

By the Committee on Judiciary; and Senator Latvala

590-03622-12

20121890c1

1                   A bill to be entitled  
2           An act relating to mortgage foreclosure proceedings;  
3           amending s. 95.11, F.S.; specifying the limitation  
4           period for initiating an action to collect a  
5           deficiency following the foreclosure of certain  
6           dwellings; providing for application to existing  
7           causes of action; amending s. 701.04, F.S.; specifying  
8           requirements for a holder of a mortgage to provide an  
9           estoppel statement to certain persons requesting the  
10          payoff amount for the mortgage; specifying the  
11          required contents of the estoppel statement; requiring  
12          a person who provides a mortgage satisfaction to  
13          provide supplemental information if the person was not  
14          the owner of the mortgage; requiring certain persons  
15          who are not a mortgagor to provide information showing  
16          the requestor's ownership interest in the property to  
17          the mortgageholder when making a request for the  
18          payoff amount of the mortgage; specifying documents  
19          that the person who provides the mortgage satisfaction  
20          must provide to the payor of a mortgage note;  
21          specifying a fee for failing to timely provide the  
22          required documents to the payor; authorizing the use  
23          of a summary procedure to compel compliance with  
24          requirements to provide an estoppel statement or the  
25          documents that must be provided by the person who  
26          provides a mortgage satisfaction; creating s. 701.045,  
27          F.S.; requiring a party who is owed and who is fully  
28          paid money due on a lien or judgment to execute in  
29          writing an instrument acknowledging satisfaction of

590-03622-12

20121890c1

30 the lien or judgment, to have the instrument recorded  
31 in the official records of the appropriate county  
32 requiring the party, and to send within a specified  
33 time the recorded instrument to the person who made  
34 full payment; providing for attorney fees and costs;  
35 requiring the party receiving full payment for a  
36 judgment for which a writ of execution has been  
37 issued, docketed, and indexed with a sheriff to  
38 request, in writing and addressed to the sheriff, the  
39 return of the satisfied writ of execution; requiring  
40 compliance with certain procedures; creating s.  
41 702.015, F.S.; specifying required contents of a  
42 complaint seeking to foreclose on certain types of  
43 residential properties with respect to the authority  
44 of the plaintiff to foreclose on the note and the  
45 location of the note; creating s. 702.036, F.S.;  
46 requiring a court to treat a challenge to a final  
47 judgment of foreclosure as a claim for monetary  
48 damages under certain circumstances; amending s.  
49 702.06, F.S.; providing that a person who forecloses  
50 on a mortgage may not initiate an action to recover a  
51 deficiency if the court in the foreclosure action has  
52 granted or denied a claim for a deficiency judgment;  
53 limiting the amount of the deficiency judgment;  
54 requiring a separate action to recover a deficiency be  
55 initiated within a certain time period; amending s.  
56 702.10, F.S.; expanding the class of persons  
57 authorized to move for expedited foreclosure; defining  
58 the term "lienholder"; providing requirements and

590-03622-12

20121890c1

59 procedures with respect to an order directed to  
60 defendants to show cause why a final judgment of  
61 foreclosure should not be entered; providing that  
62 certain failures by a defendant to make certain  
63 filings or to make certain appearances may have  
64 specified legal consequences; requiring the court to  
65 enter a final judgment of foreclosure and order a  
66 foreclosure sale under certain circumstances; revising  
67 a restriction on a mortgagee to request a court to  
68 order a mortgagor defendant to make payments or to  
69 vacate the premises during an action to foreclose on  
70 residential real estate to provide that the  
71 restriction applies to all but owner-occupied  
72 residential property; providing a presumption  
73 regarding owner-occupied residential property;  
74 requesting the Supreme Court to adopt rules and forms  
75 for use in expedited foreclosure proceedings; creating  
76 s. 702.11, F.S.; specifying security that may be  
77 determined by the court as adequate protection against  
78 a loss by another person seeking to enforce the  
79 mortgage; authorizing the holder of a note to initiate  
80 an action against a person who wrongfully claimed to  
81 be entitled to enforce the note for damages and  
82 attorney fees and costs; authorizing the holder of the  
83 note to pursue the recovery against any adequate  
84 protections given by the person who wrongfully claimed  
85 to be entitled to enforce the note; creating s.  
86 702.13, F.S.; establishing expedited foreclosure  
87 proceedings for abandoned residential real property

590-03622-12

20121890c1

88 and procedures and requirements with respect thereto;  
89 providing for application of the act; providing an  
90 effective date.

91

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

93

94 Section 1. Paragraph (b) of subsection (2) and subsection  
95 (5) of section 95.11, Florida Statutes, are amended to read:

96 95.11 Limitations other than for the recovery of real  
97 property.—Actions other than for recovery of real property shall  
98 be commenced as follows:

99 (2) WITHIN FIVE YEARS.—

100 (b) A legal or equitable action on a contract, obligation,  
101 or liability founded on a written instrument, except for an  
102 action to enforce a claim against a payment bond, which shall be  
103 governed by the applicable provisions of ss. 255.05(10) and  
104 713.23(1)(e), and except for an action for a deficiency  
105 judgment, which shall be governed by paragraph (5)(h) and s.  
106 702.06.

