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1 A bill to be entitled
2 An act relating to foreclosure proceedings; providing a
3 short title; amending s. 45.031, F.S.; providing
4 requirements for publication of a notice of foreclosure
5 sale; revising requirements for a notice of sale; amending
6 s. 45.035, F.S.; conforming cross-references; amending s.
7 50.011, F.S.; providing requirements for a notice of
8 foreclosure sale on an Internet website; amending ss.
9 69.041 and 201.02, F.S.; conforming cross-references;
10 amending s. 701.02, F.S.; entitling mortgagors, county
11 clerks, and circuit courts to rely on a full or partial
12 release, discharge, consent, joinder, subordination,
13 satisfaction, or assignment of a mortgage in certain
14 circumstances; amending s. 701.03, F.S.; providing for an
15 estoppel certificate for a mortgagor, upon request;
16 providing requirements for certificates; providing for a
17 summary proceeding to compel compliance; requiring
18 cancellation of a mortgage within a specified period after
19 all money due is paid; providing for a summary proceeding
20 to compel compliance; providing for county clerk to cancel
21 the mortgage of record in certain circumstances following
22 judicial action; requiring a deposit by a plaintiff in an
23 action seeking to cancel a mortgage; authorizing a service
24 charge; providing for award of attorney's fees; creating
25 s. 702.015, F.S.; providing requirements for foreclosure
26 of residential home loans; providing requirements for
27 complaints; amending s. 702.035, F.S.; revising
28 requirements for legal notices concerning foreclosure

29 | proceedings; specifying who must receive notice; providing
30 | requirements for printing and wording of notice; amending
31 | s. 702.06, F.S.; providing requirements for deficiency
32 | judgments in proceedings involving certain owner-occupied
33 | properties; precluding deficiency judgments in certain
34 | circumstances; providing for disposition of moneys
35 | remaining in the hands of a receiver of the rents and
36 | profits appointed in the action; amending s. 702.065,
37 | F.S.; revising the period in which a judgment must be
38 | entered in an uncontested proceeding; revising provisions
39 | relating to determination of the amount of a reasonable
40 | attorney's fee in an uncontested proceeding without
41 | requiring a hearing; creating s. 702.11, F.S.; providing
42 | an alternative procedure to foreclosure for certain
43 | residential properties; specifying when the procedure may
44 | be used; providing for notice; providing for objections;
45 | providing for establishment of abandonment of property in
46 | certain circumstances; providing requirements for a deed
47 | in lieu of foreclosure for certain purposes; specifying
48 | when a nonhomestead property subject to a residential
49 | mortgage is deemed to have no equity for certain purposes;
50 | providing for return of excess funds following sale;
51 | providing for an election to proceed with the alternative
52 | procedure to foreclosure; providing for redemption;
53 | providing for an order for redemption or notice thereof;
54 | providing for a public sale; providing for resolution of a
55 | dispute among defendants over the right to redeem;
56 | providing for an issuance of a certification of redemption

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57 | if the property is redeemed; providing for a judgment
 58 | debarring and foreclosing the equity of redemption of the
 59 | defendants and each of them and any person claiming by,
 60 | through, or under them, and adjudging the plaintiff vested
 61 | with a valid and indefeasible estate in the mortgaged
 62 | premises if specified requirements are met; specifying the
 63 | effect of an entry of judgment; providing an effective
 64 | date.

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

68 | Section 1. This act may be cited as the "Florida Fair
 69 | Foreclosure Act."

70 | Section 2. Subsections (2) through (10) of section 45.031,
 71 | Florida Statutes, are renumbered as subsections (3) through
 72 | (11), respectively, a new subsection (2) is added to that
 73 | section, and present subsections (2) and (10) of that section
 74 | are amended, to read:

75 | 45.031 Judicial sales procedure.—In any sale of real or
 76 | personal property under an order or judgment, the procedures
 77 | provided in this section and ss. 45.0315-45.035 may be followed
 78 | as an alternative to any other sale procedure if so ordered by
 79 | the court.

80 | (2) PUBLICATION OF SALE.—Notice of sale shall be
 81 | published:

82 | (a) In a newspaper of general circulation, as defined in
 83 | chapter 50, published in the county where the sale is to be held
 84 | once a week for 2 consecutive weeks. The second publication

85 shall be at least 5 days before the sale. On each page of the
 86 newspaper on which such notices are printed, the newspaper shall
 87 print the Internet website address of the clerk of the court for
 88 the county in which the sale is to be held. It shall also print
 89 the Internet website address of www.floridapublicnotices.com.
 90 These Internet website addresses shall be printed in a clear,
 91 large font;

92 (b) On the Internet website of the newspaper in which the
 93 notice is published by a clear and conspicuous hyperlink from
 94 the website's home page for 20 consecutive days before the sale.
 95 The newspaper website containing the notice shall also contain a
 96 clean and conspicuous hyperlink to the website of the clerk of
 97 the court for the county in which the sale is to be held; or

98 (c) On the Internet website located at
 99 www.floridapublicnotices.com by a clear and conspicuous
 100 hyperlink on that website.

