide evidence  
728 of the grounds for foreclosure. If the debtor desires to  
729 negotiate a forbearance or modification on the underlying  
730 obligation, the debtor must provide financial statements and  
731 other documents sufficient to permit the foreclosing creditor to  
732 determine the existence, if any, for grounds to negotiate  
733 alternate terms or obligations. The creditor or representative  
734 shall consider the objections to foreclosure stated by the  
735 person requesting the meeting. Within 10 days after the meeting,  
736 the creditor or representative attending the meeting shall give  
737 to each person who requested the meeting a written statement  
738 indicating whether the foreclosure will be discontinued or will  
739 proceed and the reasons for the determination. The objections to  
740 foreclosure stated by the person requesting the meeting and the  
741 reasons stated by the creditor or representative do not preclude  
742 any person from raising those or other grounds for objecting to  
743 or supporting foreclosure in any subsequent judicial proceeding.  
744 A statement or representation made by a person at the meeting  
745 may not be introduced as evidence in any judicial proceeding.  
746 Each party must bear its own expenses in connection with the  
747 meeting.

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748 (3) The foreclosing creditor and the representative do not  
749 incur any liability for making a determination that is adverse  
750 to the person who requested the meeting.

751 52.207 Period of limitation for foreclosure.—The time of  
752 foreclosure may not be less than 90 days nor more than 1 year  
753 after an original notice of foreclosure is recorded under s.  
754 52.203 and not less than 30 days after any subsequent notice of  
755 foreclosure. The 1-year period of limitation may be extended by  
756 agreement of the foreclosing creditor and all persons to whom  
757 notice of foreclosure was required to be given pursuant to s.  
758 52.203(3), other than persons excluded from foreclosure by  
759 notice issued under s. 52.203(5), s. 52.406(1)(b), or s.  
760 52.506(1)(b). The 1-year and 30-day periods of limitation are  
761 tolled during the period that any court order temporarily  
762 enjoining or staying the foreclosure is in effect and during any  
763 stay under the United States Bankruptcy Code, 11 U.S.C. ss. 101  
764 et seq.

765 52.208 Judicial supervision of foreclosure.—

766 (1) Before the time of foreclosure, any person required to  
767 be notified of the foreclosure pursuant to s. 52.203(3) may  
768 commence a proceeding in a court of competent jurisdiction for  
769 any violation of this chapter or of other law or principle of  
770 equity in the conduct of the foreclosure. The court may issue  
771 any order within the authority of the court in a foreclosure of  
772 a mortgage by judicial action, including injunction and  
773 postponement of the foreclosure.

774 (2) Any person required to be notified of the foreclosure  
775 pursuant to s. 52.203(3) may file an action in the circuit court

776 demanding that the foreclosure proceed through the court  
777 process. The complaint must include a notice of demand of  
778 judicial foreclosure and must be filed no later than 20 days  
779 after receipt of the original notice of foreclosure unless filed  
780 by a debtor who has been granted and has continuously maintained  
781 a homestead exemption pursuant to s. 196.031 for the property  
782 being foreclosed, in which case the complaint must be filed by  
783 such debtor no later than 45 days after receipt of the original  
784 notice of foreclosure. The complaint must state a bona fide  
785 defense to the foreclosure and must include a certification by  
786 all plaintiffs under oath that the complaint is not being filed  
787 principally for the purpose of delay. Unless waived pursuant to  
788 s. 57.082 or as permitted under subsection (3), the complaint  
789 must be accompanied by the appropriate filing fee and any other  
790 required fees. Service of process on the foreclosing creditor  
791 may be perfected by serving the foreclosing creditor at the  
792 address listed on the notice of foreclosure sent to the debtor  
793 as required by s. 52.203(3). Unless dismissed by the court, the  
794 civil action takes precedence over foreclosure under this  
795 chapter and the creditor must cease further action under this  
796 chapter.

797 (3) (a) A debtor who has been granted and has continuously  
798 maintained a homestead exemption pursuant to s. 196.031 for the  
799 property being foreclosed may, in lieu of paying the filing and  
800 other fees associated with commencing a civil action, file a  
801 complaint pursuant to this chapter without paying filing fees if  
802 such debtor is the only plaintiff in the lawsuit and if the  
803 complaint is accompanied by a sworn affidavit confirming that:

804 1. Payment of the required fees would place an undue  
805 hardship on the debtor receiving and maintaining a homestead  
806 exemption.

807 2. The debtor receiving and maintaining a homestead  
808 exemption has a bona fide defense to the foreclosure proceeding.

809 3. The filing is not principally for the purpose of delay.

810 (b) If the debtor filing the complaint under paragraph (a)  
811 is represented by an attorney, the attorney shall also verify  
812 under oath, to the best of his or her knowledge, that the  
813 affidavit required of the debtor receiving and maintaining a  
814 homestead exemption under paragraph (a) is true and correct.

815 (c) Within 45 days after a debtor's filing an action in  
816 circuit court under this subsection, the foreclosing creditor  
817 shall pay the required filing and other fees to the clerk of the  
818 circuit court. Failure to do so shall cause the complaint to be  
819 dismissed without prejudice.

820 (d) In addition, the debtor's attorney shall provide to  
821 the debtor a written statement that electing to proceed in court  
822 rather than under this chapter could result in a deficiency  
823 judgment, a more negative impact upon credit ratings, and  
824 eviction immediately upon entry of a judgment of foreclosure.  
825 This statement must be acknowledged by the debtor in writing.  
826 Failure by the debtor's attorney to comply with this paragraph  
827 is negligence per se.