107 (5) WITHIN ONE YEAR.—

108 (a) An action for specific performance of a contract.

109 (b) An action to enforce an equitable lien arising from the  
110 furnishing of labor, services, or material for the improvement  
111 of real property.

112 (c) An action to enforce rights under the Uniform  
113 Commercial Code—Letters of Credit, chapter 675.

114 (d) An action against any guaranty association and its  
115 insured, with the period running from the date of the deadline  
116 for filing claims in the order of liquidation.

590-03622-12

20121890c1

117 (e) An action to enforce any claim against a payment bond  
118 on which the principal is a contractor, subcontractor, or sub-  
119 subcontractor as defined in s. 713.01, for private work as well  
120 as public work, from the last furnishing of labor, services, or  
121 materials or from the last furnishing of labor, services, or  
122 materials by the contractor if the contractor is the principal  
123 on a bond on the same construction project, whichever is later.

124 (f) Except for actions described in subsection (8), a  
125 petition for extraordinary writ, other than a petition  
126 challenging a criminal conviction, filed by or on behalf of a  
127 prisoner as defined in s. 57.085.

128 (g) Except for actions described in subsection (8), an  
129 action brought by or on behalf of a prisoner, as defined in s.  
130 57.085, relating to the conditions of the prisoner's  
131 confinement.

132 (h) An action under s. 702.06, to collect a deficiency  
133 following the foreclosure of an owner-occupied, one-family to  
134 four-family dwelling unit.

135 Section 2. The amendments to s. 95.11, Florida Statutes,  
136 made by this act shall apply to any action commenced on or after  
137 July 1, 2012, regardless of when the cause of action accrues,  
138 except that any action that would not have been barred under s.  
139 95.11(2)(b), Florida Statutes, before the changes made by this  
140 act may be commenced no later than 5 years after the action  
141 accrues and in no event later than July 1, 2014, and if the  
142 action is not commenced by that date, it is barred by the  
143 changes made by this act.

144 Section 3. Section 701.04, Florida Statutes, is amended to  
145 read:

590-03622-12

20121890c1

146 701.04 Cancellation of mortgages, liens, and judgments.—

147 (1) (a) If a mortgagor, a holder of an interest in property  
148 encumbered by a mortgage, or a designee of either makes a  
149 written request for the payoff amount of the mortgage as of a  
150 certain date, the holder of the mortgage shall provide a written  
151 estoppel statement executed by an officer or authorized agent of  
152 the holder of the mortgage to the person making the request  
153 within 15 days after the date the request was received. The  
154 estoppel statement shall be delivered to the place, facsimile  
155 number, or e-mail address designated in the written request. The  
156 estoppel statement shall set ~~Within 14 days after receipt of the~~  
157 ~~written request of a mortgagor, the holder of a mortgage shall~~  
158 ~~deliver to the mortgagor at a place designated in the written~~  
159 ~~request an estoppel letter setting forth:~~

160 1. The unpaid balance of the loan secured by the mortgage,  
161 including principal, all accrued interest, and any other charges  
162 properly due under or secured by the mortgage as of the date  
163 specified in the request. ~~and~~

164 2. Interest on a per-day basis for the unpaid balance for a  
165 period of at least 20 days after the date specified in the  
166 request.

167 3. A certification that the party providing the estoppel  
168 statement is the holder of the original promissory note secured  
169 thereby, or is the person or agent of the person entitled to  
170 enforce the note pursuant to s. 673.3011.

171 4. A commitment to comply with paragraph (d) upon timely  
172 receipt of the amounts set forth in the estoppel statement.

173 (b) The mortgagee may not charge a fee for the preparation  
174 or delivery of the first two estoppel statements requested for

590-03622-12

20121890c1

175 any one mortgage in any calendar month. This paragraph is not  
176 intended to limit requirements of federal law.

177 (c) Subsequent owners of the property encumbered by the  
178 mortgage, and creditors and lienholders taking an interest in  
179 the property for a valuable consideration, and those claiming  
180 by, through, and under them, may rely on the estoppel statement  
181 and are entitled to the benefits of the statement.

182 (d) Whenever the amount of money due on a ~~any~~ mortgage,  
183 ~~lien, or judgment is~~ shall be fully paid to the person or party  
184 entitled to the payment thereof, or all obligations secured by  
185 the mortgage or lien are otherwise satisfied, the mortgagee,  
186 creditor, or assignee, or the attorney of record in the case of  
187 a judgment, to whom such payment has shall have been made or  
188 satisfaction has been given, shall execute in writing an  
189 instrument acknowledging satisfaction of the said mortgage,  
190 lien, or judgment and have the same acknowledged, or proven, and  
191 recorded duly entered of record in the official records book  
192 provided by law for such purposes in the proper county. If the  
193 person or party executing the satisfaction is not shown as the  
194 owner of the mortgage in the official records, the instrument  
195 shall be supplemented by an affidavit that the person executing  
196 the satisfaction is in physical possession of the original  
197 promissory note secured by the mortgage or was entitled to  
198 enforce the note pursuant to s. 673.3011. If the person was  
199 entitled only to enforce the note, but was not in possession of  
200 the note, the person shall provide in the affidavit the specific  
201 factual basis for such authority.

