

1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 95.11, F.S.; reducing the limitations period for
4 commencing an action to enforce a claim of a
5 deficiency judgment subsequent to a foreclosure
6 action; providing for application to existing causes
7 of action; creating s. 702.015, F.S.; providing
8 legislative intent; specifying required contents of a
9 complaint seeking to foreclose on certain types of
10 residential properties with respect to the authority
11 of the plaintiff to foreclose on the note and the
12 location of the note; providing that failure to file
13 such documents does not affect title to property
14 subsequent to a foreclosure sale; amending s. 702.06,
15 F.S.; limiting the amount of a deficiency judgment;
16 amending s. 702.10, F.S.; expanding the class of
17 persons authorized to move for expedited foreclosure;
18 defining the term "lienholder"; providing requirements
19 and procedures with respect to an order directed to
20 defendants to show cause why a final judgment of
21 foreclosure should not be entered; providing that
22 certain failures by a defendant to make certain
23 filings or to make certain appearances may have
24 specified legal consequences; requiring the court to
25 enter a final judgment of foreclosure and order a
26 foreclosure sale under certain circumstances; revising
27 a restriction on a mortgagee to request a court to
28 order a mortgagor defendant to make payments or to

29 vacate the premises during an action to foreclose on
 30 residential real estate to provide that the
 31 restriction applies to all but owner-occupied
 32 residential property; providing a presumption
 33 regarding owner-occupied residential property;
 34 requesting the Supreme Court to adopt rules and forms
 35 for use in expedited foreclosure proceedings; creating
 36 s. 702.11, F.S.; establishing expedited foreclosure
 37 proceedings for abandoned residential real property
 38 and procedures and requirements with respect thereto;
 39 providing for application of the act; providing an
 40 effective date.

41

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

43

44 Section 1. Paragraph (b) of subsection (2) of section
 45 95.11, Florida Statutes, is amended, and paragraph (h) is added
 46 to subsection (5) of that section, to read:

47 95.11 Limitations other than for the recovery of real
 48 property.—Actions other than for recovery of real property shall
 49 be commenced as follows:

50 (2) WITHIN FIVE YEARS.—

51 (b) A legal or equitable action on a contract, obligation,
 52 or liability founded on a written instrument, except for an
 53 action to enforce a claim against a payment bond, which shall be
 54 governed by the applicable provisions of ss. 255.05(10) and
 55 713.23(1)(e), and except for actions for a deficiency judgment
 56 governed by paragraph (5)(h).

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57 (5) WITHIN ONE YEAR.—

58 (h) An action to enforce a claim of a deficiency related
59 to a note secured by a mortgage against a residential property
60 that is a one-family to four-family dwelling unit. The
61 limitations period shall commence on the 11th day after the
62 foreclosure sale or the day after the mortgagee accepts a deed
63 in lieu of foreclosure.

64 Section 2. The amendment to s. 95.11, Florida Statutes,
65 made by this act shall apply to any action commenced on or after
66 July 1, 2012, regardless of when the cause of action accrued,
67 except that any action that would not have been barred under s.
68 95.11(2)(b), Florida Statutes, prior to the amendments made by
69 this act may be commenced no later than 5 years after the action
70 accrued and in no event later than July 1, 2013, and if the
71 action is not commenced by that date, it is barred by the
72 amendments made by this act.

73 Section 3. Section 702.015, Florida Statutes, is created
74 to read:

75 702.015 Elements of complaint; lost, destroyed, or stolen
76 note affidavit.—

77 (1) The Legislature intends that the requirements of this
78 section are to expedite the foreclosure process by ensuring
79 initial disclosure of a plaintiff's status and the facts
80 supporting that status and thereby ensuring the availability of
81 documents necessary to the prosecution of the case. This section
82 is not intended to modify existing law regarding standing or
83 real parties in interest.

84 (2) A complaint that seeks to foreclose a mortgage or

85 other lien on residential real property, including individual
86 units of condominiums and cooperatives, designed principally for
87 occupation by from one to four families, but not including an
88 interest in a timeshare property, which secures a promissory
89 note must:

90 (a) Contain affirmative allegations expressly made by the
91 plaintiff at the time the proceeding is commenced that the
92 plaintiff is the holder of the original note secured by the
93 mortgage; or

94 (b) Allege with specificity the factual basis by which the
95 plaintiff is a person entitled to enforce the note under s.
96 673.3011.