828 (4) The court may, at any time, examine the pleadings,  
829 affidavits, and the parties and shall dismiss the case upon a  
830 finding that the case was filed principally for the purpose of  
831 delay. If the court dismisses the action, the foreclosure under

832 this chapter shall resume from the point at which it previously  
833 stopped, treating the case filing as an abatement of the  
834 foreclosure under this chapter, and all costs shall be awarded  
835 in favor of the foreclosing creditor. In addition, if the court  
836 finds that the affidavits required under paragraphs (3) (a) and  
837 (b) are false or were filed without reasonable basis, the debtor  
838 and his attorney shall be jointly and severally liable for the  
839 foreclosing creditor's reasonable costs and attorney's fees.

840 52.209 Redemption.—A person who has the right to redeem  
841 collateral from a security interest under principles of law and  
842 equity may not redeem after the time of foreclosure. Unless  
843 precluded from doing so by law other than this chapter, a  
844 foreclosing creditor shall cooperate with any person who  
845 attempts to redeem the collateral from the security interest  
846 before the time of foreclosure by promptly providing upon  
847 request reasonable information concerning the amount due or  
848 performance required to redeem.

849 Section 3. Part III of chapter 52, Florida Statutes,  
850 consisting of sections 52.301, 52.302, 52.303, 52.304, 52.305,  
851 52.306, 52.307, 52.308, 52.309, 52.310, 52.311, and 52.312, is  
852 created to read:

853 PART III

854 FORECLOSURE BY AUCTION

855 52.301 Foreclosure by auction.—A secured creditor may  
856 elect to foreclose by auction. A secured creditor that elects to  
857 foreclose by auction shall comply with the requirements of this  
858 part and parts I, II, and VI.

859 52.302 Evidence of title; other information.—

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860       (1) If a secured creditor elects to foreclose by auction,  
861 the foreclosing creditor shall obtain evidence of title and make  
862 a copy thereof available upon request to any prospective bidder  
863 at the foreclosure. The evidence of title must have an effective  
864 date no earlier than the time of recording of the original  
865 notice of foreclosure and must be issued no later than 30 days  
866 after the time of such recording. Unless the evidence of title  
867 is an attorney's opinion, the evidence of title must state that  
868 the issuer is willing to provide evidence of title to the real  
869 property collateral to a person who acquires title by virtue of  
870 the foreclosure, and the exceptions and exclusions from coverage  
871 to which the evidence of title issued to that person will be  
872 subject.

873       (2) The foreclosing creditor may, but is not required to,  
874 make reports and information concerning the collateral other  
875 than evidence of title available to prospective bidders at the  
876 foreclosure.

877       (3) The foreclosing creditor is not liable to any person  
878 because of error in any information disclosed to prospective  
879 bidders unless the information was prepared by the foreclosing  
880 creditor and the foreclosing creditor had actual knowledge of  
881 the error at the time the information was disclosed.

882       52.303 Advertisement of sale.—

883       (1) After giving notice as required by ss. 52.203 and  
884 52.204, a foreclosing creditor shall, at the foreclosing  
885 creditor's option, advertise foreclosure sale under this part  
886 either:



887 (a) In a manner that complies with the publication  
888 requirements provided by s. 45.031; or

889 (b) By placing an advertisement in a newspaper having  
890 general circulation in each county where any part of the real  
891 property collateral is located. The advertisement must be  
892 published at least once per week for 3 consecutive weeks, with  
893 the last publication not less than 7 nor more than 30 days  
894 before the advertised date of sale.

895 (2) No later than 21 days before the advertised date of  
896 sale, the foreclosing creditor shall give a copy of the  
897 advertisement required by subsection (1) to the persons to whom  
898 notice of foreclosure was required to be given pursuant to s.  
899 52.203. The advertisement may be sent with the notice of  
900 foreclosure or may be sent separately in the manner prescribed  
901 for notices under s. 52.106. The foreclosing creditor may, but  
902 is not required to, enter the real property collateral and post  
903 on it a copy of the advertisement or a sign containing  
904 information about the sale.

905 (3) An advertisement required by subsection (1) must  
906 state:

907 (a) The date, time, and location by street address and, if  
908 applicable, by floor and office number, of the foreclosure sale.

909 (b) That the sale will be made to the highest qualified  
910 bidder.

911 (c) The amount or percentage of the bid that will be  
912 required of the successful bidder at the completion of the sale  
913 as a deposit, and the form in which the deposit may be made if  
914 payment other than by cash or certified check will be accepted.

915        (d) A legally sufficient description of the real property  
 916 to be sold, and the street address, if any, or the location if  
 917 there is no street address, of the real property.

918        (e) A brief description of any improvements on the real  
 919 property and any personal property collateral to be sold.

920        (f) The name, address, and telephone number of an  
 921 individual who is the foreclosing creditor or a representative  
 922 of the foreclosing creditor, who can provide information  
 923 concerning the collateral and the foreclosure if the foreclosing  
 924 creditor is not an individual.

925        (g) That a copy of the evidence of title, any available  
 926 reports concerning the collateral, which may be listed  
 927 specifically, and additional information are available from the  
 928 person identified pursuant to paragraph (f).

929        (h) Whether access to the collateral for the purpose of  
 930 inspection before foreclosure is available to prospective  
 931 bidders and, if so, how to obtain access.

932        (4) An advertisement required by subsection (1) may also  
 933 state any other information concerning the collateral or the  
 934 foreclosure that the foreclosing creditor elects to include.

935        52.304 Access to collateral.—If a foreclosing creditor has  
 936 authority to grant access to the real property collateral, the  
 937 creditor shall reasonably accommodate a person who contacts the  
 938 creditor, expresses an interest in bidding at the foreclosure  
 939 sale, and requests an opportunity to inspect the collateral.

940        52.305 Location and time of sale.—An auction sale under  
 941 this part must be conducted:

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942 (1) At a date and time permitted for a sale under judicial  
 943 foreclosure of a security interest in real property in this  
 944 state.

945 (2) In a county where some of the real property collateral  
 946 is located.

947 (3) At any location where a sale under judicial  
 948 foreclosure of a security interest in real property may be held  
 949 in this state.