202 (e) If the written request for the payoff amount for the  
203 mortgage as of a certain date is not from the mortgagor or the

590-03622-12

20121890c1

204 designee of the mortgagor, the request must include a copy of  
205 the instrument or instruments showing the requestor's ownership  
206 interest in the property. The mortgageholder, in response to the  
207 request, is not required to itemize the unpaid balance of the  
208 loan secured by the mortgage.

209 (2) (a) Within 60 days after ~~of~~ the date of receipt of the  
210 full payment of the mortgage in accord with the estoppel  
211 statement, ~~lien, or judgment~~, the person required to acknowledge  
212 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or  
213 cause to be sent ~~the recorded satisfaction~~ to the maker of the  
214 promissory note, or such other person as may be designated in  
215 writing by the payor at or after the final payment, a certified  
216 copy of the recorded satisfaction. The person shall also send to  
217 the payor of a mortgage note:

- 218 1. The original promissory note, marked "paid in full"; or
- 219 2. An affidavit stating that the note was lost, destroyed,  
220 or stolen, together with exhibits in compliance with s. 702.015  
221 and evidence of adequate protections as provided in s. 702.11.

222 (b) If the documents required by this subsection are not  
223 delivered within 60 days, the party who received payment on the  
224 note or mortgage shall pay to the maker of the promissory note  
225 or its designee a fee in the amount of \$100 per day for each day  
226 beyond 60 days that the documents have not been delivered. The  
227 aggregate fees under this paragraph may not exceed \$5,000.

228 (3) A summary procedure pursuant to s. 51.011 may be  
229 brought to compel compliance with the requirements of this  
230 section, and the prevailing party shall recover reasonable  
231 attorney fees and costs. The court may limit recovery of  
232 attorney fees and costs if an unreasonable number of requests



590-03622-12

20121890c1

233 for estoppel statements have been made ~~person who has made the~~  
234 ~~full payment. In the case of a civil action arising out of the~~  
235 ~~provisions of this section, the prevailing party shall be~~  
236 ~~entitled to attorney's fees and costs.~~

237 (4) ~~(2)~~ Whenever a writ of execution has been issued,  
238 docketed, and indexed with a sheriff and the judgment upon which  
239 it was issued has been fully paid, it shall be the  
240 responsibility of the party receiving payment to request, in  
241 writing, addressed to the sheriff, return of the writ of  
242 execution as fully satisfied.

243 Section 4. Section 701.045, Florida Statutes, is created to  
244 read:

245 701.045 Cancellation of liens and judgments.-

246 (1) If the amount of money due on any lien, other than a  
247 mortgage, or any judgment is fully paid to the party entitled to  
248 such payment or to the creditor or assignee, the party, the  
249 creditor, or the assignee to whom such payment has been made  
250 shall execute in writing an instrument acknowledging  
251 satisfaction of the lien or judgment, have the instrument  
252 acknowledged or proven, and have the instrument duly entered of  
253 record in the official records in the appropriate county. Within  
254 60 days after the date of receipt of the full payment of the  
255 lien or judgment, the party required to acknowledge satisfaction  
256 of the lien or judgment shall send or cause to be sent the  
257 recorded satisfaction instrument to the party who has made the  
258 full payment. In the case of a civil action arising out of this  
259 section, the prevailing party is entitled to attorney fees and  
260 costs.

261 (2) If a writ of execution has been issued, docketed, and

590-03622-12

20121890c1

262 indexed with a sheriff and the judgment upon which it was issued  
263 has been fully paid, the party receiving payment must request,  
264 in writing and addressed to the sheriff, return of the writ of  
265 execution as fully satisfied.

266 (3) The party receiving full payment of any judgment shall  
267 also comply with s. 55.206, as appropriate.

268 Section 5. Section 702.015, Florida Statutes, is created to  
269 read:

270 702.015 Elements of complaint; lost, destroyed, or stolen  
271 note affidavit.—

272 (1) A complaint that seeks to foreclose a mortgage or other  
273 lien on residential real property, including individual units of  
274 condominiums and cooperatives, designed principally for  
275 occupation by from one to four families, but not including an  
276 interest in a timeshare property, which secures a promissory  
277 note must:

278 (a) Contain affirmative allegations expressly made by the  
279 plaintiff at the time the proceeding is commenced that the  
280 plaintiff is the holder of the original note secured by the  
281 mortgage; or

282 (b) Allege with specificity the factual basis by which the  
283 plaintiff is a person entitled to enforce the note under s.  
284 673.3011.

285 (2) If a party has been delegated the authority to  
286 institute a mortgage foreclosure action on behalf of the holder  
287 of the note, the complaint shall describe the authority of the  
288 plaintiff and identify, with specificity, the document that  
289 grants the plaintiff the authority to act on behalf of the  
290 holder of the note. This subsection is intended to require

590-03622-12

20121890c1

291 initial disclosure of status and pertinent facts and not to  
292 modify law regarding standing or real parties in interest.