101 ~~(3)(2) NOTICE PUBLICATION OF SALE. Notice of sale shall be~~
 102 ~~published once a week for 2 consecutive weeks in a newspaper of~~
 103 ~~general circulation, as defined in chapter 50, published in the~~
 104 ~~county where the sale is to be held. The second publication~~
 105 ~~shall be at least 5 days before the sale. The notice of sale~~
 106 ~~shall contain:~~

- 107 (a) A description of the property to be sold.
- 108 (b) The time and place of sale.
- 109 (c) A statement that the sale will be made pursuant to the
- 110 order or final judgment.
- 111 (d) The caption of the action.
- 112 (e) The name of the clerk making the sale.

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113 (f) A statement of the name of the newspaper, and the
 114 website home page address, in or on which the notice will be
 115 published.

116 (g)~~(f)~~ A statement that any person claiming an interest in
 117 the surplus from the sale, if any, other than the property owner
 118 as of the date of the lis pendens must file a claim within 60
 119 days after the sale.

120
 121 The court, in its discretion, may enlarge the time of the sale.
 122 Notice of the changed time of sale shall be published as
 123 provided in this section ~~herein~~.

124 (11)~~(10)~~ ELECTRONIC SALES.—The clerk may conduct the sale
 125 of real or personal property under an order or judgment pursuant
 126 to this section by electronic means. Such electronic sales shall
 127 comply with the procedures provided in this chapter, except that
 128 electronic proxy bidding shall be allowed and the clerk may
 129 require bidders to advance sufficient funds to pay the deposit
 130 required by subsection (4) ~~(3)~~. The clerk shall provide access
 131 to the electronic sale by computer terminals open to the public
 132 at a designated location and shall accept an advance credit
 133 proxy bid from the plaintiff of any amount up to the maximum
 134 allowable credit bid of the plaintiff. A clerk who conducts such
 135 electronic sales may receive electronic deposits and payments
 136 related to the sale.

137 Section 3. Subsection (3) of section 45.035, Florida
 138 Statutes, is amended to read:

139 45.035 Clerk's fees.—In addition to other fees or service
 140 charges authorized by law, the clerk shall receive service

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141 charges related to the judicial sales procedure set forth in ss.
 142 45.031-45.034 and this section:

143 (3) If the sale is conducted by electronic means, as
 144 provided in s. 45.031 (11) ~~(10)~~, the clerk shall receive an
 145 additional service charge not to exceed \$70 for services in
 146 conducting or contracting for the electronic sale, which service
 147 charge shall be assessed as costs and paid by the winning
 148 bidder. If the clerk requires advance electronic deposits to
 149 secure the right to bid, such deposits shall not be subject to
 150 the fee under s. 28.24(10). The portion of an advance deposit
 151 from a winning bidder required by s. 45.031 (4) ~~(3)~~ shall, upon
 152 acceptance of the winning bid, be subject to the fee under s.
 153 28.24(10).

154 Section 4. Section 50.011, Florida Statutes, is amended to
 155 read:

156 50.011 Where and in what language legal notices to be
 157 published.—

158 (1) Whenever by statute an official or legal advertisement
 159 or a publication, or notice in a newspaper has been or is
 160 directed or permitted in the nature of or in lieu of process, or
 161 for constructive service, or in initiating, assuming, reviewing,
 162 exercising or enforcing jurisdiction or power, or for any
 163 purpose, including all legal notices and advertisements of
 164 sheriffs and tax collectors, the contemporaneous and continuous
 165 intent and meaning of such legislation all and singular,
 166 existing or repealed, is and has been and is hereby declared to
 167 be and to have been, and the rule of interpretation is and has
 168 been, a publication in a newspaper printed and published

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169 | periodically once a week or oftener, containing at least 25
 170 | percent of its words in the English language, entered or
 171 | qualified to be admitted and entered as periodicals matter at a
 172 | post office in the county where published, for sale to the
 173 | public generally, available to the public generally for the
 174 | publication of official or other notices and customarily
 175 | containing information of a public character or of interest or
 176 | of value to the residents or owners of property in the county
 177 | where published, or of interest or of value to the general
 178 | public.

179 | (2) As allowed by s. 45.031(2), the electronic publication
 180 | of a notice of sale must be on a website having at least 25
 181 | percent of its words in the English language, and the website on
 182 | which the notice of sale is posted must be available for viewing
 183 | by the general public without a registration processes of any
 184 | sort and during all hours of each day. The proof of publication
 185 | affidavit must contain in its heading the common name and the
 186 | Uniform Resource Locator (URL) of the website where posting
 187 | occurred, a copy of the notice of sale, and include the dates on
 188 | which posting occurred.