950 52.306 Foreclosure of two or more parcels.-

951 (1) Collateral consisting of two or more parcels of real  
 952 property may be foreclosed by auction separately or in  
 953 combination. If the security instrument does not specify the  
 954 manner of sale of two or more parcels, the auction may be  
 955 conducted:

956 (a) By separate sale of each of the parcels; or

957 (b) At the time notice of foreclosure is recorded, if two  
 958 or more parcels are contiguous, are being used in a unitary  
 959 manner, are part of a unitary plan of development, or are  
 960 operated under integrated management:

961 1. By combining the parcels in a single auction; or

962 2. By conditionally offering the parcels both in  
 963 combination and separately, and accepting the higher of the two  
 964 aggregate bids.

965 (2) If the entire real property collateral is not made the  
 966 subject of a single auction, the foreclosing creditor shall  
 967 discontinue sales of parcels or combinations of parcels when the  
 968 total amount of bids received is sufficient to pay the secured  
 969 obligation and the expenses of foreclosure.

970 52.307 Postponement of sale.—

971 (1) An individual conducting an auction under this part  
 972 may postpone the auction for any cause the foreclosing creditor  
 973 considers appropriate. Announcement of the postponement, and the  
 974 time and location of the rescheduled sale, must be given orally  
 975 at the place previously scheduled for the sale and within a  
 976 reasonable time after the scheduled time for commencement of the  
 977 sale. No other advertisement or notice of the postponed time and  
 978 place of sale is required. A postponement may not be for a  
 979 period of more than 30 days. Subsequent postponements of the  
 980 sale may be made in the same manner.

981 (2) If an auction cannot be held at the time stated in the  
 982 notice of sale by reason of stay under the United States  
 983 Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or a stay order  
 984 issued by any court of competent jurisdiction, the foreclosing  
 985 creditor may reschedule the auction to occur at a time when the  
 986 stay is no longer in effect. The rescheduled sale must be  
 987 advertised, and a copy of the advertisement must be sent to the  
 988 persons entitled thereto, as provided by s. 52.302.

989 52.308 Conduct of sale.—

990 (1) An auction sale under this part must be conducted by a  
 991 person designated by the foreclosing creditor.

992 (2) The person conducting an auction, before commencing  
 993 the auction:

994 (a) Must make available to prospective purchasers copies  
 995 of the evidence of title.

996 (b) May verify that persons intending to bid have money in  
 997 an amount and form necessary to make the deposit stated in the

998 advertisement, but may not disclose the amount that any bidder  
 999 is prepared to deposit.

1000 (3) The auction must be conducted, at the foreclosing  
 1001 creditor's option:

1002 (a) By the creditor or the creditor's representative  
 1003 following the procedures for sale prescribed by s. 45.031; or

1004 (b) In the following manner:

1005 1. Any person, including a debtor and the foreclosing  
 1006 creditor, may bid at the auction. The individual conducting the  
 1007 auction may bid on behalf of the foreclosing creditor or any  
 1008 other person by whom he or she is authorized, but may not bid  
 1009 for his or her own account. The foreclosing creditor may bid by  
 1010 credit up to any amount up to the balance owing on the secured  
 1011 obligation, including the expenses of foreclosure.

1012 2. A fixed bid of a person not attending the auction may  
 1013 be submitted by a writing received at least 24 hours before the  
 1014 scheduled time of the auction by the person designated in the  
 1015 advertisement of sale to provide information about the property.  
 1016 The bid must be accompanied by a deposit satisfying the  
 1017 requirements of s. 52.310. The bid must be read aloud by the  
 1018 person conducting the auction before the auction is opened to  
 1019 oral bids.

1020 3. Sale must be made to the person bidding the highest  
 1021 amount who complies with this section.

1022 4. The auction is completed by the announcement of the  
 1023 person conducting the auction that the property is sold.

1024 52.309 Deposit by successful bidder.—Immediately after the  
 1025 sale is complete, the successful bidder, if other than the

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1026 foreclosing creditor, at an auction under this part must pay a  
 1027 deposit to the person conducting the sale. The deposit must be  
 1028 at least 10 percent of the amount of the bid or such lower  
 1029 amount as the advertisement of sale stated would be accepted.  
 1030 The deposit must be paid in cash, by certified check, or in such  
 1031 other form of payment as was stated to be acceptable in the  
 1032 advertisement of sale or is acceptable to the person conducting  
 1033 the sale.

1034 52.310 Payment of remainder of bid.—

1035 (1) The successful bidder at an auction under this part  
 1036 shall pay the remainder of the bid to the person conducting the  
 1037 sale within 7 days after notice is given under s. 52.106(8) of  
 1038 the date of the auction.

1039 (2) If payment of the remainder of the bid is not timely  
 1040 made, the foreclosing creditor may cancel the sale and  
 1041 reschedule the auction as provided in s. 52.307(2) or may  
 1042 terminate the foreclosure under s. 52.701. In either event the  
 1043 deposit of the successful bidder may be forfeited and  
 1044 distributed in the same manner as the proceeds of a sale, but no  
 1045 person has any other remedy against the defaulting bidder.

1046 52.311 Foreclosure amount; distribution of proceeds.—The  
 1047 highest amount bid at a sale is the foreclosure amount. The  
 1048 foreclosure must be applied by the foreclosing creditor as  
 1049 provided in s. 52.601 within 30 days after the time of the  
 1050 foreclosure. After receiving but before applying the proceeds of  
 1051 sale, the secured creditor may, but is not required to, invest  
 1052 them in a reasonable manner.

1053 52.312 Deed to successful bidder; affidavit.—

1054           (1) Upon payment by the successful bidder of the full  
 1055 balance of the bid, the foreclosing creditor shall:

1056           (a) Record and deliver a statutory warranty deed, a bill  
 1057 of sale with respect to personal property if applicable, and  
 1058 such other documents as may be necessary to record the deed,  
 1059 conveying the collateral to or as directed by the successful  
 1060 bidder.

