

By Senator Latvala

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1 A bill to be entitled
2 An act relating to foreclosure proceedings; providing
3 a short title; amending s. 45.031, F.S.; providing
4 requirements for publication of a notice of
5 foreclosure sale; revising requirements for a notice
6 of sale; amending s. 50.011, F.S.; exempting
7 publication of a notice of foreclosure sale on an
8 Internet website from specified provisions relating to
9 publication of legal notices; providing requirements
10 for such notices; amending ss. 69.041 and 201.02,
11 F.S.; conforming cross-references; amending s. 701.02,
12 F.S.; entitling mortgagors, county clerks, and circuit
13 courts to rely on a full or partial release,
14 discharge, consent, joinder, subordination,
15 satisfaction, or assignment of a mortgage in certain
16 circumstances; amending s. 701.03, F.S.; requiring the
17 mortgagee to provide to the mortgagor an estoppel
18 certificate within a specified period after the date
19 on which a request for an estoppels certificate is
20 received from a mortgagor; providing for the content
21 of the certificate; requiring the mortgagee to cancel
22 the mortgage within a specified period after the
23 mortgage is paid in full; requiring the county court
24 clerk to cancel the mortgage of record in certain
25 circumstances following judicial action; providing for
26 award of attorney's fees; creating s. 702.015, F.S.;
27 providing requirements for foreclosure of residential
28 home loans; providing requirements for complaints;
29 amending s. 702.035, F.S.; revising requirements for

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

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59 of a dispute among defendants over the right to
60 redeem; providing for an issuance of a certification
61 of redemption if the property is redeemed; providing
62 for a judgment debarring and foreclosing the equity of
63 redemption of the defendants and each of them and any
64 person claiming by, through, or under them, and
65 adjudging the plaintiff vested with a valid and
66 indefeasible estate in the mortgaged premises if
67 specified requirements are met; specifying the effect
68 of an entry of judgment; providing an effective date.

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. This act may be cited as the "Florida Fair
73 Foreclosure Act."

74 Section 2. Subsections (2) through (10) of section 45.031,
75 Florida Statutes, are renumbered as subsections (3) through
76 (11), respectively, a new subsection (2) is added to that
77 section, and present subsections (2) and (10) of that section
78 are amended, to read:

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

84 (2) PUBLICATION OF SALE.—Notice of sale must be published:

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

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88 shall be at least 5 days before the sale. On every page of the
89 newspaper in which the notice is printed, the newspaper shall
90 print the Internet website address of the clerk of court for the
91 county in which the sale is to be held. The newspaper shall also
92 print the Internet website address for floridapublicnotice.com.
93 These Internet website addresses shall be printed in clear,
94 large font;

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

102 (c) On the Internet website located at
103 floridapublicnotice.com by a clear and conspicuous hyperlink on
104 that website.

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

111 (a) A description of the property to be sold.

112 (b) The time and place of sale.

113 (c) A statement that the sale will be made pursuant to the
114 order or final judgment.

115 (d) The caption of the action.

116 (e) The name of the clerk making the sale.

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117 (f) A statement of the name of the newspaper and the
118 website's home page address, in or on which the notice will be
119 published.

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

124

125 The court, in its discretion, may enlarge the time of the sale.
126 Notice of the changed time of sale shall be published as
127 provided in this section ~~herein~~.

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

141 Section 3. Section 50.011, Florida Statutes, is amended to
142 read:

143 50.011 Where and in what language legal notices to be
144 published.—

145 (1) Whenever by statute an official or legal advertisement

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146 or a publication, or notice in a newspaper has been or is
147 directed or permitted in the nature of or in lieu of process, or
148 for constructive service, or in initiating, assuming, reviewing,
149 exercising or enforcing jurisdiction or power, or for any
150 purpose, including all legal notices and advertisements of
151 sheriffs and tax collectors, the contemporaneous and continuous
152 intent and meaning of such legislation all and singular,
153 existing or repealed, is and has been and is hereby declared to
154 be and to have been, and the rule of interpretation is and has
155 been, a publication in a newspaper printed and published
156 periodically once a week or oftener, containing at least 25
157 percent of its words in the English language, entered or
158 qualified to be admitted and entered as periodicals matter at a
159 post office in the county where published, for sale to the
160 public generally, available to the public generally for the
161 publication of official or other notices and customarily
162 containing information of a public character or of interest or
163 of value to the residents or owners of property in the county
164 where published, or of interest or of value to the general
165 public.