189 | Section 5. Paragraph (a) of subsection (4) of section
 190 | 69.041, Florida Statutes, is amended to read:

191 | 69.041 State named party; lien foreclosure, suit to quiet
 192 | title.—

193 | (4) (a) The Department of Revenue has the right to
 194 | participate in the disbursement of funds remaining in the
 195 | registry of the court after distribution pursuant to s.
 196 | 45.031(8)~~(7)~~. The department shall participate in accordance

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197 with applicable procedures in any mortgage foreclosure action in
 198 which the department has a duly filed tax warrant, or interests
 199 under a lien arising from a judgment, order, or decree for
 200 support, as defined in s. 409.2554, or interest in an
 201 unemployment compensation tax lien under contract with the
 202 Agency for Workforce Innovation through an interagency agreement
 203 pursuant to s. 443.1316, against the subject property and with
 204 the same priority, regardless of whether a default against the
 205 department, the Agency for Workforce Innovation, or the former
 206 Department of Labor and Employment Security has been entered for
 207 failure to file an answer or other responsive pleading.

208 Section 6. Subsection (9) of section 201.02, Florida
 209 Statutes, is amended to read:

210 201.02 Tax on deeds and other instruments relating to real
 211 property or interests in real property.—

212 (9) A certificate of title issued by the clerk of court
 213 under s. 45.031(6)~~(5)~~ in a judicial sale of real property under
 214 an order or final judgment issued pursuant to a foreclosure
 215 proceeding is subject to the tax imposed by subsection (1).
 216 However, the amount of the tax shall be computed based solely on
 217 the amount of the highest and best bid received for the property
 218 at the foreclosure sale. This subsection is intended to clarify
 219 existing law and shall be applied retroactively.

220 Section 7. Subsection (5) of section 701.02, Florida
 221 Statutes, is amended to read:

222 701.02 Assignment not effectual against creditors unless
 223 recorded and indicated in title of document; applicability.—

224 (5) Notwithstanding subsection (4), a creditor, mortgagor,

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225 or subsequent purchaser of real property or any interest
 226 therein, for valuable consideration and without notice, or the
 227 county clerk or the circuit court in any action to enforce a
 228 promissory note, may ~~is entitled to~~ rely on a full or partial
 229 release, discharge, consent, joinder, subordination,
 230 satisfaction, or assignment of a mortgage upon such property
 231 made by the mortgagee of record, without regard to the filing of
 232 any Uniform Commercial Code financing statement that purports to
 233 perfect a security interest in the mortgage or in a promissory
 234 note or other right to payment or performance secured by the
 235 mortgage, and the filing of any such financing statement does
 236 not constitute notice for the purposes of this section. For the
 237 purposes of this subsection, the term "mortgagee of record"
 238 means the person named as the mortgagee in the recorded mortgage
 239 or, if an assignment of the mortgage has been recorded in
 240 accordance with this section, the term "mortgagee of record"
 241 means the assignee named in the recorded assignment.

242 Section 8. Section 701.03, Florida Statutes, is amended to
 243 read:

244 701.03 Estoppel certificate; cancellation.—

245 (1) Within 15 days after the date on which a request for
 246 an estoppel certificate is received from a mortgagor, or his or
 247 her designee, requesting a payoff amount of the mortgage as of a
 248 certain date, the mortgagee shall provide a certificate signed
 249 by an officer or authorized agent of the mortgagee stating the
 250 principal balance of the mortgage note, all accrued interest,
 251 and any other charges required by the mortgagee to satisfy the
 252 mortgage as of the date requested by the mortgagor, or his or

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253 her designee, with a per diem thereafter. The mortgagee may
 254 charge a fee for the preparation of the certificate and the
 255 amount of the fee must be stated on the certificate ~~Whenever the~~
 256 ~~amount of money due on any mortgage shall be fully paid, the~~
 257 ~~mortgagee or assignee shall within 60 days thereafter cancel the~~
 258 ~~same in the manner provided by law.~~

259 (a) The mortgagor may rely on the certificate and shall be
 260 entitled to the benefits thereof.

261 (b) A summary proceeding pursuant to s. 51.011 may be
 262 brought to compel compliance with this section, and the
 263 prevailing party may recover reasonable attorney's fees.

264 (2) Within 60 days after a mortgage is fully paid, the
 265 mortgagee or assignee shall cancel the mortgage in the manner
 266 provided by law. A summary proceeding pursuant to s. 51.011 may
 267 be brought to compel compliance with this section, and the
 268 prevailing party may recover reasonable attorney's fees.