1061           (b) Execute and record in the public records of each  
 1062 county in which the security instrument being foreclosed was  
 1063 recorded an affidavit containing the following:

1064           1. Identification of the security instrument foreclosed,  
 1065 including the official records book and page number, or official  
 1066 document number at which it was recorded, if any.

1067           2. Identification the debtor.

1068           3. A sufficient description of the collateral and  
 1069 identification of the official records book and page number, or  
 1070 official document number at which the notice of foreclosure was  
 1071 recorded.

1072           4. Identification of persons to whom notice of foreclosure  
 1073 was given and the official records book and page number, or  
 1074 official document number at which documents reflecting their  
 1075 interests in the collateral were recorded, if any.

1076           5. A statement as to which, if any, of the persons  
 1077 identified pursuant to subparagraph 4. were given special notice  
 1078 of foreclosure preserving their interests from termination by  
 1079 the foreclosure.

1080       6. A statement that the foreclosing creditor has complied  
 1081 with all provisions of this chapter for a foreclosure by  
 1082 auction.

1083       7. Identification of the person acquiring title to the  
 1084 collateral by virtue of the foreclosure, and a statement that  
 1085 title has passed to that person.

1086       (2) When recorded, the deed and bill of sale, if any,  
 1087 transfer title to the collateral to or as directed by the  
 1088 successful bidder as provided in s. 52.602.

1089       Section 4. Part IV of chapter 52, Florida Statutes,  
 1090 consisting of sections 52.401, 52.402, 52.403, 52.404, 52.405,  
 1091 and 52.406, is created to read:

1092                               PART IV

1093                               FORECLOSURE BY NEGOTIATED SALE

1094       52.401 Foreclosure by negotiated sale.—A secured creditor  
 1095 may elect to foreclose by negotiated sale. A secured creditor  
 1096 that elects to foreclose by negotiated sale shall comply with  
 1097 the requirements of this part and parts I, II, and VI.

1098       52.402 Advertisement and contract of sale.—

1099       (1) The foreclosing creditor may advertise the collateral  
 1100 for sale to prospective purchasers by whatever methods the  
 1101 foreclosing creditor considers appropriate and may list the  
 1102 collateral for sale with brokers. The foreclosing creditor may,  
 1103 but is not required to, enter the real property collateral and  
 1104 post on it a sign containing information about the sale.

1105       (2) The foreclosing creditor may enter into a conditional  
 1106 contract of sale with a prospective purchaser or, if the  
 1107 collateral is sold in parcels, with more than one purchaser. The



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1108 contract shall state the gross amount, before expenses of sale,  
1109 that the purchaser will pay for the collateral. The foreclosing  
1110 creditor's obligation to sell under the contract is subject to  
1111 the following conditions:

1112 (a) That no objection to the foreclosure amount is made  
1113 under s. 52.404.

1114 (b) That no redemption of the collateral from the security  
1115 interest is made before the time of foreclosure.

1116 52.403 Notice of proposed negotiated sale.—If a  
1117 foreclosing creditor enters into a conditional contract of sale  
1118 as provided in s. 52.402, the foreclosing creditor shall give  
1119 notice of the proposed sale at least 30 days before the date of  
1120 the proposed sale to the persons specified in s. 52.203. The  
1121 notice of proposed sale must state:

1122 (1) The date on or after which the foreclosing creditor  
1123 proposes to sell the collateral.

1124 (2) The foreclosure amount, net of all expenses of  
1125 foreclosure and sale, that the foreclosing creditor offers to  
1126 credit against the secured debt and distribute to other persons  
1127 entitled thereto, which amount may be greater or less than the  
1128 selling price stated in the contract.

1129 (3) That if the sale is completed, title to the collateral  
1130 will be transferred to the purchaser under the contract as of  
1131 the time of foreclosure and the stated foreclosure amount will  
1132 be applied as provided in s. 52.601.

1133 (4) That the person receiving the notice may inspect a  
1134 copy of the contract of sale by communicating with an individual

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1135 who is or represents the foreclosing creditor and whose name,  
1136 address, and telephone number are given in the notice.

1137 (5) That if a debtor or any other party whose interest in  
1138 the collateral is subordinate in priority to the foreclosing  
1139 creditor's security interest objects to the sale, the debtor or  
1140 interest holder may give the foreclosing creditor a notice so  
1141 stating, and if the notice is received by the foreclosing  
1142 creditor no later than 7 days before the date of the proposed  
1143 sale, the foreclosing creditor must discontinue the foreclosure  
1144 by negotiated sale unless the foreclosing creditor elects to  
1145 preserve that person's interest from termination by the  
1146 foreclosure or discharges the person's interest.

1147 52.404 Completion of sale.-

1148 (1) A foreclosing creditor may complete the sale in  
1149 accordance with the contract of sale, subsection (2), and ss.  
1150 52.405 and 52.406 unless the creditor receives a notice  
1151 objecting to the proposed foreclosure by negotiated sale 7 or  
1152 more days before the proposed date of sale from a person who  
1153 holds an interest in the real property collateral that is  
1154 subordinate in priority to the foreclosing creditor's security  
1155 interest.

1156 (2) Upon compliance by the purchaser with a contract for  
1157 sale under this part, on or after the proposed date of sale, the  
1158 foreclosing creditor shall deliver to the purchaser or a nominee  
1159 designated by the purchaser a statutory warranty deed, a bill of  
1160 sale if applicable, and other documents necessary to consummate  
1161 the sale or that the parties agreed the foreclosing creditor

1162 would supply. The foreclosing creditor shall also execute an  
1163 affidavit containing the following:

1164 (a) Identification of the security instrument foreclosed,  
1165 including the official records book and page number or official  
1166 document number at which it was recorded, if any.

1167 (b) Identification of the debtor.

1168 (c) A sufficient description of the collateral and  
1169 identification of the official records book and page number, or  
1170 official document number at which the notice of foreclosure was  
1171 recorded.