166 (2) As allowed by s. 45.031(2), the electronic publication
167 of a notice of sale must be on a website having at least 25
168 percent of its words in the English language, and the website on
169 which the notice of sale is posted must be available for viewing
170 by the general public without a registration processes of any
171 sort and during all hours of each day. The proof of publication
172 affidavit must contain in its heading the common name and the
173 Uniform Resource Locator (URL) of the website where posting
174 occurred, a copy of the notice of sale, and include the dates on

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175 which posting occurred.

176 Section 4. Paragraph (a) of subsection (4) of section
177 69.041, Florida Statutes, is amended to read:

178 69.041 State named party; lien foreclosure, suit to quiet
179 title.—

180 (4) (a) The Department of Revenue has the right to
181 participate in the disbursement of funds remaining in the
182 registry of the court after distribution pursuant to s.
183 45.031(8) ~~45.031(7)~~. The department shall participate in
184 accordance with applicable procedures in any mortgage
185 foreclosure action in which the department has a duly filed tax
186 warrant, or interests under a lien arising from a judgment,
187 order, or decree for support, as defined in s. 409.2554, or
188 interest in an unemployment compensation tax lien under contract
189 with the Agency for Workforce Innovation through an interagency
190 agreement pursuant to s. 443.1316, against the subject property
191 and with the same priority, regardless of whether a default
192 against the department, the Agency for Workforce Innovation, or
193 the former Department of Labor and Employment Security has been
194 entered for failure to file an answer or other responsive
195 pleading.

196 Section 5. Subsection (9) of section 201.02, Florida
197 Statutes, is amended to read:

198 201.02 Tax on deeds and other instruments relating to real
199 property or interests in real property.—

200 (9) A certificate of title issued by the clerk of court
201 under s. 45.031(6) ~~(5)~~ in a judicial sale of real property under
202 an order or final judgment issued pursuant to a foreclosure
203 proceeding is subject to the tax imposed by subsection (1).

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204 However, the amount of the tax shall be computed based solely on
205 the amount of the highest and best bid received for the property
206 at the foreclosure sale. This subsection is intended to clarify
207 existing law and shall be applied retroactively.

208 Section 6. Subsection (5) of section 701.02, Florida
209 Statutes, is amended to read:

210 701.02 Assignment not effectual against creditors unless
211 recorded and indicated in title of document; applicability.—

212 (5) Notwithstanding subsection (4), a creditor, mortgagor,
213 or subsequent purchaser of real property or any interest
214 therein, for valuable consideration and without notice, or the
215 county clerk or the circuit court in any action to enforce a
216 promissory note, may ~~is entitled to~~ rely on a full or partial
217 release, discharge, consent, joinder, subordination,
218 satisfaction, or assignment of a mortgage upon such property
219 made by the mortgagee of record, without regard to the filing of
220 any Uniform Commercial Code financing statement that purports to
221 perfect a security interest in the mortgage or in a promissory
222 note or other right to payment or performance secured by the
223 mortgage, and the filing of any such financing statement does
224 not constitute notice for the purposes of this section. For the
225 purposes of this subsection, the term "mortgagee of record"
226 means the person named as the mortgagee in the recorded mortgage
227 or, if an assignment of the mortgage has been recorded in
228 accordance with this section, the term "mortgagee of record"
229 means the assignee named in the recorded assignment.