269 (3) In an action brought by any mortgagor or party in
 270 interest on a mortgage on real estate or chattels, or both,
 271 recorded in the office of the county clerk, the circuit court
 272 may direct the county clerk to cancel the mortgage of record, if
 273 the plaintiff:

274 (a) Presents satisfactory proof that all sums secured by
 275 the mortgage which are due and payable have been fully paid;

276 (b) Deposits in the clerk's office a sum of money in an
 277 amount equal to the principal amount plus accrued interest and
 278 any additional charges due from the mortgagor to the mortgagee
 279 as shown on the most recent loan payment statement or monthly
 280 invoice from the mortgagee to mortgagor, which statement shall

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281 be no earlier than 1 month before the date the mortgagor
282 deposits the funds in the clerk's office, plus interest thereon
283 at the rate stated in the note for 3 months, plus \$1,000, to
284 apply on any attorney's fees and court costs that may be taxed
285 in any proceeding arising under this section. Such deposit shall
286 be conditioned to pay any judgment or decree that may be
287 rendered for the payment in full of the mortgage for which such
288 funds are deposited, including accrued interest and any
289 additional charges due from the mortgagor to the mortgagee. Upon
290 receipt of such deposit, the clerk shall make and record a
291 certificate showing the transfer of the lien of the mortgage
292 from the real property to the security and shall mail a copy
293 thereof by registered or certified mail to the mortgagee at the
294 address stated on the loan payment statement. Upon filing the
295 certificate of transfer, the real property shall be released
296 from the lien and operation of the mortgage and the lien shall
297 be transferred to such security. The clerk is entitled to a
298 service charge for making and serving the certificate in an
299 amount not to exceed \$20. Any excess of the security over the
300 aggregate amount of any judgments or decrees that may be
301 rendered for the payment in full of the mortgage for which such
302 funds are deposited, including accrued interest and any
303 additional charges due from the mortgagor to the mortgagee,
304 shall be repaid to the party filing the security or his or her
305 successor in interest. Any deposit of money shall be considered
306 as paid into court and shall be subject to the provisions of law
307 relative to payments of money into court and the disposition of
308 such money. Any party having an interest in such security from

309 the mortgage lien that was transferred may file a complaint in
 310 chancery in the circuit court of the county where such security
 311 is deposited or file a motion in a pending action to foreclose
 312 on the mortgage for an order to require additional security,
 313 reduction of security, payment of discharge thereof, or any
 314 other matter affecting the security. If the court finds that the
 315 amount of the deposit in excess of the amount due to satisfy the
 316 mortgage as provided in this paragraph is insufficient to pay
 317 the mortgagee's attorney's fees and court costs incurred in the
 318 action to foreclose the mortgage, the court may increase the
 319 amount of the cash deposit. If it appears that the mortgage lien
 320 has been satisfied of record, the clerk shall return the
 321 security upon request of the person depositing or filing it; or
 322 (c) Presents such special circumstances as to satisfy the
 323 court that the mortgagee and his or her successors or assigns,
 324 if any, in right, title, and interest, have no further interest
 325 in the mortgage or the debt secured thereby.

326 Section 9. Section 702.015, Florida Statutes, is created
 327 to read:

328 702.015 Foreclosure of residential home loans.—Any
 329 complaint served in a proceeding initiated pursuant to this
 330 section which seeks to foreclose a mortgage securing a lien on a
 331 residential one-family to four-family dwelling unit must contain
 332 affirmative allegations expressly made by the plaintiff at the
 333 time the proceeding is commenced that:

334 (1) The plaintiff is the owner and holder of the subject
 335 note and mortgage in due course, or has been expressly delegated
 336 the authority to institute a mortgage foreclosure action in

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337 writing by the owner and holder of the subject mortgage and
 338 note, which authorization shall be attached as an exhibit to the
 339 complaint.

340 (2) The complaint details a clear chain of custody for the
 341 promissory note and mortgage which is the subject of the action.

342 (3) All assignments of the note and mortgage are attached
 343 as exhibits to the complaint.

344 Section 10. Section 702.035, Florida Statutes, is amended
 345 to read:

346 702.035 Legal notice concerning foreclosure proceedings.—

347 (1) The foreclosing party in a mortgage foreclosure action
 348 involving residential real property shall provide notice to:

349 (a) Any mortgagor having an interest in the property and
 350 record title owner of the property if the action relates to an
 351 owner-occupied one-family to four-family dwelling unit; and

352 (b) Any tenant of a dwelling unit in the property in
 353 accordance with this section.

354 (2) The notice required under paragraph (1) (a) shall:

355 (a) Be delivered with the summons and complaint. Such
 356 notice shall be in bold, 14-point type and the title of the
 357 notice shall be in bold, 20-point type. The notice shall be on
 358 its own page.

359 (b) Appear as follows:

361 NOTICE YOU ARE IN DANGER OF LOSING YOUR HOME

362 If you fail to respond to the summons and complaint in this
 363 foreclosure action, you may lose your home. Please read the
 364 summons and complaint carefully. You should immediately

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365 contact an attorney or your local legal aid office to
366 obtain advice on how to protect yourself. Sending a payment
367 to your mortgage company will not stop this foreclosure
368 action.

369
370 YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE
371 ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING
372 THE RESPONSE WITH THE COURT. THIS LAWSUIT DOES NOT MEAN
373 THAT YOU MUST IMMEDIATELY MOVE OUT OF YOUR PROPERTY.

374
375 SOURCES OF INFORMATION AND ASSISTANCE:

376 The state encourages you to become informed about your
377 options in foreclosure. In addition to seeking assistance
378 from an attorney or legal aid office, there are government
379 agencies and nonprofit organizations that you may contact
380 for cost-free information about possible options, including
381 trying to work with your lender during this process.

