

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN	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

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

**Amendment (with title amendment)**

5 Between lines 140 and 141, insert:

6 Section 3. Section 702.10, Florida Statutes, is amended to  
 7 read:

8 702.10 Order to show cause; entry of final judgment of  
 9 foreclosure; payment during foreclosure.—

10 (1) A lienholder ~~After a complaint in a foreclosure~~  
 11 ~~proceeding has been filed, the mortgagee~~ may request an order to  
 12 show cause for the entry of final judgment in a foreclosure  
 13 action. For purposes of this section, the term "lienholder"  
 14 includes the plaintiff and a defendant to the action who holds a  
 15 lien encumbering the property or a defendant who, by virtue of  
 16 its status as a condominium association, cooperative  
 17 association, or homeowners' association, may file a lien against  
 18 the real property subject to foreclosure. Upon filing, and the  
 19 court shall immediately review the request and the court file in

Amendment No. 1

20 chambers and without a hearing ~~complaint~~. If, upon examination  
21 of the court file ~~complaint~~, the court finds that the complaint  
22 is verified, complies with s. 702.015, and alleges a cause of  
23 action to foreclose on real property, the court shall promptly  
24 issue an order directed to the other parties named in the action  
25 ~~defendant~~ to show cause why a final judgment of foreclosure  
26 should not be entered.

27 (a) The order shall:

28 1. Set the date and time for a hearing ~~on the order~~ to  
29 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~  
30 ~~set~~ sooner than the later of 20 days after the service of the  
31 order to show cause or 45 days after the service of the initial  
32 complaint. When service is obtained by publication, the date for  
33 the hearing may not be set sooner than 55 ~~30~~ days after the  
34 first publication. ~~The hearing must be held within 60 days after~~  
35 ~~the date of service. Failure to hold the hearing within such~~  
36 ~~time does not affect the validity of the order to show cause or~~  
37 ~~the jurisdiction of the court to issue subsequent orders.~~

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

40 3. State that the filing of defenses by a motion,  
41 responsive pleading, affidavits, or other papers ~~or by a~~  
42 ~~verified or sworn answer at or before the hearing to show cause~~  
43 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~  
44 ~~attached~~ final judgment.

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

Amendment No. 1

48 the hearing.

49 5. State that, if a ~~the~~ defendant files defenses by a  
50 motion, a verified or sworn answer, affidavits, or other papers  
51 or appears personally or by way of an attorney at the time of  
52 the hearing, the hearing time will ~~may~~ be used to hear and  
53 consider the defendant's motion, answer, affidavits, other  
54 papers, and other evidence and argument as may be presented by  
55 the defendant or the defendant's attorney. The order shall also  
56 state that the court may enter an order of final judgment of  
57 foreclosure at the hearing. If such a determination is entered,  
58 the court shall enter a final judgment of foreclosure ordering  
59 the clerk of the court to conduct a foreclosure sale.

60 6. State that, if a ~~the~~ defendant fails to appear at the  
61 hearing to show cause or fails to file defenses by a motion or  
62 by a verified or sworn answer or files an answer not contesting  
63 the foreclosure, such ~~the~~ defendant may be considered to have  
64 waived the right to a hearing, and in such case, the court may  
65 enter a default against such defendant and, if appropriate, a  
66 final judgment of foreclosure ordering the clerk of the court to  
67 conduct a foreclosure sale.

68 7. State that if the mortgage provides for reasonable  
69 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
70 fees do not exceed 3 percent of the principal amount owed at the  
71 time of filing the complaint, it is unnecessary for the court to  
72 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
73 to be reasonable.

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

Amendment No. 1

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

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

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

87 b. If a defendant ~~the mortgagor~~ has not been personally  
88 served with the complaint and original process, the order to  
89 show cause, together with the summons and a copy of the  
90 complaint, shall be served on the party ~~mortgagor~~ in the same  
91 manner as provided by law for original process.

92  
93 Any final judgment of foreclosure entered under this subsection  
94 is for in rem relief only. ~~Nothing in~~ This subsection does not  
95 ~~shall~~ preclude the entry of a deficiency judgment where  
96 otherwise allowed by law. It is the intent of the Legislature  
97 that this alternative procedure may run simultaneously with  
98 other court procedures.

