

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Passidomo offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (b) of subsection (2) of section
7 95.11, Florida Statutes, is amended, and paragraph (h) is added
8 to subsection (5) of that section, to read:

9 95.11 Limitations other than for the recovery of real
10 property.—Actions other than for recovery of real property shall
11 be commenced as follows:

12 (2) WITHIN FIVE YEARS.—

13 (b) A legal or equitable action on a contract, obligation,
14 or liability founded on a written instrument, except for an
15 action to enforce a claim against a payment bond, which shall be
16 governed by the applicable provisions of ss. 255.05(10) and
17 713.23(1)(e), and except for certain actions for a deficiency
18 judgment governed by paragraph (5)(h).

19 (5) WITHIN ONE YEAR.—

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20 (h) An action to enforce a claim of a deficiency related
21 to a note secured by a mortgage against a residential property
22 that is a one-family to four-family dwelling unit. The
23 limitations period shall commence on the 11th day after the
24 foreclosure sale or the day after the mortgagee accepts a deed
25 in lieu of foreclosure.

26 Section 2. The amendment to s. 95.11, Florida Statutes,
27 made by this act shall apply to any action commenced on or after
28 July 1, 2012, regardless of when the cause of action accrued,
29 except that any action that would not have been barred under s.
30 95.11(2)(b), Florida Statutes, prior to the amendments made by
31 this act may be commenced no later than 5 years after the action
32 accrued and in no event later than July 1, 2013, and if the
33 action is not commenced by that date, it is barred by the
34 amendments made by this act.

35 Section 3. Section 702.015, Florida Statutes, is created
36 to read:

37 702.015 Elements of complaint; lost, destroyed, or stolen
38 note affidavit.—

39 (1) A complaint that seeks to foreclose a mortgage or
40 other lien on residential real property, including individual
41 units of condominiums and cooperatives, designed principally for
42 occupation by from one to four families, but not including an
43 interest in a timeshare property, which secures a promissory
44 note must:

45 (a) Contain affirmative allegations expressly made by the
46 plaintiff at the time the proceeding is commenced that the
47 plaintiff is the holder of the original note secured by the

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48 mortgage; or

49 (b) Allege with specificity the factual basis by which the
50 plaintiff is a person entitled to enforce the note under s.
51 673.3011.

52 (2) If a party has been delegated the authority to
53 institute a mortgage foreclosure action on behalf of the holder
54 of the note, the complaint shall describe the authority of the
55 plaintiff and identify, with specificity, the document that
56 grants the plaintiff the authority to act on behalf of the
57 holder of the note. This subsection is intended to require
58 initial disclosure of status and pertinent facts and not to
59 modify law regarding standing or real parties in interest.

60 (3) If the plaintiff is in physical possession of the
61 original promissory note, the plaintiff must file with the
62 court, contemporaneously with and as a condition precedent to
63 the filing of the complaint for foreclosure, certification,
64 under penalty of perjury, that the plaintiff is in physical
65 possession of the original promissory note. The certification
66 must set forth the physical location of the note, the name and
67 title of the individual giving the certification, the name of
68 the person who personally verified such physical possession, and
69 the time and date on which the possession was verified. Correct
70 copies of the note and all allonges to the note must be attached
71 to the certification. The original note and the allonges must be
72 filed with the court before the entry of any judgment of
73 foreclosure or judgment on the note.

74 (4) If the plaintiff seeks to enforce a lost, destroyed,
75 or stolen instrument, an affidavit executed under penalty of

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76 perjury must be attached to the complaint. The affidavit must:

77 (a) Detail a clear chain of all endorsements or
78 assignments of the promissory note that is the subject of the
79 action.

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

83 (c) Include as exhibits to the affidavit such copies of
84 the note and the allonges to the note, audit reports showing
85 physical receipt of the original note, or other evidence of the
86 acquisition, ownership, and possession of the note as may be
87 available to the plaintiff.

88 (5) The Legislature intends that the requirements of this
89 section are to expedite the foreclosure process by ensuring
90 initial disclosure of a plaintiff's status and the facts
91 supporting that status and thereby ensuring the availability of
92 documents necessary to the prosecution of the case. This section
93 is not intended to modify existing law regarding standing or
94 real parties in interest. The court may sanction the plaintiff
95 for failure to comply with this section, but any noncompliance
96 with this section does not affect the validity of a foreclosure
97 sale or title to real property subsequent to a foreclosure sale.