382
383 FORECLOSURE RESCUE SCAMS:

384 Be careful of people who approach you with offers to "save"
385 your home. There are individuals who watch for notices of
386 foreclosure actions in order to unfairly profit from a
387 homeowner's distress. You should be extremely careful about
388 any such promises and any suggestions that you pay them a
389 fee or sign over your deed. State law requires anyone
390 offering such services for profit to enter into a contract
391 which fully describes the services they will perform and
392 fees they will charge, and which prohibits them from taking

393 any money from you until they have completed all such
 394 promised services.

395
 396 (3) The notice to any tenant required under paragraph
 397 (1)(b) shall:

398 (a) Be delivered with the summons and complaint. The
 399 foreclosing party shall provide its name, address, and telephone
 400 number on the notice. The notice shall be printed on colored
 401 paper that is different than the color of the summons and
 402 complaint, and the title of the notice shall be in bold, 14-
 403 point type. The notice shall be on its own page.

404 (b) Appear as follows:

405
 406 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE
 407 Florida law requires that we provide you this notice about
 408 the foreclosure process. Please read it carefully.

409
 410 We, ...(name of foreclosing party)..., are the foreclosing
 411 party and are located at ...(foreclosing party's
 412 address).... We can be reached at ...(foreclosing party's
 413 telephone number)....

414
 415 The dwelling unit where your apartment is located is the
 416 subject of a foreclosure proceeding. If you have a lease,
 417 are not the owner of the residence, and the lease requires
 418 payment of rent that at the time it was entered into was
 419 not substantially less than the fair market rent for the
 420 property, you may be entitled to remain in occupancy for

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421 the remainder of your lease term. If you do not have a
422 lease, you will be entitled to remain in your home until 90
423 days after any person or entity who acquires title to the
424 property provides you with a notice. The notice shall
425 provide information regarding the name and address of the
426 new owner and your rights to remain in your home. These
427 rights are in addition to any others you may have if you
428 are a subsidized tenant under federal, state, or local law
429 or if you are a tenant subject to rent control, rent
430 stabilization, or a federal statutory scheme.

431
432 (4) Whenever a legal advertisement, publication, or notice
433 relating to a foreclosure proceeding is required to be placed in
434 a newspaper and posted in a website online, it is the
435 responsibility of the petitioner or petitioner's attorney to
436 place such advertisement, publication, or notice. For counties
437 having ~~with~~ more than 1 million total population as reflected in
438 the 2000 Official Decennial Census of the United States Census
439 Bureau as shown on the official website of the United States
440 Census Bureau, any notice of publication required by this
441 section shall be deemed to have been published in accordance
442 with the law if the notice is published in a newspaper that has
443 been entered as a periodical matter at a post office in the
444 county in which the newspaper is published, is published a
445 minimum of 5 days a week, exclusive of legal holidays, and has
446 been in existence and published a minimum of 5 days a week,
447 exclusive of legal holidays, for 1 year or is a direct successor
448 to a newspaper that has been in existence for 1 year that has

449 | been published a minimum of 5 days a week, exclusive of legal
 450 | holidays. The advertisement, publication, or notice shall be
 451 | placed directly by the attorney for the petitioner, by the
 452 | petitioner if acting pro se, or by the clerk of the court. Only
 453 | the actual costs charged by the newspaper for the advertisement,
 454 | publication, or notice may be charged as costs in the action.

455 | Section 11. Section 702.06, Florida Statutes, is amended
 456 | to read:

457 | 702.06 Deficiency decree; common-law suit to recover
 458 | deficiency.—

459 | (1) In all suits for the foreclosure of mortgages
 460 | heretofore or hereafter executed, the entry of a deficiency
 461 | decree for any portion of a deficiency, should one exist, shall
 462 | be within the sound judicial discretion of the court, but the
 463 | complainant shall also have the right to sue at common law to
 464 | recover such deficiency, provided no suit at law to recover such
 465 | deficiency shall be maintained against the original mortgagor in
 466 | cases where the mortgage is for the purchase price of the
 467 | property involved and where the original mortgagee becomes the
 468 | purchaser thereof at foreclosure sale and also is granted a
 469 | deficiency decree against the original mortgagor.

470 | (2) (a) In respect to an owner-occupied one-family to four-
 471 | family dwelling unit, if a person liable to the plaintiff for
 472 | the payment of the debt secured by the mortgage is made a
 473 | defendant in the action, and has appeared before the court or
 474 | been personally served with the summons, the final judgment may
 475 | award payment by him or her of the whole residue, or so much
 476 | thereof as the court may determine to be just and equitable, of

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477 the debt remaining unsatisfied, after a sale of the mortgaged
478 property and the application of the proceeds, pursuant to the
479 directions contained in such judgment, with the amount thereof
480 to be determined by the court as provided in this subsection.