293 (3) If the plaintiff is in physical possession of the  
294 original promissory note, the plaintiff must file with the  
295 court, contemporaneously with and as a condition precedent to  
296 the filing of the complaint for foreclosure, certification,  
297 under penalty of perjury, that the plaintiff is in physical  
298 possession of the original promissory note. The certification  
299 must set forth the physical location of the note, the name and  
300 title of the individual giving the certification, the name of  
301 the person who personally verified such physical possession, and  
302 the time and date on which the possession was verified. Correct  
303 copies of the note and all allonges to the note must be attached  
304 to the certification. The original note and the allonges must be  
305 filed with the court before the entry of any judgment of  
306 foreclosure or judgment on the note.

307 (4) If the plaintiff seeks to enforce a lost, destroyed, or  
308 stolen instrument, an affidavit executed under penalty of  
309 perjury must be attached to the complaint. The affidavit must:

310 (a) Detail a clear chain of all assignments for the  
311 promissory note that is the subject of the action.

312 (b) Set forth facts showing that the plaintiff is entitled  
313 to enforce a lost, destroyed, or stolen instrument pursuant to  
314 s. 673.3091.

315 (c) Include as exhibits to the affidavit such copies of the  
316 note and the allonges to the note, assignments of mortgage,  
317 audit reports showing physical receipt of the original note, or  
318 other evidence of the acquisition, ownership, and possession of  
319 the note as may be available to the plaintiff.

590-03622-12

20121890c1

320 Section 6. Section 702.036, Florida Statutes, is created to  
321 read:

322 702.036 Finality of mortgage foreclosure judgment.—

323 (1) (a) In an action or proceeding in which a party seeks to  
324 set aside, invalidate, or challenge the validity of a final  
325 judgment of foreclosure of a mortgage or to establish or  
326 reestablish a lien or encumbrance on the property in abrogation  
327 of the final judgment of foreclosure of a mortgage, the court  
328 shall treat such request solely as a claim for monetary damages  
329 and may not grant relief that adversely affects the quality or  
330 character of the title to the property if:

331 1. A final judgment of foreclosure of a mortgage has been  
332 entered as to a property;

333 2. All applicable appeals periods have run as to the final  
334 judgment of foreclosure of a mortgage and an appeal has not been  
335 filed or, if an appeal has been filed, it has been finally  
336 resolved;

337 3. The property has been acquired for value by a person not  
338 affiliated with the foreclosing lender or the foreclosed owner,  
339 at a time in which no lis pendens regarding the suit to set  
340 aside, invalidate, or challenge the foreclosure appears in the  
341 official records of the county where the property is located;  
342 and

343 4. The party seeking relief from the final judgment of  
344 foreclosure of a mortgage has been properly served in the  
345 foreclosure lawsuit as provided in chapter 48 or chapter 49.

346 (b) This subsection does not limit the right to pursue any  
347 other relief to which a person may be entitled, including, but  
348 not limited to, compensatory damages, punitive damages,

590-03622-12

20121890c1

349 statutory damages, consequential damages, injunctive relief, or  
350 fees and costs, and which does not adversely affect the  
351 ownership of the title to the property as vested in the  
352 unaffiliated purchaser for value.

353 (2) For purposes of this section, the following, without  
354 limitation, shall be considered persons affiliated with the  
355 foreclosing lender:

356 (a) The foreclosing lender or any loan servicer for the  
357 loan being foreclosed;

358 (b) Any past or present owner or holder of the loan being  
359 foreclosed;

360 (c) Any maintenance company, holding company, foreclosure  
361 services company, or law firm under contract to any entity  
362 listed in paragraph (a), paragraph (b), or this paragraph, with  
363 regard to the loan being foreclosed; or

364 (d) Any parent entity, subsidiary, or other person that  
365 directly, or indirectly through one or more intermediaries,  
366 controls or is controlled by, or is under common control with,  
367 any entity listed in paragraph (a), paragraph (b), or paragraph  
368 (c).

369 (3) After foreclosure of a mortgage based upon the  
370 enforcement of a lost, destroyed, or stolen note, a person who  
371 is not a party to the underlying foreclosure action but who  
372 claims to be the actual holder of the promissory note secured by  
373 the foreclosed mortgage does not have a claim against the  
374 foreclosed property after it has been conveyed for valuable  
375 consideration to a person not affiliated with the foreclosing  
376 lender or the foreclosed owner. This section does not preclude  
377 the actual holder of the note from pursuing recovery from any

590-03622-12

20121890c1

378 adequate protection given under s. 673.3091 by the person who  
379 enforced the note or from the party who wrongfully claimed to be  
380 the owner or holder of the promissory note or the maker of the  
381 note or from any other person against whom the actual holder of  
382 the note may have a claim relating to the note.