98 Section 4. Section 702.06, Florida Statutes, is amended to
99 read:

100 702.06 Deficiency decree; common-law suit to recover
101 deficiency.—In all suits for the foreclosure of mortgages
102 heretofore or hereafter executed the entry of a deficiency
103 decree for any portion of a deficiency, should one exist, may

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104 not exceed the difference between the judgment amount or, in the
105 case of a short sale, the outstanding debt, and the fair market
106 value of the property on the date of sale., shall be within the
107 ~~sound judicial discretion of the court, but~~ The complainant
108 shall also have the right to sue at common law to recover such
109 deficiency, unless the court in the foreclosure action has
110 granted or denied a claim for a deficiency judgment provided no
111 ~~suit at law to recover such deficiency shall be maintained~~
112 ~~against the original mortgagor in cases where the mortgage is~~
113 ~~for the purchase price of the property involved and where the~~
114 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
115 ~~sale and also is granted a deficiency decree against the~~
116 ~~original mortgagor.~~

117 Section 5. Section 702.10, Florida Statutes, is amended to
118 read:

119 702.10 Order to show cause; entry of final judgment of
120 foreclosure; payment during foreclosure.-

121 (1) A lienholder ~~After a complaint in a foreclosure~~
122 ~~proceeding has been filed, the mortgagee may request an order to~~
123 show cause for the entry of final judgment in a foreclosure
124 action. For purposes of this section, the term "lienholder"
125 includes the plaintiff and a defendant to the action who holds a
126 lien encumbering the property or a defendant who, by virtue of
127 its status as a condominium association, cooperative
128 association, or homeowners' association, may file a lien against
129 the real property subject to foreclosure. Upon filing, and the
130 court shall immediately review the request and the court file in
131 chambers and without a hearing ~~complaint.~~ If, upon examination

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132 of the court file ~~complaint~~, the court finds that the complaint
133 is verified, complies with s. 702.015, and alleges a cause of
134 action to foreclose on real property, the court shall promptly
135 issue an order directed to the other parties named in the action
136 ~~defendant~~ to show cause why a final judgment of foreclosure
137 should not be entered.

138 (a) The order shall:

139 1. Set the date and time for a hearing ~~on the order~~ to
140 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~
141 ~~set~~ sooner than the later of 20 days after the service of the
142 order to show cause or 45 days after the service of the initial
143 complaint. When service is obtained by publication, the date for
144 the hearing may not be set sooner than 55 ~~30~~ days after the
145 first publication. ~~The hearing must be held within 60 days after~~
146 ~~the date of service. Failure to hold the hearing within such~~
147 ~~time does not affect the validity of the order to show cause or~~
148 ~~the jurisdiction of the court to issue subsequent orders.~~

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

151 3. State that the filing of defenses by a motion,
152 responsive pleading, affidavits, or other papers ~~or by a~~
153 ~~verified or sworn answer at or before the hearing to show cause~~
154 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~
155 ~~attached~~ final judgment.

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

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160 5. State that, if a ~~the~~ defendant files defenses by a
161 motion, a verified or sworn answer, affidavits, or other papers
162 or appears personally or by way of an attorney at the time of
163 the hearing, the hearing time will ~~may~~ be used to hear and
164 consider the defendant's motion, answer, affidavits, other
165 papers, and other evidence and argument as may be presented by
166 the defendant or the defendant's attorney. The order shall also
167 state that the court may enter an order of final judgment of
168 foreclosure at the hearing. If such a determination is entered,
169 the court shall enter a final judgment of foreclosure ordering
170 the clerk of the court to conduct a foreclosure sale.

171 6. State that, if a ~~the~~ defendant fails to appear at the
172 hearing to show cause or fails to file defenses by a motion or
173 by a verified or sworn answer or files an answer not contesting
174 the foreclosure, such ~~the~~ defendant may be considered to have
175 waived the right to a hearing, and in such case, the court may
176 enter a default against such defendant and, if appropriate, a
177 final judgment of foreclosure ordering the clerk of the court to
178 conduct a foreclosure sale.

179 7. State that if the mortgage provides for reasonable
180 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
181 fees do not exceed 3 percent of the principal amount owed at the
182 time of filing the complaint, it is unnecessary for the court to
183 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
184 to be reasonable.

