

1                                   A bill to be entitled  
 2       An act relating to mortgage foreclosures; amending s.  
 3       95.281, F.S.; specifying a limited statute of limitations  
 4       for certain deficiency judgments; requiring claims for  
 5       deficiency connected with a foreclosure action to be filed  
 6       within a time certain after a foreclosure sale; providing  
 7       an exception for participation in the Florida Mortgage  
 8       Foreclosure Diversion Program; providing exception  
 9       criteria; creating s. 95.285, F.S.; establishing the  
 10      Florida Mortgage Foreclosure Diversion Program;  
 11      authorizing mortgagees to obtain an extension of the  
 12      statute of limitations on mortgage deficiencies under  
 13      certain circumstances; authorizing mortgagees to offer  
 14      mortgagors opportunities to participate in the program;  
 15      providing mortgagee and mortgagor program participation  
 16      criteria, procedures, and requirements; specifying duties  
 17      and limitations of mortgagors and mortgagees under the  
 18      program; providing for continued participation in the  
 19      program after certain deadlines; specifying participation  
 20      in the program as consent to additional rights and  
 21      privileges for mortgagees and voluntary waiver of rights  
 22      by mortgagors; providing an effective date.

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

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 26           Section 1. Subsection (1) of section 95.281, Florida  
 27   Statutes, is amended, subsection (5) is renumbered as subsection  
 28   (6), and a new subsection (5) is added to that section, to read:

29 95.281 Limitations; instruments encumbering real  
 30 property.—

31 (1) The lien of a mortgage or other instrument encumbering  
 32 real property, herein called mortgage, except those specified in  
 33 subsection (6) ~~(5)~~, shall terminate after the expiration of the  
 34 following periods of time:

35 (a) If the final maturity of an obligation secured by a  
 36 mortgage is ascertainable from the record of it, 5 years after  
 37 the date of maturity.

38 (b) If the final maturity of an obligation secured by a  
 39 mortgage is not ascertainable from the record of it, 20 years  
 40 after the date of the mortgage, unless prior to such time the  
 41 holder of the mortgage:

42 1. Rerecords the mortgage and includes a copy of the  
 43 obligation secured by the mortgage so that the final maturity is  
 44 ascertainable; or

45 2. Records a copy of the obligation secured by the  
 46 mortgage from which copy the final maturity is ascertainable and  
 47 by affidavit identifies the mortgage by its official recording  
 48 data and certifies that the obligation is the obligation  
 49 described in the mortgage;

50  
 51 in which case the lien shall terminate 5 years after the date of  
 52 maturity.

53 (c) For all obligations, including taxes, paid by the  
 54 mortgagee, 5 years from the date of payment. A mortgagee shall  
 55 have no right of subrogation to the lien of the state for taxes  
 56 paid by the mortgagee to protect the security of his or her

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57 mortgage unless he or she obtains an assignment from the state  
58 of the tax certificate. Redemption of the tax certificate shall  
59 be insufficient for subrogation.

60 (5) (a) All claims for a deficiency in connection with a  
61 deficiency judgment entered on or after October 1, 2010, are  
62 subject to a 6-month statute of limitations beginning upon entry  
63 of the judgment and all claims for a deficiency in connection  
64 with a foreclosure action in accordance with chapter 702 must be  
65 filed within 6 months after the foreclosure sale date or such  
66 claims are void as a matter of law, subject to the exception  
67 provided in paragraph (b).

68 (b) Any mortgagee who in good faith participates in the  
69 foreclosure diversion program under s. 95.285, shall have 5  
70 years from:

71 1. The date of a foreclosure sale to pursue a deficiency  
72 judgment with respect to any deficiency arising out of a  
73 foreclosure action pursuant to chapter 702; or

74 2. The date of a partial payoff of a mortgage loan to  
75 pursue a deficiency which arises in connection with and is  
76 incident to a short-sale payoff of such mortgage loan, and in  
77 connection with such short-sale payoff the mortgagee releases  
78 and satisfies its mortgage lien on the property.

79 (6)-(5) This section does not apply to mortgages or deeds  
80 of trust executed by any railroad or other public utility  
81 corporation or by any receiver or trustee of them or to liens or  
82 notices of liens under chapter 713.