481 (b) Simultaneously with the making of a motion for an
482 order confirming the sale, if made within 180 days after the
483 date of the consummation of the sale by the delivery of the
484 proper deed of conveyance to the purchaser, the party to whom
485 such residue is owing may make a motion in the action for leave
486 to enter a deficiency judgment upon notice to the party against
487 whom such judgment is sought or the attorney for that party. The
488 notice shall be served personally or in such other manner as the
489 court may direct. Upon such motion, the court, regardless of
490 whether the respondent appears, shall determine the fair and
491 reasonable market value of the mortgaged premises as of the date
492 the premises were bid in at auction or such nearest earlier date
493 as there shall have been any market value thereof and shall make
494 an order directing the entry of a deficiency judgment. Such
495 deficiency judgment shall be for an amount equal to the sum of
496 the amount owing by the party liable as determined by the
497 judgment with interest, plus the amount owing on all prior liens
498 and encumbrances with interest, plus costs and disbursements of
499 the action including the receiver's fee and disbursements, less
500 the market value as determined by the court or the sale price of
501 the property, whichever is higher.

502 (c) If a motion for a deficiency judgment is not made as
503 prescribed in this subsection, the proceeds of the sale,
504 regardless of amount, shall be deemed to be in full satisfaction

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505 of the mortgage debt and a right to recover any deficiency in
 506 any action or proceeding subsequently does not exist.

507 (3) Notwithstanding subsection (2) and irrespective of
 508 whether a motion for a deficiency judgment has been made or, if
 509 made, has been denied, the court shall direct that all moneys
 510 remaining in the hands of a receiver of the rents and profits
 511 appointed in the action, after the payment of the receiver's
 512 fees and the expenses of the receivership, or any moneys
 513 remaining in the hands of a mortgagee in possession or an
 514 assignee of the rents and profits of the premises, shall be paid
 515 to the plaintiff to the extent of the amount, if any, by which
 516 the judgment of foreclosure and sale exceeds the amount paid for
 517 the property upon the sale.

518 Section 12. Section 702.065, Florida Statutes, is amended
 519 to read:

520 702.065 Final judgment in uncontested proceedings where
 521 deficiency judgment waived; attorney's fees when default
 522 judgment entered.—

523 (1) In uncontested mortgage foreclosure proceedings in
 524 which the mortgagee waives the right to recoup any deficiency
 525 judgment, the court shall enter final judgment within 45 ~~90~~ days
 526 from the date of the close of pleadings. For the purposes of
 527 this subsection, a mortgage foreclosure proceeding is
 528 uncontested if a default has been entered against all defendants
 529 or no response an answer not contesting the foreclosure has been
 530 timely filed or a default judgment has been entered by the
 531 court.

532 (2) In a mortgage foreclosure proceeding of a residential

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533 ~~one-family to four-family dwelling unit, when a default judgment~~
534 ~~has been entered against the mortgagor and the note or mortgage~~
535 ~~provides for the award of reasonable attorney's fees, it is not~~
536 ~~necessary for the court to hold a hearing or adjudge the~~
537 ~~requested attorney's fees to be reasonable if the fees do not~~
538 ~~exceed the greater of 1.5 ~~3~~ percent of the principal amount owed~~
539 ~~at the time of filing the complaint or \$1,500, even if the note~~
540 ~~or mortgage does not specify the percentage of the original~~
541 ~~amount that would be paid as liquidated damages. Such fees~~
542 ~~constitute liquidated damages in any proceeding to enforce the~~
543 ~~note or mortgage. This section does not preclude a challenge to~~
544 ~~the reasonableness of the attorney's fees.~~

545 Section 13. Section 702.11, Florida Statutes, is created
546 to read:

547 702.11 Alternative procedure to foreclosure.-

548 (1) An alternative procedure to foreclosure without sale
549 for the disposition of a residential one-family to four-family
550 dwelling unit subject to foreclosure is established under
551 subsection (2) to allow a lender to elect to proceed according
552 to this section and the Florida Rules of Civil Procedure.

553 (2) (a) The alternative procedure to foreclosure without
554 sale provided in this section may only be used if:

555 1. The debtor has consented in writing to the use of this
556 procedure;

557 2. The debtor has abandoned the property which is the
558 subject of the residential mortgage;

559 3. The debtor has voluntarily surrendered the property
 560 which is the subject of the residential mortgage by signing a
 561 deed in lieu of foreclosure in favor of the lender; or

562 4. There is no equity in a nonhomestead property which is
 563 the subject of the residential mortgage, as defined in
 564 subsection (5); and

565 (b) The following are conditions are met:

566 1. The debtor is not on active duty with the United States
 567 military.

568 2. The lender provides 30 days' written notice by ordinary
 569 mail and certified mail, return receipt requested, to the last
 570 known address of all current mortgagors, mortgagees, record
 571 titleholders, and lienholders of record and also to the address
 572 of the property being foreclosed. The notice shall inform the
 573 aforementioned parties that the lender is proceeding under an
 574 alternative procedure to foreclosure authorized by this section
 575 in substantially the form below:

576
 577 NOTICE OF ALTERNATIVE PROCEDURE TO FORECLOSURE WITHOUT SALE
 578 Florida Law requires that we provide you this notice about
 579 the alternative foreclosure process. Please read it
 580 carefully.