230 Section 7. Section 701.03, Florida Statutes, is amended to
231 read:

232 701.03 Estoppel certificate and cancellation.—

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233 (1) Within 15 days after the date on which a request for an
234 estoppel certificate is received from a mortgagor, or his or her
235 designee, requesting a pay-off amount of the mortgage as of a
236 certain date, the mortgagee shall provide to the mortgagor a
237 certificate, signed by an officer or authorized agent of the
238 mortgagee, stating:

239 (a)1. The principal balance of the mortgage note;
240 2. The accrued interest due; and
241 3. Any other charge required that the mortgagee must
242 satisfy as of the date requested by the mortgagor, or his or her
243 designee, with a per diem thereafter.

244 (b) The fee the mortgagee may charge for preparing the
245 certificate, with the amount of the fee clearly stated on the
246 certificate.

247
248 The mortgagor may rely on the certificate and is entitled to the
249 benefits thereof. A summary proceeding pursuant to s. 51.011 may
250 be brought to compel compliance with this section. The
251 prevailing party is entitled to recover reasonable attorney's
252 fees.

253 (2) Whenever the amount of money due on any mortgage is
254 fully paid, the mortgagee or assignee shall within 60 days
255 thereafter cancel the mortgage in the manner provided by law. A
256 summary proceeding pursuant to s. 51.011, may be brought to
257 compel compliance with this section. The prevailing party is
258 entitled to recover reasonable attorney's fees.

259 (3) If a mortgage on real estate or chattels, or both, is
260 recorded in the office of the county clerk, the circuit court in
261 an action brought by any mortgagor or party in interest may

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262 direct the county clerk to cancel the mortgage of record, if the
263 plaintiff:

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

266 (b) Deposits in the clerk's office a sum of money in an
267 amount equal to the principal amount plus accrued interest and
268 any additional charge due from the mortgagor to the mortgagee as
269 shown on the most recent loan payment statement or monthly
270 invoice from mortgagee to mortgagor. The statement may not be
271 dated any earlier than 1 month before the date the mortgagor
272 deposits the funds in the clerk's office, plus interest thereon
273 at the rate stated in the note for 3 months, plus \$1,000, to
274 apply on any attorney's fees and court cost that may be taxed in
275 any proceeding arising out of this section. The deposit shall be
276 conditioned to pay any judgment or decree that may be rendered
277 for the payment in full of the mortgage for which such funds are
278 deposited, including accrued interest and any additional charges
279 due from the mortgagor to the mortgagee. Upon receipt of the
280 deposit, the clerk shall make and record a certificate showing
281 the transfer of the lien of the mortgage from the real property
282 to the security and shall mail a copy thereof by registered or
283 certified mail to the mortgagee at the address stated on the
284 loan payment statement. Upon filing the certificate of transfer,
285 the real property shall thereupon be released from the lien and
286 operation of the mortgage and such lien shall be transferred to
287 said security. The clerk is entitled to a service charge for
288 making and serving the certificate in the amount of up to \$20.
289 Any excess of the security over the aggregate amount of any
290 judgments or decrees that may be rendered for the payment in

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291 full of the mortgage for which such funds are deposited,
292 including accrued interest and any additional charges due from
293 the mortgagor to the mortgagee shall be repaid to the party
294 filing the same or his or her successor in interest. Any deposit
295 of money shall be considered as paid into the court and is
296 subject to the provisions of law relative to payments of money
297 into the court and the disposition of same. A party having an
298 interest in such security from which the mortgage lien was
299 transferred may file a complaint in chancery in the circuit
300 court of the county where such security is deposited, or file a
301 motion in a pending action to foreclose on the mortgage, for an
302 order to require additional security, reduction of security,
303 payment of discharge thereof, or any other matter affecting the
304 security. If the court finds that the amount of the deposit in
305 excess of the amount due to satisfy the mortgage as provided in
306 this paragraph is insufficient to pay the mortgagee's attorney's
307 fees and court costs incurred in the action to foreclose the
308 mortgage, the court may increase the amount of the cash deposit.
309 If it appears that the mortgage lien has been satisfied of
310 record, the clerk shall return the security upon request of the
311 person depositing or filing the same; or