83 Section 2. Section 95.285, Florida Statutes, is created to  
84 read:

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85 95.285 Florida Mortgage Foreclosure Diversion Program.—

86 (1) A mortgagee may obtain an extension of the statute of  
87 limitations on mortgage deficiencies by consenting to  
88 participate in the Florida Mortgage Foreclosure Diversion  
89 Program as provided in this section.

90 (a) Prior to filing any action for foreclosure or in the  
91 case of a pending foreclosure action, at any time prior to the  
92 entry of the foreclosure judgment, the mortgagee may offer any  
93 mortgagor the opportunity to participate in the program.

94 (b) Within 60 days after declaring a mortgage loan to be  
95 in default, the mortgagee shall initiate participation in the  
96 program by delivering to the mortgagor a written diversion offer  
97 to voluntarily participate in the program, together with  
98 information describing the terms of participation as follows:

99 1. A statement that clearly describes the program in which  
100 the mortgagee shall identify and be bound to a preapproved  
101 short-sale price, as well as a specified partial mortgage loan  
102 payoff, which shall be binding upon the mortgagor for a period  
103 of 1 year after the date of entering the program, and that, in  
104 exchange for this commitment by the mortgagee, the mortgagor  
105 shall voluntarily extend the statute of limitations from 6  
106 months to 5 years and further agree to waive the right of  
107 discharge of a deficiency judgment, if any, in any bankruptcy  
108 proceeding voluntarily filed by the mortgagor within 24 months  
109 after the final judgment date or date of closing on a short  
110 sale.

111 2. Provide the name, current telephone numbers, and e-mail  
112 and physical mailing addresses of such employees, agents, or

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113 delegates of the mortgagee possessing the authority to  
114 negotiate, authorize, and bind the mortgagor to the terms and  
115 requirements embodied in the program and to release and satisfy  
116 any mortgage lien.

117 (c) If a mortgagee submits a diversion offer to a  
118 mortgagor, the mortgagor shall have 45 days after receiving the  
119 diversion offer to accept such offer in writing and, as a  
120 condition precedent to participation in the program, provide to  
121 the mortgagee the following:

122 1. Documentation evidencing that the mortgagor has  
123 retained an attorney in this state to assist the mortgagor with  
124 completing the program documentation requirements.

125 2. Documentation evidencing that the mortgagor has  
126 retained a real estate broker licensed in this state to assist  
127 the mortgagor with selling the property at the short-sale price,  
128 including, but not limited to, providing a copy of the listing  
129 agreement between the real estate broker and the mortgagor.

130 3. A financial hardship affidavit, consisting of the  
131 mortgagor's assets, owned individually or jointly or held for  
132 the benefit of the mortgagor, liabilities, income, and living  
133 expenses, and such affidavit shall be signed under penalty of  
134 perjury and acknowledged before a notary public.

135 4. An estimated HUD-1 Settlement Statement, which sets  
136 forth the following:

137 a. The sales price the mortgagor proposes to sell the  
138 property.

139 b. Any outstanding monetary encumbrances or liens that are  
140 customarily reflected on the settlement statement, including,

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141 but not limited to, any condominium or homeowners' association  
142 fees and assessments, code enforcement liens, construction  
143 liens, liens for outstanding real estate taxes or similar liens,  
144 and estoppel fees. Reliance in good faith by a settlement agent  
145 on the statements of a mortgagor shall not subject the  
146 settlement agent to liability.

147 c. The amount that the mortgagor proposes as the payoff  
148 amount of any outstanding mortgage encumbering the property.

149 5. A title commitment or opinion concerning title from an  
150 attorney licensed in this state that indicates all requirements  
151 to convey marketable title to a third party.

152 6. Tax returns and financial statements, including, but  
153 not limited to, any statement concerning bank accounts of any  
154 nature or any account that contains securities or other similar  
155 investments, together with such additional financial  
156 documentation as the mortgagee may reasonably request.

157 (d) The mortgagor shall update its financial information  
158 when reasonably requested by the mortgagee or when the mortgagor  
159 experiences a material change in circumstances. In no event  
160 shall the mortgagor be required to provide updated financial  
161 documentation more frequently than once every 30 days, except as  
162 authorized by this section.

163 (2) Upon receipt of the mortgagor's acceptance package,  
164 the mortgagee shall refrain from all collection or foreclosure  
165 activity for a suspension period consisting of a minimum of 1  
166 year after the date of acceptance or as otherwise agreed between  
167 the mortgagee and mortgagor.