99 (b) The right to be heard at the hearing to show cause is  
100 waived if a ~~the~~ defendant, after being served as provided by law  
101 with an order to show cause, engages in conduct that clearly  
102 shows that the defendant has relinquished the right to be heard  
103 on that order. The defendant's failure to file defenses by a

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Published On: 2/21/2012 6:58:34 PM

Amendment No. 1

104 motion or by a sworn or verified answer, affidavits, or other  
105 papers or to appear personally or by way of an attorney at the  
106 hearing duly scheduled on the order to show cause presumptively  
107 constitutes conduct that clearly shows that the defendant has  
108 relinquished the right to be heard. If a defendant files  
109 defenses by a motion, ~~or by~~ a verified or sworn answer,   
110 affidavits, or other papers at or before the hearing, such  
111 action may constitute ~~constitutes~~ cause and may preclude  
112 ~~precludes~~ the entry of a final judgment at the hearing to show  
113 cause.

114 (c) In a mortgage foreclosure proceeding, when a final  
115 ~~default~~ judgment of foreclosure has been entered against the  
116 mortgagor and the note or mortgage provides for the award of  
117 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
118 court to hold a hearing or adjudge the requested attorney  
119 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
120 percent of the principal amount owed on the note or mortgage at  
121 the time of filing, even if the note or mortgage does not  
122 specify the percentage of the original amount that would be paid  
123 as liquidated damages.

124 (d) If the court finds that all defendants have ~~the~~  
125 ~~defendant has~~ waived the right to be heard as provided in  
126 paragraph (b), the court shall promptly enter a final judgment  
127 of foreclosure without the need for further hearing if the  
128 plaintiff has shown entitlement to a final judgment and upon the  
129 filing with the court of original note, satisfaction of the  
130 conditions for establishment of a lost note, or upon a showing  
131 to the court that the obligation to be foreclosed is not

Amendment No. 1

132 evidenced by a promissory note or other negotiable instrument.  
133 If the court finds that a ~~the~~ defendant has not waived the right  
134 to be heard on the order to show cause, the court shall ~~then~~  
135 determine whether there is cause not to enter a final judgment  
136 of foreclosure. If the court finds that the defendant has not  
137 shown cause, the court shall promptly enter a judgment of  
138 foreclosure. If the time allotted for the hearing is  
139 insufficient, the court may announce at the hearing a date and  
140 time for the continued hearing. Only the parties who appear,  
141 individually or through an attorney, at the initial hearing must  
142 be notified of the date and time of the continued hearing.

143 (2) This subsection does not apply to foreclosure of an owner-  
144 occupied residence. As part of any other ~~In an~~ action for  
145 foreclosure, and in addition to any other relief that the court  
146 may award ~~other than residential real estate,~~ the plaintiff the  
147 mortgagee may request that the court enter an order directing  
148 the mortgagor defendant to show cause why an order to make  
149 payments during the pendency of the foreclosure proceedings or  
150 an order to vacate the premises should not be entered.

151 (a) The order shall:

152 1. Set the date and time for hearing on the order to show  
153 cause. However, the date for the hearing may ~~shall~~ not be set  
154 sooner than 20 days after the service of the order. If ~~Where~~  
155 service is obtained by publication, the date for the hearing may  
156 ~~shall~~ not be set sooner than 30 days after the first  
157 publication.

158 2. Direct the time within which service of the order to  
159 show cause and the complaint shall be made upon each ~~the~~

Amendment No. 1

160 defendant.

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

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

169 5. Require the movant ~~mortgagee~~ to serve a copy of the  
170 order to show cause on the defendant ~~mortgager~~ in the following  
171 manner:

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

175 b. If a defendant ~~the mortgager~~ has not been served with  
176 the complaint and original process, the order to show cause,  
177 together with the summons and a copy of the complaint, shall be  
178 served on the defendant ~~mortgager~~ in the same manner as provided  
179 by law for original process.