383 Section 7. Section 702.06, Florida Statutes, is amended to  
384 read:

385 702.06 Deficiency decree; ~~common-law~~ suit to recover  
386 deficiency.-

387 (1) In an action ~~all suits~~ for the foreclosure of a  
388 mortgage, ~~mortgages heretofore or hereafter executed~~ the entry  
389 of a deficiency decree for any portion of a deficiency, should  
390 one exist, must shall be commenced within 1 year after the sale  
391 date of the mortgaged property pursuant to a court foreclosure  
392 sale or short sale. If not commenced within 1 year after sale,  
393 any attempt to collect a deficiency judgment shall be barred.  
394 The amount of the deficiency judgment may not exceed the  
395 difference between the judgment amount or, in the case of a  
396 short sale, the outstanding debt, and the fair market value of  
397 the property on the date of sale. ~~the sound judicial discretion~~  
398 ~~of the court, but~~ The complainant shall also have the right to  
399 sue at common law to recover such deficiency, unless the court  
400 in the foreclosure action has granted or denied a claim for a  
401 deficiency judgment ~~provided no suit at law to recover such~~  
402 ~~deficiency shall be maintained against the original mortgagor in~~  
403 ~~eases where the mortgage is for the purchase price of the~~  
404 ~~property involved and where the original mortgagee becomes the~~  
405 ~~purchaser thereof at foreclosure sale and also is granted a~~  
406 ~~deficiency decree against the original mortgagor.~~

590-03622-12

20121890c1

407       (2) (a) With respect to an owner-occupied, one-family to  
408 four-family dwelling unit, the party to whom a deficiency is  
409 owing may move for the entry of a deficiency judgment in the  
410 foreclosure action or file a separate action for collection of  
411 the deficiency. The separate action must be filed within 1 year  
412 after the property has vested in the foreclosing lender or other  
413 purchaser at the foreclosure sale.

414       (b) If a deficiency is not pursued within the time period  
415 specified in this subsection, the vesting of the property or  
416 proceeds of the sale, regardless of the amount, shall be deemed  
417 to be in full satisfaction of the judgment debt and a right to  
418 recover any deficiency in any subsequent action or proceeding is  
419 extinguished.

420       (c) This subsection does not restrict the authority of the  
421 court to determine the entitlement to any assets held by any  
422 receiver or any assignee of the rents and profits of the  
423 property.

424       Section 8. Section 702.10, Florida Statutes, is amended to  
425 read:

426       702.10 Order to show cause; entry of final judgment of  
427 foreclosure; payment during foreclosure.-

428       (1) A lienholder ~~After a complaint in a foreclosure~~  
429 ~~proceeding has been filed, the mortgagee~~ may request an order to  
430 show cause for the entry of final judgment in a foreclosure  
431 action. For purposes of this section, the term "lienholder"  
432 includes the plaintiff and a defendant to the action who holds a  
433 lien encumbering the property or a defendant who, by virtue of  
434 its status as a condominium association, cooperative  
435 association, or homeowners' association, may file a lien against

590-03622-12

20121890c1

436 the real property subject to foreclosure. Upon filing, and the  
437 court shall immediately review the request and the court file in  
438 chambers and without a hearing complaint. If, upon examination  
439 of the court file complaint, the court finds that the complaint  
440 is verified, complies with s. 702.015, and alleges a cause of  
441 action to foreclose on real property, the court shall promptly  
442 issue an order directed to the other parties named in the action  
443 ~~defendant~~ to show cause why a final judgment of foreclosure  
444 should not be entered.

445 (a) The order shall:

446 1. Set the date and time for a hearing on the order to show  
447 cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner  
448 than 20 days after the service of the order. ~~When service is~~  
449 ~~obtained by publication, the date for the hearing may not be set~~  
450 ~~sooner than 30 days after the first publication.~~ The hearing  
451 must be held within 90 ~~60~~ days after the date of service.  
452 Failure to hold the hearing within such time does not affect the  
453 validity of the order to show cause or the jurisdiction of the  
454 court to issue subsequent orders.

455 2. Direct the time within which service of the order to  
456 show cause and the complaint must be made upon the defendant.

457 3. State that the filing of defenses by a motion,  
458 responsive pleading, affidavits, or other papers ~~or by a~~  
459 ~~verified or sworn answer at or before the hearing to show cause~~  
460 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~  
461 ~~attached~~ final judgment.

462 4. State that a ~~the~~ defendant has the right to file  
463 affidavits or other papers before ~~at~~ the time of the hearing to  
464 show cause and may appear personally or by way of an attorney at



590-03622-12

20121890c1

465 the hearing.

466 5. State that, if a ~~the~~ defendant files defenses by a  
467 motion, a verified or sworn answer, affidavits, or other papers  
468 or appears personally or by way of an attorney at the time of  
469 the hearing, the hearing time will ~~may~~ be used to hear and  
470 consider the defendant's motion, answer, affidavits, other  
471 papers, and other evidence and argument as may be presented by  
472 the defendant or the defendant's attorney. The order shall also  
473 state that the court may enter an order of final judgment of  
474 foreclosure, which must be based on clear and convincing  
475 evidence and the arguments presented. If such an order is  
476 entered, the court shall enter a final judgment of foreclosure  
477 ordering the clerk of the court to conduct a foreclosure sale.

478 6. State that, if a ~~the~~ defendant fails to appear at the  
479 hearing to show cause or fails to file defenses by a motion or  
480 by a verified or sworn answer or files an answer not contesting  
481 the foreclosure, such ~~the~~ defendant may be considered to have  
482 waived the right to a hearing, and in such case, the court may  
483 enter a default against such defendant and, if appropriate, a  
484 final judgment of foreclosure ordering the clerk of the court to  
485 conduct a foreclosure sale.

486 7. State that if the mortgage provides for reasonable  
487 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
488 fees do not exceed 3 percent of the principal amount owed at the  
489 time of filing the complaint, it is unnecessary for the court to  
490 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
491 to be reasonable.