312 (c) Presents such special circumstances as to satisfy the
313 court that the mortgagee and his or her successors or assigns,
314 if any, in right, title, and interest have no further interest
315 in the mortgage or the debt secured thereby. ~~Whenever the amount~~
316 ~~of money due on any mortgage shall be fully paid, the mortgagee~~
317 ~~or assignee shall within 60 days thereafter cancel the same in~~
318 ~~the manner provided by law.~~

319 Section 8. Section 702.015, Florida Statutes, is created to

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320 read:

321 702.015 Foreclosure of residential home loans.—Any
322 complaint served in a proceeding initiated pursuant to this
323 section which seeks to foreclose a mortgage securing a lien on a
324 residential one-family to four-family dwelling unit must contain
325 affirmative allegations expressly made by the plaintiff at the
326 time the proceeding is commenced that:

327 (1) The plaintiff is the owner and holder of the subject
328 note and mortgage in due course, or has been expressly delegated
329 the authority to institute a mortgage foreclosure action in
330 writing by the owner and holder of the subject mortgage and
331 note, which authorization shall be attached as an exhibit to the
332 complaint.

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

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

337 Section 9. Section 702.035, Florida Statutes, is amended to
338 read:

339 702.035 Legal notice concerning foreclosure proceedings.—

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

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

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

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

348 (a) Be delivered with the summons and complaint. Such

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349 notice shall be in bold, 14-point type and the title of the
350 notice shall be in bold, 20-point type. The notice shall be on
351 its own page.

352 (b) Appear as follows:

353
354 NOTICE YOU ARE IN DANGER OF LOSING YOUR HOME

355 If you fail to respond to the summons and complaint in this
356 foreclosure action, you may lose your home. Please read the
357 summons and complaint carefully. You should immediately contact
358 an attorney or your local legal aid office to obtain advice on
359 how to protect yourself. Sending a payment to your mortgage
360 company will not stop this foreclosure action.

361
362 YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY
363 FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE RESPONSE
364 WITH THE COURT. THIS LAWSUIT DOES NOT MEAN THAT YOU MUST
365 IMMEDIATELY MOVE OUT OF YOUR PROPERTY.

366
367 SOURCES OF INFORMATION AND ASSISTANCE:

368
369 The state encourages you to become informed about your options
370 in foreclosure. In addition to seeking assistance from an
371 attorney or legal aid office, there are government agencies and
372 nonprofit organizations that you may contact for cost-free
373 information about possible options, including trying to work
374 with your lender during this process.

375
376 FORECLOSURE RESCUE SCAMS:

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

388
 389 (3) The notice to any tenant required under paragraph
 390 (1) (b) shall:

391 (a) Be delivered with the summons and complaint. The
 392 foreclosing party shall provide its name, address, and telephone
 393 number on the notice. The notice shall be printed on colored
 394 paper that is different than the color of the summons and
 395 complaint, and the title of the notice shall be in bold, 14-
 396 point type. The notice shall be on its own page.

397 (b) Appear as follows:

398
 399 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE

400 Florida law requires that we provide you this notice about the
 401 foreclosure process. Please read it carefully.

402

403 We, ...(name of foreclosing party)..., are the foreclosing party
 404 and are located at ...(foreclosing party's address).... We can
 405 be reached at ...(foreclosing party's telephone number)....