168 (3) Within 30 days after the mortgagor's acceptance of the

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169 diversion offer, the mortgagee shall provide the mortgagor the  
170 amount of a preapproved price or short-sale price and the  
171 partial payoff amount of the mortgage payoff the mortgagee will  
172 accept to release and satisfy its mortgage or liens encumbering  
173 the property.

174 (a) In no event shall the short-sale price be greater than  
175 the current appraised value of the property or the outstanding  
176 balance of the mortgage loan, whichever is less. The mortgagee  
177 shall have the option to update the short-sale price and the  
178 partial payoff amount the mortgagee is willing to accept based  
179 upon market conditions, not more frequently than once every 6  
180 months. The mortgagee shall promptly deliver to the mortgagor  
181 the good faith documentation that supports its proposed short-  
182 sale price, including any updates to the short-sale price. Good  
183 faith documentation shall include, but not be limited to, a  
184 current appraisal by an appraiser licensed in this state who is  
185 located in the county in which the property is located.

186 (b) The partial payoff amount shall be ratably reduced by  
187 any condominium or homeowners' association fees and assessments  
188 and property taxes that accrue or are recalculated after the  
189 date of the diversion offer. However, in no event shall the  
190 mortgagee be required to consent to release any lien when the  
191 aggregate amount of condominium or homeowners' association fees  
192 and assessments exceeds the amounts for which the mortgagee  
193 would be liable as set forth in s. 718.116 or s. 720.3085, as  
194 applicable.

195 (4) Except in the case where aggregate condominium or  
196 homeowners' association fees and assessments exceed the amounts

197 authorized by chapter 718 or chapter 720, the mortgagee shall,  
 198 within 15 days after receiving from the mortgagor a copy of any  
 199 bona fide written contract setting forth a sales price equal to  
 200 or in excess of the mortgagee's approved short-sale price or,  
 201 alternatively, a payoff amount to the mortgagee equal to or in  
 202 excess of the partial payoff amount, deliver to the mortgagor a  
 203 final payoff letter confirming the short payoff amount and  
 204 setting forth the amount of a deficiency, if any, the mortgagee  
 205 claims is still due and owed by the mortgagor. The failure of  
 206 the mortgagee to provide the final payoff letter within the 15-  
 207 day period shall not prevent the mortgagor from proceeding with  
 208 closing on and transferring the property and shall relieve the  
 209 mortgagor of any obligation to the mortgagee for a deficiency  
 210 judgment or any unpaid portion of the mortgage loan.

211 (5) The mortgagor and mortgagee must consent in writing to  
 212 the following as conditions to participation in the program:

213 (a) The mortgagor agrees to maintain the property in good  
 214 condition pending the short sale or foreclosure of the property  
 215 and to commit no waste on the property.

216 (b) The mortgagor agrees to waive any right to discharge a  
 217 deficiency judgment or debt owed to the mortgagee in bankruptcy  
 218 for a period of 24 months after date of the short-sale closing  
 219 or foreclosure sale.

220 (c) The mortgagor waives any rights concerning exemption  
 221 from garnishment.

222 (6) The mortgagee is under no obligation to provide a  
 223 final payoff letter or release its mortgage lien for any offer  
 224 that is less than its stated short-sale price or that results in



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225 a mortgage loan payoff amount less than partial payoff amount.  
226 Nothing in this section prevents a mortgagee from accepting less  
227 than its stated short-sale offer.

228 (7) Upon mutual written consent of the mortgagee and the  
229 mortgagor, the parties may continue to participate in the  
230 program beyond the initial suspension period. For each  
231 additional suspension period of 1 year that the mortgagee and  
232 the mortgagor participate in the program, the statute of  
233 limitations for pursuing and collecting a deficiency shall be  
234 extended an additional year. The parties may participate in the  
235 program for such time as they both mutually agree, but in no  
236 event may the total statute of limitations exceed 7 years in the  
237 aggregate.

238 (8) In consideration of the additional rights and  
239 privileges afforded to mortgagees and the voluntary waiver of  
240 rights by mortgagors participating in the program, participation  
241 in the program constitutes consent by both parties to the  
242 requirements and remedies set forth in this section.

243 Section 3. This act shall take effect July 1, 2010.