180 (b) The right of a defendant to be heard at the hearing to  
181 show cause is waived if the defendant, after being served as  
182 provided by law with an order to show cause, engages in conduct  
183 that clearly shows that the defendant has relinquished the right  
184 to be heard on that order. A ~~The~~ defendant's failure to file  
185 defenses by a motion or by a sworn or verified answer or to  
186 appear at the hearing duly scheduled on the order to show cause  
187 presumptively constitutes conduct that clearly shows that the

Amendment No. 1

188 defendant has relinquished the right to be heard.

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

193 (d) If the court finds that the mortgagor has not waived  
194 the right to be heard on the order to show cause, the court  
195 shall, at the hearing on the order to show cause, consider the  
196 affidavits and other showings made by the parties appearing and  
197 make a determination of the probable validity of the underlying  
198 claim alleged against the mortgagor and the mortgagor's  
199 defenses. If the court determines that the plaintiff mortgagee  
200 is likely to prevail in the foreclosure action, the court shall  
201 enter an order requiring the mortgagor to make the payment  
202 described in paragraph (e) to the plaintiff mortgagee and  
203 provide for a remedy as described in paragraph (f). However, the  
204 order shall be stayed pending final adjudication of the claims  
205 of the parties if the mortgagor files with the court a written  
206 undertaking executed by a surety approved by the court in an  
207 amount equal to the unpaid balance of the lien being foreclosed  
208 ~~the mortgage on the property~~, including all principal, interest,  
209 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~  
210 ~~mortgagee~~.

211 (e) If ~~In the event~~ the court enters an order requiring  
212 the mortgagor to make payments to the plaintiff mortgagee,  
213 payments shall be payable at such intervals and in such amounts  
214 provided for in the mortgage instrument before acceleration or  
215 maturity. The obligation to make payments pursuant to any order

Amendment No. 1

216 entered under this subsection shall commence from the date of  
217 the motion filed under this section hereunder. The order shall  
218 be served upon the mortgagor no later than 20 days before the  
219 date specified for the first payment. The order may permit, but  
220 ~~may shall~~ not require, the plaintiff mortgagee to take all  
221 appropriate steps to secure the premises during the pendency of  
222 the foreclosure action.

223 (f) ~~If In the event~~ the court enters an order requiring  
224 payments, the order shall also provide that the plaintiff is  
225 ~~mortgagee shall be~~ entitled to possession of the premises upon  
226 the failure of the mortgagor to make the payment required in the  
227 order unless at the hearing on the order to show cause the court  
228 finds good cause to order some other method of enforcement of  
229 its order.

230 (g) All amounts paid pursuant to this section shall be  
231 credited against the mortgage obligation in accordance with the  
232 terms of the loan documents; ~~provided, however, that any~~  
233 payments made under this section do shall not constitute a cure  
234 of any default or a waiver or any other defense to the mortgage  
235 foreclosure action.

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

240 (i) For purposes of this subsection, there is a rebuttable  
241 presumption that a residential property for which a homestead  
242 exemption for taxation was granted according to the certified  
243 rolls of the latest assessment by the county property appraiser,

Amendment No. 1

244 before the filing of the foreclosure action, is an owner-  
245 occupied residential property.

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

253 -----  
254 **T I T L E A M E N D M E N T**

255 Remove line 9 and insert:

256 records request; amending s. 702.10, F.S.; expanding the class  
257 of persons authorized to move for expedited foreclosure;  
258 defining the term "lienholder"; providing requirements and  
259 procedures with respect to an order directed to defendants to  
260 show cause why a final judgment of foreclosure should not be  
261 entered; providing that certain failures by a defendant to make  
262 certain filings or to make certain appearances may have  
263 specified legal consequences; requiring the court to enter a  
264 final judgment of foreclosure and order a foreclosure sale under  
265 certain circumstances; amending a restriction on a mortgagee to  
266 request a court to order a mortgagor defendant to make payments  
267 or to vacate the premises during an action to foreclose on  
268 residential real estate to provide that the restriction applies  
269 to all but owner-occupied residential property; providing a  
270 presumption regarding owner-occupied residential property;  
271 requesting the Supreme Court to adopt rules and forms for use in

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 319 (2012)

Amendment No. 1

272 expedited foreclosure proceedings; amending s. 718.112, F.S.;

273 revising

274