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407 The dwelling unit where your apartment is located is the subject
408 of a foreclosure proceeding. If you have a lease, are not the
409 owner of the residence, and the lease requires payment of rent
410 that at the time it was entered into was not substantially less
411 than the fair market rent for the property, you may be entitled
412 to remain in occupancy for the remainder of your lease term. If
413 you do not have a lease, you will be entitled to remain in your
414 home until 90 days after any person or entity who acquires title
415 to the property provides you with a notice. The notice shall
416 provide information regarding the name and address of the new
417 owner and your rights to remain in your home. These rights are
418 in addition to any others you may have if you are a subsidized
419 tenant under federal, state, or local law or if you are a tenant
420 subject to rent control, rent stabilization, or a federal
421 statutory scheme.

422
423 (4) Whenever a legal advertisement, publication, or notice
424 relating to a foreclosure proceeding is required to be placed in
425 a newspaper and posted in a website online, it is the
426 responsibility of the petitioner or petitioner's attorney to
427 place such advertisement, publication, or notice. For counties
428 having ~~with~~ more than 1 million total population as reflected in
429 the 2000 Official Decennial Census of the United States Census
430 Bureau as shown on the official website of the United States
431 Census Bureau, any notice of publication required by this
432 section shall be deemed to have been published in accordance
433 with the law if the notice is published in a newspaper that has
434 been entered as a periodical matter at a post office in the
435 county in which the newspaper is published, is published a

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436 minimum of 5 days a week, exclusive of legal holidays, and has
437 been in existence and published a minimum of 5 days a week,
438 exclusive of legal holidays, for 1 year or is a direct successor
439 to a newspaper that has been in existence for 1 year that has
440 been published a minimum of 5 days a week, exclusive of legal
441 holidays. The advertisement, publication, or notice shall be
442 placed directly by the attorney for the petitioner, by the
443 petitioner if acting pro se, or by the clerk of the court. Only
444 the actual costs charged by the newspaper for the advertisement,
445 publication, or notice may be charged as costs in the action.

446 Section 10. Section 702.06, Florida Statutes, is amended to
447 read:

448 702.06 Deficiency decree; common-law suit to recover
449 deficiency.-

450 (1) In all suits for the foreclosure of mortgages
451 heretofore or hereafter executed, the entry of a deficiency
452 decree for any portion of a deficiency, should one exist, shall
453 be within the sound judicial discretion of the court, but the
454 complainant shall also have the right to sue at common law to
455 recover such deficiency, provided no suit at law to recover such
456 deficiency shall be maintained against the original mortgagor in
457 cases where the mortgage is for the purchase price of the
458 property involved and where the original mortgagee becomes the
459 purchaser thereof at foreclosure sale and also is granted a
460 deficiency decree against the original mortgagor.

461 (2) (a) In respect to an owner-occupied one-family to four-
462 family dwelling unit, if a person liable to the plaintiff for
463 the payment of the debt secured by the mortgage is made a
464 defendant in the action, and has appeared before the court or

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465 been personally served with the summons, the final judgment may
466 award payment by him or her of the whole residue, or so much
467 thereof as the court may determine to be just and equitable, of
468 the debt remaining unsatisfied, after a sale of the mortgaged
469 property and the application of the proceeds, pursuant to the
470 directions contained in such judgment, with the amount thereof
471 to be determined by the court as provided in this subsection.

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

493 (c) If a motion for a deficiency judgment is not made as

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494 prescribed in this subsection, the proceeds of the sale,
495 regardless of amount, shall be deemed to be in full satisfaction
496 of the mortgage debt and a right to recover any deficiency in
497 any action or proceeding subsequently does not exist.

498 (3) Notwithstanding subsection (2) and irrespective of
499 whether a motion for a deficiency judgment has been made or, if
500 made, has been denied, the court shall direct that all moneys
501 remaining in the hands of a receiver of the rents and profits
502 appointed in the action, after the payment of the receiver's
503 fees and the expenses of the receivership, or any moneys
504 remaining in the hands of a mortgagee in possession or an
505 assignee of the rents and profits of the premises, shall be paid
506 to the plaintiff to the extent of the amount, if any, by which
507 the judgment of foreclosure and sale exceeds the amount paid for
508 the property upon the sale.