1172 (d) Identification of persons to whom notice of  
1173 foreclosure was given and the official records book and page  
1174 number, or official document number at which documents  
1175 reflecting their interests in the collateral are recorded, if  
1176 any.

1177 (e) A statement as to which, if any, of the persons  
1178 identified pursuant to paragraph (d) were given notice under s.  
1179 52.203(5) or s. 52.406(1) (a) preserving their interests from  
1180 termination by the foreclosure.

1181 (f) A statement that the foreclosing creditor has complied  
1182 with all provisions of this chapter for a foreclosure by  
1183 negotiated sale.

1184 (g) Identification of the person acquiring title to the  
1185 collateral by virtue of the foreclosure, and a statement that  
1186 title has passed to that person.

1187 52.405 Recording of affidavit and deed; application of  
1188 foreclosure amount.—On or after the date of delivery of the  
1189 deed, the affidavit, deed, and bill of sale, if any, required

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1190 under s. 52.404 must be recorded in public records of the county  
 1191 or counties where the collateral is located. When the affidavit,  
 1192 deed, and bill of sale, if any, are recorded, the deed and bill  
 1193 of sale transfer title to the collateral to the contract  
 1194 purchaser or a nominee designated by the contract purchaser as  
 1195 provided in s. 52.602. The foreclosure amount stated in the  
 1196 notice of proposed negotiated sale pursuant to s. 52.403(2) must  
 1197 be applied as provided in s. 52.601 within 30 days after the  
 1198 time of foreclosure.

1199 52.406 Notice of objection to sale.-

1200 (1) If, 7 or more days before the proposed date of sale  
 1201 under this part, a foreclosing creditor receives notice of  
 1202 objection to the sale from any person who holds an interest in  
 1203 the real property collateral subordinate in priority to the  
 1204 foreclosing creditor's security interest, the foreclosing  
 1205 creditor must:

1206 (a) Discontinue the foreclosure pursuant to s. 52.701, in  
 1207 which case the notice of objection has no further effect;

1208 (b) Give notice, before the time of foreclosure, to the  
 1209 person who made the objection that the person's interest in the  
 1210 collateral will be preserved from termination by the  
 1211 foreclosure. If the foreclosing creditor gives such notice:

1212 1. The objection of the person to whom such notice is  
 1213 given may be disregarded by the foreclosing creditor;

1214 2. The foreclosure by negotiated sale may be completed;

1215 3. The affidavit recorded under s. 52.405 must identify  
 1216 that interest in the collateral of the person objecting as not  
 1217 being terminated by the foreclosure; and

1218 4. That person is entitled to none of the foreclosure  
 1219 amount; or

1220 (c) If the interest of the person who made the objection  
 1221 is capable of being discharged for a liquidated sum of money,  
 1222 tender that sum, or a lesser sum acceptable to the person whose  
 1223 interest is being discharged, to the person and thereby  
 1224 discharge the interest.

1225 (2) If the foreclosing creditor makes a tender as provided  
 1226 in paragraph (1)(c) and keeps the tender in effect, the person  
 1227 to whom the tender is made must provide the foreclosing creditor  
 1228 with a suitable document in recordable form evidencing that the  
 1229 person's interest has been discharged.

1230 (3) After expiration of the time for objection specified  
 1231 in s. 52.404(1), a person to whom notice of foreclosure under s.  
 1232 52.203 and notice of proposed sale under s. 52.403 were sent may  
 1233 not assert that the foreclosure amount was inadequate.

1234 Section 5. Part V of chapter 52, Florida Statutes,  
 1235 consisting of sections 52.501, 52.502, 52.503, 52.504, 52.505,  
 1236 and 52.506, is created to read:

1237 PART V

1238 FORECLOSURE BY APPRAISAL

1239 52.501 Foreclosure by appraisal.—A secured creditor may  
 1240 elect to foreclose by appraisal. A secured creditor that elects  
 1241 to foreclose by appraisal shall comply with the requirements of  
 1242 this part and parts I, II, and VI.

1243 52.502 Appraisal.—

1244 (1) The foreclosing creditor shall obtain a written  
 1245 appraisal of the collateral. The debtor and other persons in

1246 possession of the real property collateral must provide  
 1247 reasonable access to the real property to the appraiser. The  
 1248 appraisal report shall state the appraiser's conclusion as to  
 1249 the fair market value of the collateral as of a date not more  
 1250 than 60 days before the date of foreclosure stated in the notice  
 1251 of foreclosure.

1252 (2) The appraisal must be made by an independent appraiser  
 1253 certified by the Appraisal Institute who is not an employee or  
 1254 affiliate of the foreclosing creditor.

1255 52.503 Notice of appraisal.—The foreclosing creditor shall  
 1256 give notice of the appraisal at least 30 days before the  
 1257 proposed date of the foreclosure to the persons specified in s.  
 1258 52.203. The notice of appraisal shall be accompanied by a copy  
 1259 of the appraisal report and shall state:

1260 (1) The date on or after which the foreclosing creditor  
 1261 proposes to foreclose by appraisal.

1262 (2) The foreclosure amount, net of all expenses of  
 1263 foreclosure, that the foreclosing creditor offers to credit  
 1264 against the secured obligation and to distribute to other  
 1265 persons entitled thereto, which amount may be greater or less  
 1266 than the appraised value of the collateral.

1267 (3) That if the foreclosure by appraisal is completed,  
 1268 title to the collateral will vest in the foreclosing creditor or  
 1269 its nominee as of the time of foreclosure, and that the stated  
 1270 foreclosure amount will be applied as provided in s. 52.601.

1271 (4) That the person receiving the notice may obtain  
 1272 further information concerning the foreclosure and the appraisal  
 1273 by communicating with an individual who is or represents the

1274 foreclosing creditor and whose name, address, and telephone  
 1275 number are given in the notice.

