



294568

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2012	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 147 and 148  
insert:

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

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

(1) A lienholder ~~After a complaint in a foreclosure  
proceeding has been filed, the mortgagee~~ may request an order to  
show cause for the entry of final judgment in a foreclosure  
action. For purposes of this section, the term "lienholder"  
includes the plaintiff and a defendant to the action who holds a



294568

14 lien encumbering the property or a defendant who, by virtue of  
15 its status as a condominium association, cooperative  
16 association, or homeowners' association, may file a lien against  
17 the real property subject to foreclosure. Upon filing, and the  
18 court shall immediately review the request and the court file in  
19 chambers and without a hearing ~~complaint~~. If, upon examination  
20 of the court file ~~complaint~~, the court finds that the complaint  
21 is verified, complies with s. 702.015, and alleges a cause of  
22 action to foreclose on real property, the court shall promptly  
23 issue an order directed to the other parties named in the action  
24 ~~defendant~~ to show cause why a final judgment of foreclosure  
25 should not be entered.

26 (a) The order shall:

27 1. Set the date and time for a hearing on the order to show  
28 cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner  
29 than 20 days after the service of the order. ~~When service is~~  
30 ~~obtained by publication, the date for the hearing may not be set~~  
31 ~~sooner than 30 days after the first publication.~~ The hearing  
32 must be held within 90 ~~60~~ days after the date of service.  
33 Failure to hold the hearing within such time does not affect the  
34 validity of the order to show cause or the jurisdiction of the  
35 court to issue subsequent orders.

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

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



294568

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

47           5. State that, if a ~~the~~ defendant files defenses by a  
48 motion, a verified or sworn answer, affidavits, or other papers  
49 or appears personally or by way of an attorney at the time of  
50 the hearing, the hearing time shall ~~may~~ be used to hear and  
51 consider the defendant's motion, answer, affidavits, other  
52 papers, and other evidence and argument as may be presented by  
53 the defendant or the defendant's attorney. The court may then  
54 determine, based upon clear and convincing evidence and the  
55 arguments presented, to support entry of a final judgment of  
56 foreclosure, and if so, enter a final judgment of foreclosure  
57 ordering the clerk of the court to conduct a foreclosure sale.

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

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



294568

72           8. Attach the form of the proposed final judgment of  
73 foreclosure which the movant requests the court to will enter,  
74 ~~if the defendant waives the right to be heard~~ at the hearing on  
75 the order to show cause. The form may contain blanks for the  
76 court to enter the amounts due.

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

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

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

90  
91 A Any final judgment of foreclosure entered under this  
92 subsection is for in rem relief only. ~~Nothing in~~ This subsection  
93 does not shall preclude the entry of a deficiency judgment where  
94 otherwise allowed by law. It is the intent of the Legislature  
95 that this alternative procedure may run simultaneously with  
96 other court procedures.

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



294568

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

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

122 (d) If the court finds that all defendants have ~~the~~  
123 ~~defendant has~~ waived the right to be heard as provided in  
124 paragraph (b), the court shall promptly enter a final judgment  
125 of foreclosure without the need for further hearing if the  
126 plaintiff has shown entitlement to a final judgment. If the  
127 court finds that a ~~the~~ defendant has not waived the right to be  
128 heard on the order to show cause, the court shall ~~then~~ determine  
129 whether there is cause not to enter a final judgment of



294568

130 foreclosure. If the court determines, based upon clear and  
131 convincing evidence and the arguments presented, to support  
132 entry of a final judgment of foreclosure, the court shall enter  
133 a final judgment of foreclosure ordering the clerk of the court  
134 to conduct a foreclosure sale ~~finds that the defendant has not~~  
135 ~~shown cause, the court shall promptly enter a judgment of~~  
136 ~~foreclosure.~~ If the time allotted for the hearing is  
137 insufficient, the court may announce at the hearing a date and  
138 time for the continued hearing. Only the parties who appear,  
139 individually or through an attorney, at the initial hearing must  
140 be notified of the date and time of the continued hearing.

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

149 (a) The order shall:

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

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



294568

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

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

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

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

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

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

187           (c) If the court finds that a ~~the~~ defendant has waived the



294568

188 right to be heard as provided in paragraph (b), the court may  
189 promptly enter an order requiring payment in the amount provided  
190 in paragraph (f) or an order to vacate.

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

209 (e) ~~If In the event~~ the court enters an order requiring the  
210 mortgagor to make payments to the plaintiff mortgagee, payments  
211 shall be payable at such intervals and in such amounts provided  
212 for in the mortgage instrument before acceleration or maturity.  
213 The obligation to make payments pursuant to any order entered  
214 under this subsection shall commence from the date of the motion  
215 filed under this section hereunder. The order shall be served  
216 upon the mortgagor no later than 20 days before the date





294568

217 specified for the first payment. The order may permit, but may  
218 ~~shall~~ not require, the plaintiff mortgagee to take all  
219 appropriate steps to secure the premises during the pendency of  
220 the foreclosure action.

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

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

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

238 (i) For purposes of this subsection, there is a rebuttable  
239 presumption that a residential property for which a homestead  
240 exemption for taxation was granted according to the certified  
241 rolls of the latest assessment by the county property appraiser,  
242 before the filing of the foreclosure action, is an owner-  
243 occupied residential property.

244 (3) The Supreme Court is requested to amend the Florida  
245 Rules of Civil Procedure to provide for expedited foreclosure



246 proceedings in conformity with this section and to develop and  
247 publish forms for use under this section.

248  
249 ===== T I T L E A M E N D M E N T =====

250 And the title is amended as follows:

251 Delete line 9

252 and insert:

253 records request; amending s. 702.10, F.S.; expanding  
254 the class of persons authorized to move for expedited  
255 foreclosure; defining the term "lienholder"; providing  
256 requirements and procedures with respect to an order  
257 directed to defendants to show cause why a final  
258 judgment of foreclosure should not be entered;  
259 providing that certain failures by a defendant to make  
260 certain filings or to make certain appearances may  
261 have specified legal consequences; requiring the court  
262 to enter a final judgment of foreclosure and order a  
263 foreclosure sale under certain circumstances; amending  
264 a restriction on a mortgagee to request a court to  
265 order a mortgagor defendant to make payments or to  
266 vacate the premises during an action to foreclose on  
267 residential real estate to provide that the  
268 restriction applies to all but owner-occupied  
269 residential property; providing a presumption  
270 regarding owner-occupied residential property;  
271 requesting the Supreme Court to adopt rules and forms  
272 for use in expedited foreclosure proceedings; amending  
273 s. 718.112, F.S.; revising