492 8. Attach the form of the proposed final judgment of  
493 foreclosure which the movant requests the court to ~~will~~ enter,

590-03622-12

20121890c1

494 ~~if the defendant waives the right to be heard~~ at the hearing on  
495 the order to show cause. The form may contain blanks for the  
496 court to enter the amounts due.

497 9. Require the party seeking final judgment ~~mortgagee~~ to  
498 serve a copy of the order to show cause on the other parties ~~the~~  
499 ~~mortgagor~~ in the following manner:

500 a. If a party ~~the mortgagor~~ has been served with the  
501 complaint and original process, or the other party is the  
502 plaintiff in the action, service of the order to show cause on  
503 that party ~~order~~ may be made in the manner provided in the  
504 Florida Rules of Civil Procedure.

505 b. If a defendant ~~the mortgagor~~ has not been served with  
506 the complaint and original process, the order to show cause,  
507 together with the summons and a copy of the complaint, shall be  
508 served on the party ~~mortgagor~~ in the same manner as provided by  
509 law for original process.

510  
511 Any final judgment of foreclosure entered under this subsection  
512 is for in rem relief only. ~~Nothing in~~ This subsection does not  
513 ~~shall~~ preclude the entry of a deficiency judgment where  
514 otherwise allowed by law. It is the intent of the Legislature  
515 that this alternative procedure may run simultaneously with  
516 other court procedures.

517 (b) The right to be heard at the hearing to show cause is  
518 waived if a ~~the~~ defendant, after being served as provided by law  
519 with an order to show cause, engages in conduct that clearly  
520 shows that the defendant has relinquished the right to be heard  
521 on that order. The defendant's failure to file defenses by a  
522 motion or by a sworn or verified answer, affidavits, or other

590-03622-12

20121890c1

523 papers or to appear personally or by way of an attorney at the  
524 hearing duly scheduled on the order to show cause presumptively  
525 constitutes conduct that clearly shows that the defendant has  
526 relinquished the right to be heard. If a defendant files  
527 defenses by a motion, ~~or by~~ a verified or sworn answer,  
528 affidavits, or other papers at or before the hearing, such  
529 action may constitute ~~constitutes~~ cause and may preclude  
530 ~~precludes~~ the entry of a final judgment at the hearing to show  
531 cause.

532 (c) In a mortgage foreclosure proceeding, when a final  
533 ~~default~~ judgment of foreclosure has been entered against the  
534 mortgagor and the note or mortgage provides for the award of  
535 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
536 court to hold a hearing or adjudge the requested attorney  
537 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
538 percent of the principal amount owed on the note or mortgage at  
539 the time of filing, even if the note or mortgage does not  
540 specify the percentage of the original amount that would be paid  
541 as liquidated damages.

542 (d) If the court finds that all defendants have ~~the~~  
543 ~~defendant has~~ waived the right to be heard as provided in  
544 paragraph (b), the court shall promptly enter a final judgment  
545 of foreclosure without the need for further hearing if the  
546 plaintiff has shown entitlement to a final judgment. If the  
547 court finds that a ~~the~~ defendant has not waived the right to be  
548 heard on the order to show cause, the court shall ~~then~~ determine  
549 whether there is cause not to enter a final judgment of  
550 foreclosure. If the court determines, based upon clear and  
551 convincing evidence and the arguments presented, to support

590-03622-12

20121890c1

552 entry of a final judgment of foreclosure, the court shall enter  
553 a final judgment of foreclosure ordering the clerk of the court  
554 to conduct a foreclosure sale ~~finds that the defendant has not~~  
555 ~~shown cause, the court shall promptly enter a judgment of~~  
556 ~~foreclosure.~~ If the time allotted for the hearing is  
557 insufficient, the court may announce at the hearing a date and  
558 time for the continued hearing. Only the parties who appear,  
559 individually or through an attorney, at the initial hearing must  
560 be notified of the date and time of the continued hearing.

561 (2) This subsection does not apply to foreclosure of an  
562 owner-occupied residence. As part of any other ~~In an~~ action for  
563 foreclosure, and in addition to any other relief that the court  
564 may award ~~other than residential real estate, the plaintiff the~~  
565 ~~mortgagee~~ may request that the court enter an order directing  
566 the mortgagor defendant to show cause why an order to make  
567 payments during the pendency of the foreclosure proceedings or  
568 an order to vacate the premises should not be entered.

569 (a) The order shall:

570 1. Set the date and time for hearing on the order to show  
571 cause. However, the date for the hearing may ~~shall~~ not be set  
572 sooner than 20 days after the service of the order. If ~~Where~~  
573 service is obtained by publication, the date for the hearing may  
574 ~~shall~~ not be set sooner than 30 days after the first  
575 publication.

576 2. Direct the time within which service of the order to  
577 show cause and the complaint shall be made upon each ~~the~~  
578 defendant.

579 3. State that a ~~the~~ defendant has the right to file  
580 affidavits or other papers at the time of the hearing and may

590-03622-12

20121890c1

581 appear personally or by way of an attorney at the hearing.

582 4. State that, if a ~~the~~ defendant fails to appear at the  
583 hearing to show cause and fails to file defenses by a motion or  
584 by a verified or sworn answer, the defendant is ~~may be~~ deemed to  
585 have waived the right to a hearing and in such case the court  
586 may enter an order to make payment or vacate the premises.