97 (3) If a party has been delegated the authority to
98 institute a mortgage foreclosure action on behalf of the holder
99 of the note, the complaint shall describe the authority of the
100 plaintiff and identify, with specificity, the document that
101 grants the plaintiff the authority to act on behalf of the
102 holder of the note. This subsection is intended to require
103 initial disclosure of status and pertinent facts and not to
104 modify law regarding standing or real parties in interest.

105 (4) If the plaintiff is in physical possession of the
106 original promissory note, the plaintiff must file with the
107 court, contemporaneously with and as a condition precedent to
108 the filing of the complaint for foreclosure, certification,
109 under penalty of perjury, that the plaintiff is in physical
110 possession of the original promissory note. The certification
111 must set forth the physical location of the note, the name and
112 title of the individual giving the certification, the name of

113 the person who personally verified such physical possession, and
114 the time and date on which the possession was verified. Correct
115 copies of the note and all allonges to the note must be attached
116 to the certification. The original note and the allonges must be
117 filed with the court before the entry of any judgment of
118 foreclosure or judgment on the note.

119 (5) If the plaintiff seeks to enforce a lost, destroyed,
120 or stolen instrument, an affidavit executed under penalty of
121 perjury must be attached to the complaint. The affidavit must:

122 (a) Detail a clear chain of all endorsements or
123 assignments of the promissory note that is the subject of the
124 action.

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

128 (c) Include as exhibits to the affidavit such copies of
129 the note and the allonges to the note, audit reports showing
130 physical receipt of the original note, or other evidence of the
131 acquisition, ownership, and possession of the note as may be
132 available to the plaintiff.

133 (6) The court may sanction the plaintiff for failure to
134 comply with this section, but any noncompliance with this
135 section does not affect the validity of a foreclosure sale or
136 title to real property subsequent to a foreclosure sale.

137 Section 4. Section 702.06, Florida Statutes, is amended to
138 read:

139 702.06 Deficiency decree; common-law suit to recover
140 deficiency.—In all suits for the foreclosure of mortgages

141 heretofore or hereafter executed the entry of a deficiency
 142 decree for any portion of a deficiency, should one exist, may
 143 not exceed the difference between the judgment amount or, in the
 144 case of a short sale, the outstanding debt and the fair market
 145 value of the property on the date of sale., ~~shall be within the~~
 146 ~~sound judicial discretion of the court, but~~ The complainant
 147 shall also have the right to sue at common law to recover such
 148 deficiency, unless the court in the foreclosure action has
 149 granted or denied a claim for a deficiency judgment ~~provided no~~
 150 ~~suit at law to recover such deficiency shall be maintained~~
 151 ~~against the original mortgagor in cases where the mortgage is~~
 152 ~~for the purchase price of the property involved and where the~~
 153 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
 154 ~~sale and also is granted a deficiency decree against the~~
 155 ~~original mortgagor.~~

156 Section 5. Section 702.10, Florida Statutes, is amended to
 157 read:

158 702.10 Order to show cause; entry of final judgment of
 159 foreclosure; payment during foreclosure.-

160 (1) A lienholder ~~After a complaint in a foreclosure~~
 161 ~~proceeding has been filed, the mortgagee may request an order to~~
 162 ~~show cause for the entry of final judgment~~ in a foreclosure
 163 action. For purposes of this section, the term "lienholder"
 164 includes the plaintiff and a defendant to the action who holds a
 165 lien encumbering the property or a defendant who, by virtue of
 166 its status as a condominium association, cooperative
 167 association, or homeowners' association, may file a lien against
 168 the real property subject to foreclosure. Upon filing, and the

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169 court shall immediately review the request and the court file in
170 chambers and without a hearing ~~complaint~~. If, upon examination
171 of the court file ~~complaint~~, the court finds that the complaint
172 is verified, complies with s. 702.015, and alleges a cause of
173 action to foreclose on real property, the court shall promptly
174 issue an order directed to the other parties named in the action
175 ~~defendant~~ to show cause why a final judgment of foreclosure
176 should not be entered.