509 Section 11. Section 702.065, Florida Statutes, is amended
510 to read:

511 702.065 Final judgment in uncontested proceedings where
512 deficiency judgment waived; attorney's fees when default
513 judgment entered.-

514 (1) In uncontested mortgage foreclosure proceedings in
515 which the mortgagee waives the right to recoup any deficiency
516 judgment, the court shall enter final judgment within 45 ~~90~~ days
517 from the date of the close of pleadings. For the purposes of
518 this subsection, a mortgage foreclosure proceeding is
519 uncontested if a default has been entered against all defendants
520 or no response ~~an answer not~~ contesting the foreclosure has been
521 timely filed ~~or a default judgment has been entered by the~~
522 court.

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523 (2) In a mortgage foreclosure proceeding of a residential
524 one-family to four-family dwelling unit, when ~~a default judgment~~
525 ~~has been entered against the mortgagor and~~ the note or mortgage
526 provides for the award of reasonable attorney's fees, it is not
527 necessary for the court to hold a hearing or adjudge the
528 requested attorney's fees to be reasonable if the fees do not
529 exceed the greater of 1.5 ~~3~~ percent of the principal amount owed
530 at the time of filing the complaint or \$1,500, even if the note
531 or mortgage does not specify the percentage of the original
532 amount that would be paid ~~as liquidated damages~~. ~~Such fees~~
533 ~~constitute liquidated damages in any proceeding to enforce the~~
534 ~~note or mortgage~~. This section does not preclude a challenge to
535 the reasonableness of the attorney's fees.

536 Section 12. Section 702.11, Florida Statutes, is created to
537 read:

538 702.11 Alternative procedure to foreclosure.-

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

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

546 1. The debtor has consented in writing to the use of this
547 procedure;

548 2. The debtor has abandoned the property that is the
549 subject of the residential mortgage;

550 3. The debtor has voluntarily surrendered the property that
551 is the subject of the residential mortgage by signing a deed in

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552 lieu of foreclosure in favor of the lender; or

553 4. There is no equity in a nonhomestead property that is
 554 the subject of the residential mortgage, as defined in
 555 subsection (5); and

556 (b) The following are conditions are met:

557 1. The debtor is not on active duty with the United States
 558 military.

559 2. The lender provides 30 days' written notice by ordinary
 560 mail and certified mail, return receipt requested, to the last
 561 known address of all current mortgagors, mortgagees, record
 562 titleholders, and lienholders of record and also to the address
 563 of the property being foreclosed. The notice shall inform the
 564 aforementioned parties that the lender is proceeding under an
 565 alternative procedure to foreclosure authorized by this section
 566 in substantially the form below:

567
 568 NOTICE OF ALTERNATIVE PROCEDURE TO FORECLOSURE WITHOUT SALE
 569 Florida Law requires that we provide you this notice about the
 570 alternative foreclosure process. Please read it carefully.

571
 572 You have been identified as a current mortgagor, mortgagee,
 573 record titleholder, or lienholder of record for a property which
 574 is subject to foreclosure. You are hereby notified that [NAME
 575 AND ADDRESS OF LENDER] is seeking to commence an alternative to
 576 foreclosure procedure pursuant to s. 702.11, Florida Statutes,
 577 in regard to the property located at [ADDRESS]. You have 30 days
 578 in which to object to the lender proceeding under s. 702.11,
 579 Florida Statutes. You must notify the lender in writing within
 580 30 days that you object to this proceeding; otherwise, your

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581 right to so object will be lost.

582

583 3. The lender records a Notice of Alternative Procedure To
584 Foreclosure in the land records of the county clerk in the
585 county in which the property is situated, which notice shall be
586 recorded in the same manner as a lis pendens.