185 8. Attach the form of the proposed final judgment of
186 foreclosure which the movant requests the court to will enter,
187 ~~if the defendant waives the right to be heard at the hearing on~~

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188 the order to show cause. The form may contain blanks for the
189 court to enter the amounts due.

190 9. Require the party seeking final judgment mortgagee to
191 serve a copy of the order to show cause on the other parties the
192 mortgagor in the following manner:

193 a. If a party the mortgagor has been personally served
194 with the complaint and original process, or the other party is
195 the plaintiff in the action, service of the order to show cause
196 on that party order may be made in the manner provided in the
197 Florida Rules of Civil Procedure.

198 b. If a defendant the mortgagor has not been personally
199 served with the complaint and original process, the order to
200 show cause, together with the summons and a copy of the
201 complaint, shall be served on the party mortgagor in the same
202 manner as provided by law for original process.

203
204 Any final judgment of foreclosure entered under this subsection
205 is for in rem relief only. ~~Nothing in~~ This subsection does not
206 ~~shall~~ preclude the entry of a deficiency judgment where
207 otherwise allowed by law. It is the intent of the Legislature
208 that this alternative procedure may run simultaneously with
209 other court procedures.

210 (b) The right to be heard at the hearing to show cause is
211 waived if a the defendant, after being served as provided by law
212 with an order to show cause, engages in conduct that clearly
213 shows that the defendant has relinquished the right to be heard
214 on that order. The defendant's failure to file defenses by a
215 motion or by a sworn or verified answer, affidavits, or other

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216 papers or to appear personally or by way of an attorney at the
217 hearing duly scheduled on the order to show cause presumptively
218 constitutes conduct that clearly shows that the defendant has
219 relinquished the right to be heard. If a defendant files
220 defenses by a motion, ~~or by~~ a verified or sworn answer,
221 affidavits, or other papers at or before the hearing, such
222 action may constitute ~~constitutes~~ cause and may preclude
223 ~~precludes~~ the entry of a final judgment at the hearing to show
224 cause.

225 (c) In a mortgage foreclosure proceeding, when a final
226 ~~default~~ judgment of foreclosure has been entered against the
227 mortgagor and the note or mortgage provides for the award of
228 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
229 court to hold a hearing or adjudge the requested attorney
230 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
231 percent of the principal amount owed on the note or mortgage at
232 the time of filing, even if the note or mortgage does not
233 specify the percentage of the original amount that would be paid
234 as liquidated damages.

235 (d) If the court finds that all defendants have ~~the~~
236 ~~defendant has~~ waived the right to be heard as provided in
237 paragraph (b), the court shall promptly enter a final judgment
238 of foreclosure without the need for further hearing if the
239 plaintiff has shown entitlement to a final judgment and upon the
240 filing with the court of original note, satisfaction of the
241 conditions for establishment of a lost note, or upon a showing
242 to the court that the obligation to be foreclosed is not
243 evidenced by a promissory note or other negotiable instrument.

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244 If the court finds that a ~~the~~ defendant has not waived the right
245 to be heard on the order to show cause, the court shall ~~then~~
246 determine whether there is cause not to enter a final judgment
247 of foreclosure. If the court finds that the defendant has not
248 shown cause, the court shall promptly enter a judgment of
249 foreclosure. If the time allotted for the hearing is
250 insufficient, the court may announce at the hearing a date and
251 time for the continued hearing. Only the parties who appear,
252 individually or through an attorney, at the initial hearing must
253 be notified of the date and time of the continued hearing.

254 (2) This subsection does not apply to foreclosure of an
255 owner-occupied residence. As part of any other ~~In an~~ action for
256 foreclosure, and in addition to any other relief that the court
257 may award ~~other than residential real estate, the plaintiff the~~
258 ~~mortgagee~~ may request that the court enter an order directing
259 the mortgagor defendant to show cause why an order to make
260 payments during the pendency of the foreclosure proceedings or
261 an order to vacate the premises should not be entered.

262 (a) The order shall:

263 1. Set the date and time for hearing on the order to show
264 cause. However, the date for the hearing may ~~shall~~ not be set
265 sooner than 20 days after the service of the order. If ~~Where~~
266 service is obtained by publication, the date for the hearing may
267 ~~shall~~ not be set sooner than 30 days after the first
268 publication.