177 (a) The order shall:

178 1. Set the date and time for a hearing ~~on the order~~ to
179 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~
180 ~~set~~ sooner than the later of 20 days after the service of the
181 order to show cause or 45 days after the service of the initial
182 complaint. When service is obtained by publication, the date for
183 the hearing may not be set sooner than 55 ~~30~~ days after the
184 first publication. ~~The hearing must be held within 60 days after~~
185 ~~the date of service. Failure to hold the hearing within such~~
186 ~~time does not affect the validity of the order to show cause or~~
187 ~~the jurisdiction of the court to issue subsequent orders.~~

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

190 3. State that the filing of defenses by a motion,
191 responsive pleading, affidavits, or other papers ~~or by a~~
192 ~~verified or sworn answer at or~~ before the hearing to show cause
193 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~
194 ~~attached~~ final judgment.

195 4. State that a ~~the~~ defendant has the right to file
196 affidavits or other papers before ~~at~~ the time of the hearing to

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197 show cause and may appear personally or by way of an attorney at
198 the hearing.

199 5. State that, if a ~~the~~ defendant files defenses by a
200 motion, a verified or sworn answer, affidavits, or other papers
201 or appears personally or by way of an attorney at the time of
202 the hearing, the hearing time will ~~may~~ be used to hear and
203 consider the defendant's motion, answer, affidavits, other
204 papers, and other evidence and argument as may be presented by
205 the defendant or the defendant's attorney. The order shall also
206 state that the court may enter an order of final judgment of
207 foreclosure at the hearing. If such a determination is entered,
208 the court shall enter a final judgment of foreclosure ordering
209 the clerk of the court to conduct a foreclosure sale.

210 6. State that, if a ~~the~~ defendant fails to appear at the
211 hearing to show cause or fails to file defenses by a motion or
212 by a verified or sworn answer or files an answer not contesting
213 the foreclosure, such ~~the~~ defendant may be considered to have
214 waived the right to a hearing, and in such case, the court may
215 enter a default against such defendant and, if appropriate, a
216 final judgment of foreclosure ordering the clerk of the court to
217 conduct a foreclosure sale.

218 7. State that if the mortgage provides for reasonable
219 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
220 fees do not exceed 3 percent of the principal amount owed at the
221 time of filing the complaint, it is unnecessary for the court to
222 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
223 to be reasonable.

224 8. Attach the form of the proposed final judgment of

225 foreclosure which the movant requests the court to ~~will enter,~~
 226 ~~if the defendant waives the right to be heard~~ at the hearing on
 227 the order to show cause. The form may contain blanks for the
 228 court to enter the amounts due.

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

232 a. If a party ~~the mortgagor~~ has been personally served
 233 with the complaint and original process, or the other party is
 234 the plaintiff in the action, service of the order to show cause
 235 on that party ~~order~~ may be made in the manner provided in the
 236 Florida Rules of Civil Procedure.

237 b. If a defendant ~~the mortgagor~~ has not been personally
 238 served with the complaint and original process, the order to
 239 show cause, together with the summons and a copy of the
 240 complaint, shall be served on the party ~~mortgagor~~ in the same
 241 manner as provided by law for original process.

242
 243 Any final judgment of foreclosure entered under this subsection
 244 is for in rem relief only. ~~Nothing in~~ This subsection does not
 245 ~~shall~~ preclude the entry of a deficiency judgment where
 246 otherwise allowed by law. It is the intent of the Legislature
 247 that this alternative procedure may run simultaneously with
 248 other court procedures.

249 (b) The right to be heard at the hearing to show cause is
 250 waived if a ~~the~~ defendant, after being served as provided by law
 251 with an order to show cause, engages in conduct that clearly
 252 shows that the defendant has relinquished the right to be heard

253 on that order. The defendant's failure to file defenses by a
 254 motion or by a sworn or verified answer, affidavits, or other
 255 papers or to appear personally or by way of an attorney at the
 256 hearing duly scheduled on the order to show cause presumptively
 257 constitutes conduct that clearly shows that the defendant has
 258 relinquished the right to be heard. If a defendant files
 259 defenses by a motion, ~~or by~~ a verified or sworn answer,
 260 affidavits, or other papers at or before the hearing, such
 261 action may constitute ~~constitutes~~ cause and may preclude
 262 ~~precludes~~ the entry of a final judgment at the hearing to show
 263 cause.