581
 582 You have been identified as a current mortgagor, mortgagee,
 583 record titleholder, or lienholder of record for a property
 584 which is subject to foreclosure. You are hereby notified
 585 that [NAME AND ADDRESS OF LENDER] is seeking to commence an
 586 alternative to foreclosure procedure pursuant to s. 702.11,

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587 Florida Statutes, in regard to the property located at
588 [ADDRESS]. You have 30 days in which to object to the
589 lender proceeding under s. 702.11, Florida Statutes. You
590 must notify the lender in writing within 30 days that you
591 object to this proceeding; otherwise, your right to so
592 object will be lost.

593
594 3. The lender records a Notice of Alternative Procedure To
595 Foreclosure in the land records of the county clerk in the
596 county in which the property is situated, which notice shall be
597 recorded in the same manner as a lis pendens.

598 (c) If the lender receives written objection from a
599 current mortgagor, mortgagee, record titleholder, or lienholder
600 of record to proceeding under this section within 30 days after
601 the mailing of the written notice, or the recording of the
602 Notice of Alternative Procedure To Foreclosure in the land
603 records, whichever is later, the lender is precluded from
604 proceeding with the alternative procedure to foreclosure in this
605 section and shall record in the land records a Notice of
606 Termination of Alternative Procedure to Foreclosure.

607 (3) Pursuant to subparagraph (2) (a)2. and for purposes of
608 this section only, abandonment of the property subject to the
609 residential mortgage may be established only by an affidavit
610 from an individual having personal knowledge of the contents
611 thereof under penalty of perjury, setting forth the specific
612 facts upon which that conclusion is based. The affidavit shall
613 be submitted to the circuit court in the county in which the
614 property is situated at the same time that the lender applies to

615 the court for the order fixing the amount, time, and place for
 616 redemption.

617 (4) Pursuant to subparagraph (2)(a)3. and for purposes of
 618 this section only, if the lender receives a deed in lieu of
 619 foreclosure, the conveyance shall be effective only if the deed
 620 clearly and conspicuously provides that the debtor may, without
 621 penalty, rescind the conveyance within 7 days, excluding
 622 Saturdays, Sundays, and legal holidays, and that such rescission
 623 is effective upon delivery of a written notice to the lender or
 624 its agent or upon mailing of such notice to the lender or its
 625 agent by certified or registered mail, return receipt requested.

626 (5)(a) For purposes of subparagraph (2)(a)4., a
 627 nonhomestead property subject to a residential mortgage is
 628 deemed to have no equity if the total unpaid balance of all
 629 liens and encumbrances against the property, including
 630 mortgages, tax liens, and judgments actually against the
 631 property (not including similar-name judgments), and any other
 632 lien, is equal to or greater than 150 percent of the fair market
 633 value of the property as that value has been established by the
 634 county property appraiser in and for the county in which the
 635 property is situated, or as otherwise agreed between the lender
 636 and the debtor. An affidavit, from an individual having personal
 637 knowledge of the contents thereof under penalty of perjury,
 638 setting forth with specificity the fair market value of the
 639 property, the unpaid balance of the obligation, including all
 640 mortgages and liens and the method by which the lender
 641 determined that the property has no equity, with a copy of the
 642 county property appraiser's valuation of the subject property

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643 attached thereto, shall be submitted to the circuit court at the
644 time the lender applies for the order fixing the amount, time,
645 and place for redemption.

646 (b) If a lender proceeds with the alternative procedure to
647 foreclosure under this section, the debtor not having objected
648 and requested a public sale pursuant to this section, the lender
649 resells the foreclosed property after judgment, the resale
650 occurs within 12 months after judgment, and the resale price
651 received by the lender is in excess of the amount necessary to
652 repay the debt, interest, and reasonable costs of the lender,
653 and all carrying charges, including, but not limited to, the
654 reasonable costs of maintenance and resale, the lender shall
655 deposit any such excess in the registry of the clerk of the
656 court in accordance with the Florida Rules of Civil Procedure.

657 (c) Upon deposit of any such excess with the circuit
658 court, the lender shall notify the debtor and any lienholder who
659 held a lien junior to that of the lender and whose lien was lost
660 in whole or in part as a result of the foreclosure. Such
661 notification shall be by certified mail, return receipt
662 requested, to the last known address of the debtor and such
663 lienholders. The debtor and the lienholders must apply within 6
664 months to the circuit court, in the form of an application for
665 surplus funds, upon appropriate notice to all other parties in
666 interest, to seek an order for turnover of the excess funds.
667 Failure of a lender to comply with paragraph (b) and this
668 paragraph does not affect title to the foreclosed property.

669 (6) (a) In accordance with the Florida Rules of Civil
670 Procedure, and subject to compliance with this section, a lender

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671 may elect to proceed with the alternative procedure to
672 foreclosure by filing an affidavit from an individual having
673 personal knowledge of the contents thereof, under penalty of
674 perjury, with the circuit court in which the property is
675 located.