1276 (5) That if a debtor or interest holder whose interest in  
 1277 the collateral is subordinate in priority to the foreclosing  
 1278 creditor's security interest objects to the foreclosure by  
 1279 appraisal, the debtor or interest holder may give the  
 1280 foreclosing creditor a notice so stating, and if the notice is  
 1281 received by the foreclosing creditor no later than 7 days before  
 1282 the date of the proposed sale, the foreclosing creditor must  
 1283 discontinue the foreclosure by appraisal unless the foreclosing  
 1284 creditor elects to preserve that person's interest from  
 1285 termination by the foreclosure or discharges the person's  
 1286 interest.

1287 52.504 Completion of foreclosure by appraisal.-

1288 (1) A foreclosing creditor may complete the foreclosure as  
 1289 provided in subsection (2) and ss. 52.505 and 52.506 unless the  
 1290 creditor receives a notice objecting to the proposed foreclosure  
 1291 by negotiated sale 7 or more days before the proposed date of  
 1292 sale from a person who holds an interest in the real property  
 1293 collateral that is subordinate in priority to the foreclosing  
 1294 creditor's security interest.

1295 (2) On or after the proposed date of sale, the foreclosing  
 1296 creditor shall record a statutory warranty deed in the public  
 1297 records and shall also execute an affidavit containing the  
 1298 following:

1299 (a) Identification of the security instrument foreclosed,  
 1300 including the official records book and page number, or official  
 1301 document number at which it was recorded, if any.

1302        (b) Identification of the debtor.

1303        (c) A sufficient description of the collateral and  
 1304 identification of the official records book and page number, or  
 1305 official document number at which the notice of foreclosure was  
 1306 recorded.

1307        (d) Identification of persons to whom notice of  
 1308 foreclosure was given and the official records book and page  
 1309 number, or official document number at which documents  
 1310 reflecting their interests in the collateral are recorded, if  
 1311 any.

1312        (e) A statement as to which, if any, of the persons  
 1313 identified pursuant to paragraph (d) were given notice under s.  
 1314 52.203(5) or s. 52.506(1) (a) preserving their interests from  
 1315 termination by the foreclosure.

1316        (f) A statement that the foreclosing creditor has complied  
 1317 with all provisions of this chapter for a foreclosure by  
 1318 appraisal.

1319        (g) Identification of the person acquiring title to the  
 1320 collateral by virtue of the foreclosure, and a statement that  
 1321 title has passed to that person.

1322        52.505 Recording of affidavit; application of foreclosure  
 1323 amount.—On or after the proposed date of foreclosure, the  
 1324 affidavit required by s. 52.504 must be recorded in the public  
 1325 records of the county or counties in which the collateral is  
 1326 located. When recorded, the affidavit transfers title to the  
 1327 collateral to the foreclosing creditor or its nominee as  
 1328 provided in s. 52.602. The foreclosure amount stated in the  
 1329 notice of appraisal pursuant to s. 52.503(2) must be applied as



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1330 provided in s. 52.601 within 30 days after the time of  
1331 foreclosure.

1332 52.506 Notice of objection to foreclosure.—

1333 (1) If, 7 or more days before the proposed date of  
1334 foreclosure under this part, a foreclosing creditor receives  
1335 notice of objection to the foreclosure from any person who holds  
1336 an interest in the real property collateral subordinate in  
1337 priority to the foreclosing creditor's security interest, the  
1338 foreclosing creditor must:

1339 (a) Discontinue the foreclosure pursuant to s. 52.701, in  
1340 which case the notice of objection has no further effect;

1341 (b) Give notice, before the time of foreclosure, to the  
1342 person who made the objection that the person's interest in the  
1343 collateral will be preserved from termination by the  
1344 foreclosure. If the foreclosing creditor gives such notice:

1345 1. The objection of the person to whom such notice is  
1346 given may be disregarded by the foreclosing creditor;

1347 2. The foreclosure by appraisal may be completed;

1348 3. The affidavit recorded under s. 52.505 must identify  
1349 that interest in the collateral of the person objecting as not  
1350 being terminated by the foreclosure; and

1351 4. That person is entitled to none of the foreclosure  
1352 amount; or

1353 (c) If the interest of the person who made the objection  
1354 is capable of being discharged for a liquidated sum of money,  
1355 tender that sum to the person and thereby discharge the  
1356 interest.

1357 (2) If the foreclosing creditor makes a tender as provided  
1358 in subsection (1)(c) and keeps the tender in effect, the person  
1359 to whom the tender is made must provide the foreclosing creditor  
1360 with a suitable document in recordable form evidencing that the  
1361 person's interest has been discharged.

1362 (3) After expiration of the time for objection specified  
1363 in s. 52.504(1), a person to whom notice of foreclosure under s.  
1364 52.203 and notice of appraisal under s. 52.503 were sent may not  
1365 assert that the foreclosure amount was inadequate.

1366 Section 6. Part VI of chapter 52, Florida Statutes,  
1367 consisting of sections 52.601, 52.602, 52.603, 52.604, 52.605,  
1368 52.606, and 52.607, is created to read:

1369 PART VI

1370 RIGHTS AFTER FORECLOSURE

1371 52.601 Application of proceeds of foreclosure.-

1372 (1) The foreclosing creditor shall apply the proceeds of  
1373 foreclosure and any investment earnings thereon in the following  
1374 order:

1375 (a) To pay or reimburse the expenses of foreclosure in the  
1376 case of a foreclosure by auction.

1377 (b) To pay the obligation secured by the foreclosed  
1378 security instrument.

1379 (c) To pay, in the order of their priority, the amounts of  
1380 all liens and other interests of record terminated by the  
1381 foreclosure.

1382 (d) To the interest holder who owned the collateral at the  
1383 time of foreclosure.