264 (c) In a mortgage foreclosure proceeding, when a final
 265 ~~default~~ judgment of foreclosure has been entered against the
 266 mortgagor and the note or mortgage provides for the award of
 267 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
 268 court to hold a hearing or adjudge the requested attorney
 269 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
 270 percent of the principal amount owed on the note or mortgage at
 271 the time of filing, even if the note or mortgage does not
 272 specify the percentage of the original amount that would be paid
 273 as liquidated damages.

274 (d) If the court finds that all defendants have ~~the~~
 275 ~~defendant has~~ waived the right to be heard as provided in
 276 paragraph (b), the court shall promptly enter a final judgment
 277 of foreclosure without the need for further hearing if the
 278 plaintiff has shown entitlement to a final judgment and upon the
 279 filing with the court of the original note, satisfaction of the
 280 conditions for establishment of a lost note, or upon a showing

281 to the court that the obligation to be foreclosed is not
 282 evidenced by a promissory note or other negotiable instrument.
 283 If the court finds that a ~~the~~ defendant has not waived the right
 284 to be heard on the order to show cause, the court shall ~~then~~
 285 determine whether there is cause not to enter a final judgment
 286 of foreclosure. If the court finds that the defendant has not
 287 shown cause, the court shall promptly enter a judgment of
 288 foreclosure. If the time allotted for the hearing is
 289 insufficient, the court may announce at the hearing a date and
 290 time for the continued hearing. Only the parties who appear,
 291 individually or through an attorney, at the initial hearing must
 292 be notified of the date and time of the continued hearing.

293 (2) This subsection does not apply to foreclosure of an
 294 owner-occupied residence. As part of any other ~~In an~~ action for
 295 foreclosure, and in addition to any other relief that the court
 296 may award ~~other than residential real estate,~~ the plaintiff the
 297 ~~mortgagee~~ may request that the court enter an order directing
 298 the mortgagor defendant to show cause why an order to make
 299 payments during the pendency of the foreclosure proceedings or
 300 an order to vacate the premises should not be entered.

301 (a) The order shall:

302 1. Set the date and time for hearing on the order to show
 303 cause. However, the date for the hearing may ~~shall~~ not be set
 304 sooner than 20 days after the service of the order. If ~~Where~~
 305 service is obtained by publication, the date for the hearing may
 306 ~~shall~~ not be set sooner than 30 days after the first
 307 publication.

308 2. Direct the time within which service of the order to

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309 show cause and the complaint shall be made upon each ~~the~~
310 defendant.

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

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

319 5. Require the movant ~~mortgagee~~ to serve a copy of the
320 order to show cause on the defendant ~~mortgagor~~ in the following
321 manner:

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

325 b. If a defendant ~~the mortgagor~~ has not been served with
326 the complaint and original process, the order to show cause,
327 together with the summons and a copy of the complaint, shall be
328 served on the defendant ~~mortgagor~~ in the same manner as provided
329 by law for original process.

330 (b) The right of a defendant to be heard at the hearing to
331 show cause is waived if the defendant, after being served as
332 provided by law with an order to show cause, engages in conduct
333 that clearly shows that the defendant has relinquished the right
334 to be heard on that order. A ~~The~~ defendant's failure to file
335 defenses by a motion or by a sworn or verified answer or to
336 appear at the hearing duly scheduled on the order to show cause

337 presumptively constitutes conduct that clearly shows that the
338 defendant has relinquished the right to be heard.

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

343 (d) If the court finds that the mortgagor has not waived
344 the right to be heard on the order to show cause, the court
345 shall, at the hearing on the order to show cause, consider the
346 affidavits and other showings made by the parties appearing and
347 make a determination of the probable validity of the underlying
348 claim alleged against the mortgagor and the mortgagor's
349 defenses. If the court determines that the plaintiff mortgagee
350 is likely to prevail in the foreclosure action, the court shall
351 enter an order requiring the mortgagor to make the payment
352 described in paragraph (e) to the plaintiff mortgagee and
353 provide for a remedy as described in paragraph (f). However, the
354 order shall be stayed pending final adjudication of the claims
355 of the parties if the mortgagor files with the court a written
356 undertaking executed by a surety approved by the court in an
357 amount equal to the unpaid balance of the lien being foreclosed
358 ~~the mortgage on the property~~, including all principal, interest,
359 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
360 ~~mortgagee~~.