587 (c) If the lender receives written objection from a current
588 mortgagor, mortgagee, record titleholder, or lienholder of
589 record to proceeding under this section within 30 days after the
590 mailing of the written notice, or the recording of the Notice of
591 Alternative Procedure To Foreclosure in the land records,
592 whichever is later, the lender is precluded from proceeding with
593 the alternative procedure to foreclosure in this section and
594 shall record in the land records a Notice of Termination of
595 Alternative Procedure to Foreclosure.

596 (3) Pursuant to subparagraph (2)(a)2. and for purposes of
597 this section only, abandonment of the property subject to the
598 residential mortgage may be established only by an affidavit
599 from an individual having personal knowledge of the contents
600 thereof under penalty of perjury, setting forth the specific
601 facts upon which that conclusion is based. The affidavit shall
602 be submitted to the circuit court in the county in which the
603 property is situated at the same time that the lender applies to
604 the court for the order fixing the amount, time, and place for
605 redemption.

606 (4) Pursuant to subparagraph (2)(a)3. and for purposes of
607 this section only, if the lender receives a deed in lieu of
608 foreclosure, the conveyance shall be effective only if the deed
609 clearly and conspicuously provides that the debtor may, without

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610 penalty, rescind the conveyance within 7 days, excluding
611 Saturdays, Sundays, and legal holidays, and that such rescission
612 is effective upon delivery of a written notice to the lender or
613 its agent or upon mailing of such notice to the lender or its
614 agent by certified or registered mail, return receipt requested.

615 (5) (a) For purposes of subparagraph (2) (a)4., a
616 nonhomestead property subject to a residential mortgage is
617 deemed to have no equity if the total unpaid balance of all
618 liens and encumbrances against the property, including
619 mortgages, tax liens, and judgments actually against the
620 property (not including similar-name judgments), and any other
621 lien, is equal to or greater than 150 percent of the fair market
622 value of the property as that value has been established by the
623 county property appraiser in and for the county in which the
624 property is situated, or as otherwise agreed between the lender
625 and the debtor. An affidavit, from an individual having personal
626 knowledge of the contents thereof under penalty of perjury,
627 setting forth with specificity the fair market value of the
628 property, the unpaid balance of the obligation, including all
629 mortgages and liens and the method by which the lender
630 determined that the property has no equity, with a copy of the
631 county property appraiser's valuation of the subject property
632 attached thereto, shall be submitted to the circuit court at the
633 time the lender applies for the order fixing the amount, time,
634 and place for redemption.

635 (b) If a lender proceeds with the alternative procedure to
636 foreclosure under this section, the debtor not having objected
637 and requested a public sale pursuant to this section, the lender
638 resells the foreclosed property after judgment, the resale

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639 occurs within 12 months after judgment, and the resale price
640 received by the lender is in excess of the amount necessary to
641 repay the debt, interest, and reasonable costs of the lender,
642 and all carrying charges, including, but not limited to, the
643 reasonable costs of maintenance and resale, the lender shall
644 deposit any such excess in the registry of the clerk of the
645 court in accordance with the Florida Rules of Civil Procedure.

646 (c) Upon deposit of any such excess with the circuit court,
647 the lender shall notify the debtor and any lienholder who held a
648 lien junior to that of the lender and whose lien was lost in
649 whole or in part as a result of the foreclosure. Such
650 notification shall be by certified mail, return receipt
651 requested, to the last known address of the debtor and such
652 lienholders. The debtor and the lienholders must apply within 6
653 months to the circuit court, in the form of an application for
654 surplus funds, upon appropriate notice to all other parties in
655 interest, to seek an order for turnover of the excess funds.
656 Failure of a lender to comply with paragraph (b) and this
657 paragraph does not affect title to the foreclosed property.

658 (6) (a) In accordance with the Florida Rules of Civil
659 Procedure, and subject to compliance with this section, a lender
660 may elect to proceed with the alternative procedure to
661 foreclosure by filing an affidavit from an individual having
662 personal knowledge of the contents thereof, under penalty of
663 perjury, with the circuit court in which the property is
664 located.

