



768302

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/15/2013	.	
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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 987 - 1090
and insert:

(2) As part of any ~~In an~~ action for foreclosure, other than residential real estate, and in addition to any other relief that the court may award, the plaintiff ~~the mortgagee~~ may request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered.

(a) The order shall:

1. Set the date and time for hearing on the order to show



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14 cause. However, the date for the hearing may ~~shall~~ not be set
15 sooner than 20 days after the service of the order. If ~~Where~~
16 service is obtained by publication, the date for the hearing may
17 ~~shall~~ not be set sooner than 30 days after the first
18 publication.

19 2. Direct the time within which service of the order to
20 show cause and the complaint shall be made upon each ~~the~~
21 defendant.

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

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

30 5. Require the movant ~~mortgagee~~ to serve a copy of the
31 order to show cause on the defendant ~~mortgager~~ in the following
32 manner:

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

36 b. If a defendant ~~the mortgager~~ has not been served with
37 the complaint and original process, the order to show cause,
38 together with the summons and a copy of the complaint, shall be
39 served on the defendant ~~mortgager~~ in the same manner as provided
40 by law for original process.

41 (b) The right of a defendant to be heard at the hearing to
42 show cause is waived if the defendant, after being served as



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43 provided by law with an order to show cause, engages in conduct
44 that clearly shows that the defendant has relinquished the right
45 to be heard on that order. A ~~The~~ defendant's failure to file
46 defenses by a motion or by a sworn or verified answer or to
47 appear at the hearing duly scheduled on the order to show cause
48 presumptively constitutes conduct that clearly shows that the
49 defendant has relinquished the right to be heard.

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

54 (d) If the court finds that the mortgagor has not waived
55 the right to be heard on the order to show cause, the court
56 shall, at the hearing on the order to show cause, consider the
57 affidavits and other showings made by the parties appearing and
58 make a determination of the probable validity of the underlying
59 claim alleged against the mortgagor and the mortgagor's
60 defenses. If the court determines that the plaintiff mortgagee
61 is likely to prevail in the foreclosure action, the court shall
62 enter an order requiring the mortgagor to make the payment
63 described in paragraph (e) to the plaintiff mortgagee and
64 provide for a remedy as described in paragraph (f). However, the
65 order shall be stayed pending final adjudication of the claims
66 of the parties if the mortgagor files with the court a written
67 undertaking executed by a surety approved by the court in an
68 amount equal to the unpaid balance of the lien being foreclosed
69 ~~the mortgage on the property~~, including all principal, interest,
70 unpaid taxes, and insurance premiums paid by the plaintiff the
71 ~~mortgagee~~.



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72 (e) ~~If In the event~~ the court enters an order requiring the
73 mortgagor to make payments to the plaintiff mortgagee, payments
74 shall be payable at such intervals and in such amounts provided
75 for in the mortgage instrument before acceleration or maturity.
76 The obligation to make payments pursuant to any order entered
77 under this subsection shall commence from the date of the motion
78 filed under this section hereunder. The order shall be served
79 upon the mortgagor no later than 20 days before the date
80 specified for the first payment. The order may allow ~~permit~~, but
81 may shall not require, the plaintiff mortgagee to take all
82 appropriate steps to secure the premises during the pendency of
83 the foreclosure action.

84 (f) ~~If In the event~~ the court enters an order requiring
85 payments, the order shall also provide that the plaintiff is
86 ~~mortgagee shall be~~ entitled to possession of the premises upon
87 the failure of the mortgagor to make the payment required in the
88 order unless at the hearing on the order to show cause the court
89 finds good cause to order some other method of enforcement of
90 its order.

91 (g) All amounts paid pursuant to this section shall be
92 credited against the mortgage obligation in accordance with the
93 terms of the loan documents; ~~provided, however, that any~~
94 payments made under this section do shall not constitute a cure
95 of any default or a waiver or any other defense to the mortgage
96 foreclosure action.

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



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

And the title is amended as follows:

Delete lines 79 - 85

and insert:

circumstances;