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1384 (2) If the foreclosing creditor, in applying the proceeds  
1385 of the sale, acts in good faith and without actual knowledge of  
1386 the invalidity or lack of priority of the claim of a person to  
1387 whom distribution is made, the foreclosing creditor is not  
1388 liable for an erroneous distribution. The foreclosing creditor  
1389 may maintain an action in the nature of interpleader, in a court  
1390 of competent jurisdiction sitting in a county in which some part  
1391 of the real estate collateral is located, for an order directing  
1392 the order of distribution of the proceeds of the sale.

1393 52.602 Title transferred by foreclosure.—A foreclosure  
1394 under this chapter transfers the debtor's title to the  
1395 collateral to the successful bidder under part III, the contract  
1396 purchaser under part IV, or the foreclosing creditor under part  
1397 V, subject only to interests in the collateral having priority  
1398 over the security interest foreclosed and the interests of  
1399 persons entitled to notice under s. 52.202(3) who were not given  
1400 notice of the foreclosure or whose interests were preserved from  
1401 foreclosure by notice issued under s. 52.203(5), s.  
1402 52.406(1)(b), or s. 52.506(1)(b). The interests of all of other  
1403 persons in the collateral are terminated.

1404 52.603 Action for damages or to set aside foreclosure.—

1405 (1) Subject to subsection (3), after the time of  
1406 foreclosure an aggrieved person may commence a proceeding in a  
1407 court of competent jurisdiction seeking the following relief:

1408 (a) Damages against a foreclosing creditor for any  
1409 violation of this chapter or an applicable law or principle of  
1410 equity in the conduct of the foreclosure; or

1411 (b) That the foreclosure be set aside to correct a  
 1412 violation of this chapter or to satisfy an applicable law or  
 1413 principle of equity.

1414 (2) Recording of the deed and affidavit pursuant to s.  
 1415 52.312, the deed and affidavit pursuant to s. 52.405, or the  
 1416 affidavit pursuant to s. 52.505 conclusively establishes  
 1417 compliance with all applicable notice and procedural  
 1418 requirements of this chapter in favor of good faith purchasers  
 1419 for value of the collateral. If the title derived from  
 1420 foreclosure is not held by a good faith purchaser for value, a  
 1421 person attacking the foreclosure on grounds of noncompliance  
 1422 with the notice or procedural requirements of this chapter has  
 1423 the burden of production and persuasion.

1424 (3) An action may not be commenced:

1425 (a) For damages for violation of this chapter, more than 3  
 1426 years after the time of foreclosure; or

1427 (b) For an order to set aside a foreclosure conducted  
 1428 under this chapter, more than 1 year after the time of  
 1429 foreclosure.

1430 52.604 Possession after foreclosure.—A person that  
 1431 acquires an interest in real property by foreclosure under this  
 1432 chapter may obtain a writ of possession from the clerk of the  
 1433 court of the county in which any part of the collateral is  
 1434 located, or commence an action for ejectment under chapter 66 or  
 1435 for unlawful detainer under chapter 82 to gain possession of the  
 1436 real property against any person whose interest in the real  
 1437 property was terminated by the foreclosure.

1438 52.605 Judgment for deficiency.—

1439       (1) Except as provided in subsection (2), after the time  
1440 of foreclosure, the foreclosing creditor and any other person  
1441 whose security interest in the collateral was terminated by a  
1442 foreclosure under this chapter is entitled to pursue in court a  
1443 money judgment against any person liable for a deficiency.

1444       (2) A debtor is not liable to a foreclosing creditor for a  
1445 deficiency after a foreclosure under this chapter unless the  
1446 debtor is found by the court not to have acted in good faith.

1447       (3) For purposes of this section, the term "acted in good  
1448 faith" means the debtor:

1449       (a) Peaceably vacated the real estate collateral and  
1450 relinquished any personal property collateral within 10 days  
1451 after the time of foreclosure and the giving of a notice  
1452 demanding possession by the person entitled to possession by  
1453 virtue of the foreclosure.

1454       (b) Did not commit significant affirmative waste upon the  
1455 collateral and leave such waste uncured at the time possession  
1456 was relinquished to the person entitled to possession by virtue  
1457 of the foreclosure.

1458       (c) Did not significantly contaminate the collateral with  
1459 hazardous materials and leave the contamination uncured at the  
1460 time possession was relinquished to the person entitled to  
1461 possession by virtue of the foreclosure.

1462       (d) Did not commit fraud against the foreclosing creditor.

1463       (e) Did not engage in criminal activity on the secured  
1464 real estate collateral that significantly reduced its value at  
1465 the time possession was relinquished to the person entitled to  
1466 possession by virtue of the foreclosure.

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1467        (f) Did not permit significant uncured damage to be done  
1468 to the collateral by other persons or natural causes as a result  
1469 of the debtor's failure to take reasonable precautions against  
1470 the damage.

1471        (g) Provided reasonable access to the collateral for  
1472 inspection by the foreclosing creditor and prospective  
1473 purchasers after the initial notice of foreclosure was sent.

1474        (4) The burden of proof as to the absence of good faith on  
1475 the part of a debtor is on the person seeking a deficiency  
1476 judgment against the debtor. The absence of good faith by one  
1477 debtor does not make any other debtor liable for a deficiency.

1478        (5) If liability of a debtor for a deficiency is barred by  
1479 paragraph (2), liability of a guarantor of the debtor's  
1480 obligation is also barred.

1481        (6) This section does not prohibit recovery of a  
1482 deficiency by a person other than the foreclosing creditor.

1483        52.606 Determining amount of deficiency.—

1484        (1) Subject to subsection (2), the deficiency to which a  
1485 foreclosing creditor is entitled after a foreclosure under this  
1486 chapter is the balance remaining, if any, after subtracting the  
1487 foreclosure amount as determined under s. 52.311, s. 52.403, or  
1488 s. 52.503, as applicable, from the balance owing on the secured  
1489 obligation, including principal, interest, legally recoverable  
1490 fees and charges and, in the case of a foreclosure by auction,  
1491 the expenses of foreclosure.