665 (b) The affidavit shall set forth the facts which the
666 lender alleges show that it is entitled to proceed under
667 paragraph (2) (a) and shall be supported by the proofs required

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668 by this section and such other proofs as may be required by the
669 court.

670 (7) In accordance with the Florida Rules of Civil
671 Procedure, and subject to compliance with this section, the
672 court may enter an order fixing the amount, time, and place for
673 redemption, which shall be not less than 45 days nor more than
674 60 days after the date of the order. The court may grant an
675 extension of time for good cause shown. The order shall provide
676 that:

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

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

686 (c) In the absence of redemption, the defendants shall
687 stand absolutely debarred and foreclosed from all equity of
688 redemption.

689 (8) (a) The order for redemption or notice thereof shall be
690 mailed to each defendant's last known address and, if different,
691 also to the address of the property being foreclosed. The order
692 for redemption or notice thereof shall be sent by ordinary mail
693 and certified mail, return receipt requested, within 20 days
694 after the date the order is entered, except that, as to
695 defendants whose addresses are unknown and who were served by
696 publication, no further publication of the order for redemption

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697 or notice thereof need be made.

698 (b) The notice shall:

699 1. Inform the defendants that the plaintiff is proceeding
700 under an alternative procedure authorized by this section and
701 set out the steps of the alternative procedure;

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

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

708 (9) In any matter in which the circuit court has issued an
709 order for redemption and the lender is permitted to proceed by
710 the alternative procedure, a defendant who wishes a public sale
711 with respect to the mortgaged premises being foreclosed shall
712 submit to the court a written request for a public sale within
713 30 days after the date the order or notice thereof is served. If
714 a defendant requests a public sale within the required period,
715 and subject to compliance with this section, the court shall
716 enter a judgment of foreclosure which provides for a public sale
717 of the premises in accordance with applicable law. Any such
718 defendant who requests a public sale must post a cash deposit or
719 bond prior to the date fixed for redemption. This cash deposit
720 or bond shall be in an amount equal to 10 percent of the amount
721 declared due in the order fixing the amount, time, and place for
722 redemption and shall be held to secure the plaintiff against any
723 additional interest and costs, as well as any deficiency, as a
724 result of the public sale. The court may dispense with this
725 requirement for good cause shown. The defendant who requests a

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726 public sale shall pay all expenses and costs associated with the
727 public sale.

728 (10) In the event of any dispute among defendants over the
729 right to redeem, the court shall enter such order as is
730 necessary to secure the plaintiff pending the resolution of the
731 dispute, including, but not limited to, payment of the
732 plaintiff's additional interest and costs that accrue as a
733 result of the dispute.

734 (11) Upon redemption, the plaintiff shall furnish the
735 redemptioner with an appropriate certificate of redemption and
736 the redemptioner shall acquire all rights provided by law and
737 equity but is not entitled to a deed or title to the mortgaged
738 premises solely by virtue of the redemption. A redemptioner in
739 proper cases may proceed to foreclose the redemptioner's
740 interest. The lender shall record a certified copy of the
741 Certificate of Redemption in the land records, and the county
742 clerk shall accept such certificate for recording.

743 (12) In the absence of redemption, and on proof of mailing
744 of the order for redemption or notice thereof pursuant to
745 subsection (8) and an affidavit of nonredemption, the plaintiff
746 is entitled to a judgment debarring and foreclosing the equity
747 of redemption of the defendants and each of them and any person
748 claiming by, through, or under them, and adjudging the plaintiff
749 vested with a valid and indefeasible estate in the mortgaged
750 premises. Anything to the contrary notwithstanding, redemption
751 is permitted at any time up until the entry of judgment,
752 including the whole of the last day upon which judgment is
753 entered. A certified copy of the judgment shall be accepted for
754 recording by the county clerk.

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

761 Section 13. This act shall take effect October 1, 2011.