269 2. Direct the time within which service of the order to
270 show cause and the complaint shall be made upon each ~~the~~
271 defendant.

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272 3. State that a ~~the~~ defendant has the right to file
273 affidavits or other papers at the time of the hearing and may
274 appear personally or by way of an attorney at the hearing.

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

280 5. Require the movant ~~mortgagee~~ to serve a copy of the
281 order to show cause on the defendant ~~mortgager~~ in the following
282 manner:

283 a. If a defendant ~~the mortgager~~ has been served with the
284 complaint and original process, service of the order may be made
285 in the manner provided in the Florida Rules of Civil Procedure.

286 b. If a defendant ~~the mortgager~~ has not been served with
287 the complaint and original process, the order to show cause,
288 together with the summons and a copy of the complaint, shall be
289 served on the defendant ~~mortgager~~ in the same manner as provided
290 by law for original process.

291 (b) The right of a defendant to be heard at the hearing to
292 show cause is waived if the defendant, after being served as
293 provided by law with an order to show cause, engages in conduct
294 that clearly shows that the defendant has relinquished the right
295 to be heard on that order. A ~~The~~ defendant's failure to file
296 defenses by a motion or by a sworn or verified answer or to
297 appear at the hearing duly scheduled on the order to show cause
298 presumptively constitutes conduct that clearly shows that the
299 defendant has relinquished the right to be heard.

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300 (c) If the court finds that a ~~the~~ defendant has waived the
301 right to be heard as provided in paragraph (b), the court may
302 promptly enter an order requiring payment in the amount provided
303 in paragraph (f) or an order to vacate.

304 (d) If the court finds that the mortgagor has not waived
305 the right to be heard on the order to show cause, the court
306 shall, at the hearing on the order to show cause, consider the
307 affidavits and other showings made by the parties appearing and
308 make a determination of the probable validity of the underlying
309 claim alleged against the mortgagor and the mortgagor's
310 defenses. If the court determines that the plaintiff mortgagee
311 is likely to prevail in the foreclosure action, the court shall
312 enter an order requiring the mortgagor to make the payment
313 described in paragraph (e) to the plaintiff mortgagee and
314 provide for a remedy as described in paragraph (f). However, the
315 order shall be stayed pending final adjudication of the claims
316 of the parties if the mortgagor files with the court a written
317 undertaking executed by a surety approved by the court in an
318 amount equal to the unpaid balance of the lien being foreclosed
319 ~~the mortgage on the property~~, including all principal, interest,
320 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
321 ~~mortgagee~~.

322 (e) If ~~In the event~~ the court enters an order requiring
323 the mortgagor to make payments to the plaintiff mortgagee,
324 payments shall be payable at such intervals and in such amounts
325 provided for in the mortgage instrument before acceleration or
326 maturity. The obligation to make payments pursuant to any order
327 entered under this subsection shall commence from the date of

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328 the motion filed under this section ~~hereunder~~. The order shall
329 be served upon the mortgagor no later than 20 days before the
330 date specified for the first payment. The order may permit, but
331 may shall not require, the plaintiff ~~mortgagee~~ to take all
332 appropriate steps to secure the premises during the pendency of
333 the foreclosure action.

334 (f) ~~If In the event~~ the court enters an order requiring
335 payments, the order shall also provide that the plaintiff is
336 ~~mortgagee shall be~~ entitled to possession of the premises upon
337 the failure of the mortgagor to make the payment required in the
338 order unless at the hearing on the order to show cause the court
339 finds good cause to order some other method of enforcement of
340 its order.

341 (g) All amounts paid pursuant to this section shall be
342 credited against the mortgage obligation in accordance with the
343 terms of the loan documents; ~~provided, however, that any~~
344 payments made under this section do shall not constitute a cure
345 of any default or a waiver or any other defense to the mortgage
346 foreclosure action.

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

351 (i) For purposes of this subsection, there is a rebuttable
352 presumption that a residential property for which a homestead
353 exemption for taxation was granted according to the certified
354 rolls of the latest assessment by the county property appraiser,
355 before the filing of the foreclosure action, is an owner-

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356 occupied residential property.