587 5. Require the movant ~~mortgagee~~ to serve a copy of the  
588 order to show cause on the defendant ~~mortgagor~~ in the following  
589 manner:

590 a. If a defendant ~~the mortgagor~~ has been served with the  
591 complaint and original process, service of the order may be made  
592 in the manner provided in the Florida Rules of Civil Procedure.

593 b. If a defendant ~~the mortgagor~~ has not been served with  
594 the complaint and original process, the order to show cause,  
595 together with the summons and a copy of the complaint, shall be  
596 served on the defendant ~~mortgagor~~ in the same manner as provided  
597 by law for original process.

598 (b) The right of a defendant to be heard at the hearing to  
599 show cause is waived if the defendant, after being served as  
600 provided by law with an order to show cause, engages in conduct  
601 that clearly shows that the defendant has relinquished the right  
602 to be heard on that order. A ~~The~~ defendant's failure to file  
603 defenses by a motion or by a sworn or verified answer or to  
604 appear at the hearing duly scheduled on the order to show cause  
605 presumptively constitutes conduct that clearly shows that the  
606 defendant has relinquished the right to be heard.

607 (c) If the court finds that a ~~the~~ defendant has waived the  
608 right to be heard as provided in paragraph (b), the court may  
609 promptly enter an order requiring payment in the amount provided

590-03622-12

20121890c1

610 in paragraph (f) or an order to vacate.

611 (d) If the court finds that the mortgagor has not waived  
612 the right to be heard on the order to show cause, the court  
613 shall, at the hearing on the order to show cause, consider the  
614 affidavits and other showings made by the parties appearing and  
615 make a determination of the probable validity of the underlying  
616 claim alleged against the mortgagor and the mortgagor's  
617 defenses. If the court determines that the plaintiff mortgagee  
618 is likely to prevail in the foreclosure action, the court shall  
619 enter an order requiring the mortgagor to make the payment  
620 described in paragraph (e) to the plaintiff mortgagee and  
621 provide for a remedy as described in paragraph (f). However, the  
622 order shall be stayed pending final adjudication of the claims  
623 of the parties if the mortgagor files with the court a written  
624 undertaking executed by a surety approved by the court in an  
625 amount equal to the unpaid balance of the lien being foreclosed  
626 ~~the mortgage on the property~~, including all principal, interest,  
627 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~  
628 ~~mortgagee~~.

629 (e) ~~If in the event~~ the court enters an order requiring the  
630 mortgagor to make payments to the plaintiff mortgagee, payments  
631 shall be payable at such intervals and in such amounts provided  
632 for in the mortgage instrument before acceleration or maturity.  
633 The obligation to make payments pursuant to any order entered  
634 under this subsection shall commence from the date of the motion  
635 filed under this section hereunder. The order shall be served  
636 upon the mortgagor no later than 20 days before the date  
637 specified for the first payment. The order may permit, but may  
638 ~~shall not require,~~ the plaintiff mortgagee to take all

590-03622-12

20121890c1

639 appropriate steps to secure the premises during the pendency of  
640 the foreclosure action.

641 (f) If ~~In the event~~ the court enters an order requiring  
642 payments, the order shall also provide that the plaintiff is  
643 ~~mortgagee shall be~~ entitled to possession of the premises upon  
644 the failure of the mortgagor to make the payment required in the  
645 order unless at the hearing on the order to show cause the court  
646 finds good cause to order some other method of enforcement of  
647 its order.

648 (g) All amounts paid pursuant to this section shall be  
649 credited against the mortgage obligation in accordance with the  
650 terms of the loan documents; ~~provided, however, that any~~  
651 payments made under this section do shall not constitute a cure  
652 of any default or a waiver or any other defense to the mortgage  
653 foreclosure action.

654 (h) Upon the filing of an affidavit with the clerk that the  
655 premises have not been vacated pursuant to the court order, the  
656 clerk shall issue to the sheriff a writ for possession which  
657 shall be governed by the provisions of s. 83.62.

658 (i) For purposes of this subsection, there is a rebuttable  
659 presumption that a residential property for which a homestead  
660 exemption for taxation was granted according to the certified  
661 rolls of the latest assessment by the county property appraiser,  
662 before the filing of the foreclosure action, is an owner-  
663 occupied residential property.

664 (3) The Supreme Court is requested to amend the Florida  
665 Rules of Civil Procedure to provide for expedited foreclosure  
666 proceedings in conformity with this section. The Supreme Court  
667 is requested to develop and publish forms for use under this

590-03622-12

20121890c1

668 section.

669 Section 9. Section 702.11, Florida Statutes, is created to  
670 read:

671 702.11 Adequate protections for lost, destroyed, or stolen  
672 notes in mortgage foreclosure.—

673 (1) In connection with a mortgage foreclosure, the court  
674 may find any of the following as reasonable means of providing  
675 adequate protection under s. 673.3019:

676 (a) A written indemnification agreement by a person  
677 reasonably believed sufficiently solvent to honor such an  
678 obligation;

679 (b) A surety bond;

680 (c) A letter of credit issued by a financial institution;

681 (d) A deposit of cash collateral with the clerk of the  
682 court; or

683 (e) Such other security as the court may deem appropriate  
684 under the circumstances.