361 (e) If ~~In the event~~ the court enters an order requiring
362 the mortgagor to make payments to the plaintiff mortgagee,
363 payments shall be payable at such intervals and in such amounts
364 provided for in the mortgage instrument before acceleration or

365 maturity. The obligation to make payments pursuant to any order
366 entered under this subsection shall commence from the date of
367 the motion filed under this section ~~hereunder~~. The order shall
368 be served upon the mortgagor no later than 20 days before the
369 date specified for the first payment. The order may permit, but
370 may shall not require, the plaintiff ~~mortgagee~~ to take all
371 appropriate steps to secure the premises during the pendency of
372 the foreclosure action.

373 (f) ~~If in the event~~ the court enters an order requiring
374 payments, the order shall also provide that the plaintiff is
375 ~~mortgagee shall be~~ entitled to possession of the premises upon
376 the failure of the mortgagor to make the payment required in the
377 order unless at the hearing on the order to show cause the court
378 finds good cause to order some other method of enforcement of
379 its order.

380 (g) All amounts paid pursuant to this section shall be
381 credited against the mortgage obligation in accordance with the
382 terms of the loan documents; ~~provided, however, that any~~
383 payments made under this section do shall not constitute a cure
384 of any default or a waiver or any other defense to the mortgage
385 foreclosure action.

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

390 (i) For purposes of this subsection, there is a rebuttable
391 presumption that a residential property for which a homestead
392 exemption for taxation was granted according to the certified

393 rolls of the latest assessment by the county property appraiser,
 394 before the filing of the foreclosure action, is an owner-
 395 occupied residential property.

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

400 Section 6. Section 702.11, Florida Statutes, is created to
 401 read:

402 702.11 Expedited foreclosure of abandoned residential real
 403 property.-

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

407 (a) A duly licensed process server unaffiliated with the
 408 owner or servicer of any mortgage on the residential real
 409 property or with the attorney or law firm representing such
 410 owner or servicer has made at least three attempts to locate an
 411 occupant of the residential real property. The attempts must
 412 have been made at least 72 hours apart, and at least one each of
 413 such attempts must have been made before 12 p.m., between 12
 414 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
 415 must include physically knocking or ringing at the door of the
 416 residential real property and such other efforts as are normally
 417 sufficient to obtain a response from an occupant.

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

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

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

423 3. Rubbish, trash, or debris has accumulated on the
424 mortgaged premises.

425 4. The premises are deteriorating and are below or in
426 imminent danger of falling below minimum community standards for
427 public safety and sanitation.

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

432 6. Interviews with at least two neighbors in different
433 households indicate that the residence has been abandoned. The
434 neighbors must be adjoining, across the street in view of the
435 home, or across the hall or adjacent to the unit in a
436 condominium or cooperative.

437
438 The sheriff or process server making attempts to locate an
439 occupant of the residential real property and to determine the
440 abandoned status of the residential real property may provide,
441 by affidavit and photographic or other documentation, evidence
442 of the condition of the residential real property, and may
443 charge a reasonable fee for the attempts and for any affidavit
444 or other documentation evidencing the condition of the
445 residential real property.

446 (2) (a) The party entitled to enforce the note and mortgage
447 encumbering the residential real property appearing to be
448 abandoned may file a petition before the court seeking to

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449 determine the status of the residential real property and to
450 invoke an expedited foreclosure proceeding relating to the
451 property. Upon the filing of an affidavit of diligent search and
452 inquiry and the affidavit or documentary evidence set forth in
453 subsection (1), the court shall, upon request of the petitioner,
454 issue one or more subpoenas to the utility companies serving the
455 residential real property commanding disclosure of the status of
456 utility service to the subject property, including whether
457 utilities are currently turned off and whether all outstanding
458 utility payments have been made and, if so, by whom.

459 (b) If, after review of the response of the utility
460 companies to the subpoenas and all other matters of record, the
461 court may deem the property to have been abandoned and the
462 plaintiff entitled to expedited foreclosure.

463 Section 7. The amendments to s. 702.10, Florida Statutes,
464 and the creation of s. 702.11, Florida Statutes, by this act are
465 remedial in nature and shall apply to causes of action pending
466 on the effective date of this act. Section 702.015, Florida
467 Statutes, as created by this act, applies to cases filed on or
468 after July 1, 2012.

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

474 Section 9. This act shall take effect upon becoming a law.