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

361 Section 6. Section 702.11, Florida Statutes, is created to
362 read:

363 702.11 Expedited foreclosure of abandoned residential real
364 property.-

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

368 (a) A duly licensed process server unaffiliated with the
369 owner or servicer of any mortgage on the residential real
370 property or with the attorney or law firm representing such
371 owner or servicer has made at least three attempts to locate an
372 occupant of the residential real property. The attempts must
373 have been made at least 72 hours apart, and at least one each of
374 such attempts must have been made before 12 p.m., between 12
375 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
376 must include physically knocking or ringing at the door of the
377 residential real property and such other efforts as are normally
378 sufficient to obtain a response from an occupant.

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

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

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

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384 3. Rubbish, trash, or debris has accumulated on the
385 mortgaged premises.

386 4. The premises are deteriorating and are below or in
387 imminent danger of falling below minimum community standards for
388 public safety and sanitation.

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

393 6. Interviews with at least two neighbors in different
394 households indicate that the residence has been abandoned. The
395 neighbors must be adjoining, across the street in view of the
396 home, or across the hall or adjacent to the unit in a
397 condominium or cooperative.

398
399 The sheriff or process server making attempts to locate an
400 occupant of the residential real property and to determine the
401 abandoned status of the residential real property may provide,
402 by affidavit and photographic or other documentation, evidence
403 of the condition of the residential real property, and may
404 charge a reasonable fee for the attempts and for any affidavit
405 or other documentation evidencing the condition of the
406 residential real property.

407 (2) (a) The party entitled to enforce the note and mortgage
408 encumbering the residential real property appearing to be
409 abandoned may file a petition before the court seeking to
410 determine the status of the residential real property and to
411 invoke an expedited foreclosure proceeding relating to the

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412 property. Upon the filing of an affidavit of diligent search and
413 inquiry and the affidavit or documentary evidence set forth in
414 subsection (1), the court shall, upon request of the petitioner,
415 issue one or more subpoenas to the utility companies serving the
416 residential real property commanding disclosure of the status of
417 utility service to the subject property, including whether
418 utilities are currently turned off and whether all outstanding
419 utility payments have been made and, if so, by whom.

420 (b) If, after review of the response of the utility
421 companies to the subpoenas and all other matters of record, the
422 court may deem the property to have been abandoned and the
423 plaintiff entitled to expedited foreclosure.

424 Section 7. The amendments to s. 702.10, Florida Statutes,
425 and the creation of s. 702.11, Florida Statutes, by this act are
426 remedial in nature and shall apply to causes of action pending
427 on the effective date of this act. Section 702.015, Florida
428 Statutes, as created by this act, applies to cases filed on or
429 after July 1, 2012.

430 Section 8. The Legislature finds that this act is remedial
431 in nature. Accordingly, it is the intent of the Legislature that
432 this act shall apply to all mortgages encumbering real property
433 and all promissory notes secured by a mortgage, whether executed
434 before, on, or after the effective date of this act.

435 Section 9. This act shall take effect upon becoming a law.
436
437
438

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T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to mortgage foreclosures; amending s. 95.11, F.S.; reducing the limitations period for commencing an action to enforce a claim of a deficiency judgment subsequent to a foreclosure action; providing for application to existing causes of action; creating s. 702.015, F.S.; specifying required contents of a complaint seeking to foreclose on certain types of residential properties with respect to the authority of the plaintiff to foreclose on the note and the location of the note; providing legislative intent; providing that failure to file such documents does not affect title to property subsequent to a foreclosure sale; amending s. 702.06, F.S.; limiting the amount of a deficiency judgment; amending s. 702.10, F.S.; expanding the class of persons authorized to move for expedited foreclosure; defining the term "lienholder"; providing requirements and procedures with respect to an order directed to defendants to show cause why a final judgment of foreclosure should not be entered; providing that certain failures by a defendant to make certain filings or to make certain appearances may have specified legal consequences; requiring the court to enter a final judgment of foreclosure and order a foreclosure sale under certain circumstances; amending a restriction on a mortgagee to request a court to order a mortgagor defendant to make payments or to vacate the premises during an action to foreclose on residential real estate to provide that the restriction applies to all but owner-occupied residential property; providing a presumption regarding owner-occupied

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 213 (2012)

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468 residential property; requesting the Supreme Court to adopt
469 rules and forms for use in expedited foreclosure proceedings;
470 creating s. 702.11, F.S.; establishing expedited foreclosure
471 proceedings for abandoned residential real property and
472 procedures and requirements with respect thereto; providing for
473 application of the act; providing an effective date.