685

686 Any security given shall be on terms and in amounts set by the  
687 court, for a time period through the running of the statute of  
688 limitations for enforcement of the underlying note, and  
689 conditioned to indemnify and hold harmless the maker of the note  
690 against any loss or damage, including principal, interest, and  
691 attorney fees and costs, which might occur by reason of a claim  
692 by another person to enforce the note.

693 (2) Any person who wrongly claimed to be the holder of or,  
694 pursuant to s. 673.3011, wrongly claimed to be entitled to  
695 enforce a lost, stolen, or destroyed note and caused the  
696 mortgage secured by the note to be foreclosed is liable to the



590-03622-12

20121890c1

697 actual holder of the note for actual damages suffered, together  
698 with attorney fees and costs of the actual holder of the note in  
699 enforcing rights under this section. The extent of the liability  
700 is not limited to any adequate protections given under s.  
701 673.3091. In addition, the actual holder of the note may pursue  
702 recovery directly against any adequate protections given.

703 (a) The actual holder of the note is not required to pursue  
704 recovery against the maker of the note or any guarantor of the  
705 note as a condition precedent to pursuing remedies under this  
706 section.

707 (b) This section does not limit or restrict the ability of  
708 the actual holder of the note to pursue any other claims or  
709 remedies it may have against the maker, the person who wrongly  
710 claimed to be the holder, or any person who facilitated or  
711 participated in the claim to the note or enforcement of the  
712 note.

713 Section 10. Section 702.13, Florida Statutes, is created to  
714 read:

715 702.13 Expedited foreclosure of abandoned residential real  
716 property.—

717 (1) As used in this section, the term "abandoned  
718 residential real property" means residential real property that  
719 is deemed abandoned upon a showing that:

720 (a) A duly licensed process server unaffiliated with the  
721 owner or servicer of any mortgage on the residential real  
722 property or with the attorney or law firm representing such  
723 owner or servicer has made at least three attempts to locate an  
724 occupant of the residential real property. The attempts must  
725 have been made at least 72 hours apart, and at least one each of

590-03622-12

20121890c1

726 such attempts must have been made before 12 p.m., between 12  
727 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt  
728 must include physically knocking or ringing at the door of the  
729 residential real property and such other efforts as are normally  
730 sufficient to obtain a response from an occupant.

731 (b) Two or more of the following conditions exist:

732 1. Windows or entrances to the premises are boarded up or  
733 closed off or multiple window panes are broken and unrepaired.

734 2. Doors to the premises are smashed through, broken off,  
735 unhinged, or continuously unlocked.

736 3. Rubbish, trash, or debris has accumulated on the  
737 mortgaged premises.

738 4. The premises are deteriorating and are below or in  
739 imminent danger of falling below minimum community standards for  
740 public safety and sanitation.

741 5. If the premises are a part of a condominium or are  
742 governed by a mandatory homeowners' association, the manager or  
743 other representative of the association has confirmed that  
744 assessments for the unit are at least 90 days delinquent.

745 6. Interviews with at least two neighbors in different  
746 households indicate that the residence has been abandoned. The  
747 neighbors must be adjoining, across the street in view of the  
748 home, or across the hall or adjacent to the unit in a  
749 condominium or cooperative.

750

751 The process server making attempts to locate an occupant of the  
752 residential real property may provide, by affidavit and  
753 photographic or other documentation, evidence of the condition  
754 of the residential real property.

590-03622-12

20121890c1

755       (2) (a) The party entitled to enforce the note and mortgage  
756 encumbering the residential real property appearing to be  
757 abandoned must file a petition before the court seeking to  
758 determine the status of the residential real property and to  
759 invoke an expedited foreclosure proceeding relating to the  
760 property. Upon the filing of an affidavit of diligent search and  
761 inquiry and the affidavit or documentary evidence set forth in  
762 subsection (1), the court shall, upon request of the petitioner,  
763 issue one or more subpoenas to the utility companies serving the  
764 residential real property commanding disclosure of the status of  
765 utility service to the subject property, including whether  
766 utilities are currently turned off and whether all outstanding  
767 utility payments have been made and, if so, by whom.

768       (b) If, after review of the response of the utility  
769 companies to the subpoenas and all other matters of record, the  
770 court determines the property to have been abandoned, the party  
771 entitled to foreclose on interest encumbering the residential  
772 real property is entitled to use the expedited mortgage  
773 foreclosure procedures set forth in s. 702.10 upon service by  
774 publication. However, service must be made on any condominium,  
775 cooperative, or homeowners' association having a lien interest  
776 in the property and all other junior lienholders as required by  
777 law.

778       Section 11. This act is intended to be remedial in nature  
779 and applies to any action filed on or after the effective date  
780 of this act. The failure to strictly comply with the  
781 requirements of this act may be asserted only within the  
782 foreclosure proceeding itself and does not affect the validity  
783 of any final judgment of foreclosure which may be granted or

590-03622-12

20121890c1

784 give rise to any independent cause of action or claim for  
785 damages against the plaintiff or any other party.

786 Section 12. This act shall take effect upon becoming a law.