1492        (2) In an action for a deficiency brought by the  
1493 foreclosing creditor following a foreclosure by auction, a  
1494 person against whom the action is filed may petition a court of

1495 competent jurisdiction for a determination of the fair market  
 1496 value of the collateral at the time of foreclosure. After a  
 1497 hearing at which all interested parties may present evidence of  
 1498 fair market value, the court shall determine the fair market  
 1499 value of the collateral as of the time of foreclosure. The  
 1500 determination must be made by the court without a jury. If the  
 1501 court determines that 90 percent of the fair market value of the  
 1502 collateral was greater than the bid accepted at the foreclosure  
 1503 sale, 90 percent of the fair market value must be substituted  
 1504 for the foreclosure amount in making the calculations required  
 1505 by subsection (1) with respect to all parties against whom a  
 1506 judgment for a deficiency is entered.

1507 52.607 Effect of good faith by debtor.—If a debtor acted  
 1508 in good faith in the foreclosure as provided in s. 52.605(3),  
 1509 the debtor shall not be considered to have been in default under  
 1510 the note or security instrument and the foreclosing creditor  
 1511 shall use its best efforts thereafter to report to credit  
 1512 bureaus the fact that the debtor, having acted in good faith, is  
 1513 deemed not to be in default under Florida Law. This section does  
 1514 not invalidate any foreclosure pursuant to this chapter or any  
 1515 judgment in a case related to this chapter. This section does  
 1516 not affect the title or insurability of title to real property  
 1517 or personal property.

1518 Section 7. Part VII of chapter 52, Florida Statutes,  
 1519 consisting of section 52.701, is created to read:

1520 PART VII

1521 DISCONTINUATION OF FORECLOSURE

1522 52.701 Discontinuation of foreclosure.—

1523        (1) A foreclosing creditor may elect to discontinue  
 1524 foreclosure at any time before:

1525        (a) The completion of the auction in the case of a  
 1526 foreclosure by auction; or

1527        (b) The time of foreclosure, in the case of a foreclosure  
 1528 by negotiated sale or by appraisal.

1529        (2) To discontinue foreclosure, the foreclosing creditor  
 1530 shall give notice to the persons to whom notice of foreclosure  
 1531 was required to be given under s. 52.203(2), advising them that  
 1532 the foreclosure has been discontinued and whether the  
 1533 foreclosing creditor will:

1534        (a) Pursue another foreclosure by the same method;  
 1535        (b) Continue to foreclose by another method under this  
 1536 chapter pursuant to a notice of foreclosure previously given;  
 1537        (c) Commence foreclosure by a different method authorized  
 1538 by this chapter pursuant to a new notice of foreclosure;  
 1539        (d) Commence foreclosure by judicial proceeding; or  
 1540        (e) Abandon the foreclosure.

1541        (3) If a foreclosing creditor chooses to discontinue  
 1542 foreclosure under this chapter and pursue foreclosure by  
 1543 judicial proceeding:

1544        (a) A deficiency judgment may not be obtained through such  
 1545 judicial proceeding against any debtor receiving an original  
 1546 notice of foreclosure pursuant to this chapter.

1547        (b) Upon commencing a judicial proceeding, the limitations  
 1548 on liability provided in s. 718.116(1)(b) and s. 720.3085(2)(c)  
 1549 shall not apply. In all other aspects of foreclosure pursuant to  
 1550 this chapter, such limitations on liability shall be applicable



1551 to the same extent as if the foreclosure had been filed pursuant  
 1552 to s. 45.031 or chapter 702.

1553 (4) If a notice sent by a foreclosing creditor under this  
 1554 section includes all elements required for a notice of  
 1555 foreclosure under ss. 52.203 and 52.204, no additional notice of  
 1556 foreclosure is necessary to pursue a further foreclosure under  
 1557 this chapter.

1558 Section 8. Part VIII of chapter 52, Florida Statutes,  
 1559 consisting of sections 52.801, 52.802, and 52.803, is created to  
 1560 read:

1561 PART VIII

1562 MISCELLANEOUS

1563 52.801 Uniformity of application and construction.—In  
 1564 applying and construing this chapter, consideration must be  
 1565 given to the need to promote uniformity of the law with respect  
 1566 to its subject matter among states that enact its provisions.

1567 52.802 Relation to Electronic Signatures in Global and  
 1568 National Commerce Act.—This chapter modifies, limits, and  
 1569 supersedes the federal Electronic Signatures in Global and  
 1570 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that  
 1571 nothing in this chapter modifies, limits, or supersedes 15  
 1572 U.S.C. s. 7001(c) or authorizes electronic delivery of any of  
 1573 the notices described in 15 U.S.C. s. 7003(b).

1574 52.803 Calculation of documentary stamp taxes.—For the  
 1575 purposes of this chapter, the documentary stamp taxes required  
 1576 under chapter 201 shall be assessed based on the following  
 1577 values:

1578 (1) For foreclosure by auction, the foreclosure amount

1579 defined in s. 52.311;

1580 (2) For foreclosure by negotiated sale, the gross amount  
 1581 of the sale described in s. 52.402(2); or

1582 (3) For foreclosure by appraisal, the fair market value  
 1583 determined by the appraisal as described in s. 52.502.

1584 Section 9. Section 702.01, Florida Statutes, is amended to  
 1585 read:

1586 702.01 Equity.—All mortgages foreclosed though judicial  
 1587 process shall be foreclosed in equity. In a judicial mortgage  
 1588 foreclosure action, the court shall sever for separate trial all  
 1589 counterclaims against the foreclosing mortgagee. The foreclosure  
 1590 claim shall, if tried, be tried to the court without a jury.  
 1591 This section does not require a foreclosure to be pursued  
 1592 through judicial process or prohibit a foreclosure through  
 1593 nonjudicial process.

1594 Section 10. This act shall take effect July 1, 2010.