676 (b) The affidavit shall set forth the facts which the
677 lender alleges show that it is entitled to proceed under
678 paragraph (2) (a) and shall be supported by the proofs required
679 by this section and such other proofs as may be required by the
680 court.

681 (7) In accordance with the Florida Rules of Civil
682 Procedure, and subject to compliance with this section, the
683 court may enter an order fixing the amount, time, and place for
684 redemption, which shall be not less than 45 days nor more than
685 60 days after the date of the order. The court may grant an
686 extension of time for good cause shown. The order shall provide
687 that:

688 (a) The redeeming defendant must pay to the plaintiff's
689 attorney the amount fixed by the court for redemption, together
690 with interest to the date of redemption, plus all court costs.

691 (b) Redemption shall be by cash, cashier's check, or
692 certified check and made at the office of the plaintiff's
693 attorney, if such office is located in the county where the
694 property is situated, or at such other place as designated by
695 the court, between the hours of 9 a.m. and 5 p.m. of the date
696 set by the court in the order.

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697 (c) In the absence of redemption, the defendants shall
 698 stand absolutely debarred and foreclosed from all equity of
 699 redemption.

700 (8) (a) The order for redemption or notice thereof shall be
 701 mailed to each defendant's last known address and, if different,
 702 also to the address of the property being foreclosed. The order
 703 for redemption or notice thereof shall be sent by ordinary mail
 704 and certified mail, return receipt requested, within 20 days
 705 after the date the order is entered, except that, as to
 706 defendants whose addresses are unknown and who were served by
 707 publication, no further publication of the order for redemption
 708 or notice thereof need be made.

709 (b) The notice shall:

710 1. Inform the defendants that the plaintiff is proceeding
 711 under an alternative procedure authorized by this section and
 712 set out the steps of the alternative procedure;

713 2. Inform all defendants of the terms and conditions under
 714 which a defendant may request a public sale of the mortgaged
 715 premises under subsection (9); and

716 3. Clearly state that a request for a public sale made
 717 more than 30 days after the date of service will not be granted,
 718 except for good cause shown.

719 (9) In any matter in which the circuit court has issued an
 720 order for redemption and the lender is permitted to proceed by
 721 the alternative procedure, a defendant who wishes a public sale
 722 with respect to the mortgaged premises being foreclosed shall
 723 submit to the court a written request for a public sale within
 724 30 days after the date the order or notice thereof is served. If

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725 a defendant requests a public sale within the required period,
726 and subject to compliance with this section, the court shall
727 enter a judgment of foreclosure which provides for a public sale
728 of the premises in accordance with applicable law. Any such
729 defendant who requests a public sale must post a cash deposit or
730 bond prior to the date fixed for redemption. This cash deposit
731 or bond shall be in an amount equal to 10 percent of the amount
732 declared due in the order fixing the amount, time, and place for
733 redemption and shall be held to secure the plaintiff against any
734 additional interest and costs, as well as any deficiency, as a
735 result of the public sale. The court may dispense with this
736 requirement for good cause shown. The defendant who requests a
737 public sale shall pay all expenses and costs associated with the
738 public sale.

739 (10) In the event of any dispute among defendants over the
740 right to redeem, the court shall enter such order as is
741 necessary to secure the plaintiff pending the resolution of the
742 dispute, including, but not limited to, payment of the
743 plaintiff's additional interest and costs which accrue as a
744 result of the dispute.

745 (11) Upon redemption, the plaintiff shall furnish the
746 redemptioner with an appropriate certificate of redemption and
747 the redemptioner shall acquire all rights provided by law and
748 equity but is not entitled to a deed or title to the mortgaged
749 premises solely by virtue of the redemption. A redemptioner in
750 proper cases may proceed to foreclose the redemptioner's
751 interest. The lender shall record a certified copy of the

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752 Certificate of Redemption in the land records, and the county
753 clerk shall accept such certificate for recording.

754 (12) In the absence of redemption, and on proof of mailing
755 of the order for redemption or notice thereof pursuant to
756 subsection (8) and an affidavit of nonredemption, the plaintiff
757 is entitled to a judgment debarring and foreclosing the equity
758 of redemption of the defendants and each of them and any person
759 claiming by, through, or under them, and adjudging the plaintiff
760 vested with a valid and indefeasible estate in the mortgaged
761 premises. Anything to the contrary notwithstanding, redemption
762 is permitted at any time up until the entry of judgment,
763 including the whole of the last day upon which judgment is
764 entered. A certified copy of the judgment shall be accepted for
765 recording by the county clerk.

766 (13) Upon entry of a judgment vesting title in the
767 plaintiff under this section, the debt that was secured by the
768 foreclosed mortgage shall be deemed satisfied and shall be
769 canceled in accordance with s. 701.03, any deficiency is thereby
770 waived, and no party may institute any further or
771 contemporaneous action for the collection of the debt.

772 Section 14. This act shall take effect October 1, 2011.