

By the Committee on Banking and Insurance; and Senator Latvala

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1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 45.031, F.S.; providing that the second publication of
4 the notice of sale may be published on a publicly
5 accessible website of the clerk of the court in lieu
6 of publication in any other form of media; revising
7 the contents of the notice of sale; amending s.
8 50.011, F.S.; providing that certain legal notice
9 requirements do not apply to an electronic publication
10 of a notice of sale on a publicly accessible Internet
11 website; creating s. 50.015, F.S.; requiring that a
12 publicly accessible Internet website must be approved
13 for legal publication, advertisement, and notice by
14 the Florida Clerks of Court Operations Corporation;
15 describing conditions and requirements for a publicly
16 accessible Internet website; requiring 24-hour
17 customer support; requiring that legal publication,
18 advertisement, or notice of foreclosure action be
19 posted within 3 business days, excluding court
20 holidays, after the date for the foreclosure sale is
21 set; authorizing a clerk of court to contract with a
22 publicly accessible Internet website provider for
23 legal publication of notice of foreclosure action;
24 providing for maximum publication fees; amending s.
25 95.11, F.S.; revising the limitations period for
26 commencing an action to enforce a claim of a
27 deficiency judgment after a foreclosure action;
28 providing for applicability to existing causes of
29 action; providing that the amendments made by this act

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30 to s. 95.11, F.S., apply to any action commenced on or
31 after July 1, 2013; amending s. 121.021, F.S.;

32 defining terms; providing for the applicability of the
33 term "termination"; amending s. 121.091, F.S.;

34 providing that between two specified dates, a retired
35 justice or retired judge is not subject to certain
36 limitations otherwise applicable to retired employees;

37 amending s. 121.591, F.S.; providing that, between two
38 specified dates, a retired justice or retired judge
39 who returns to temporary employment as a senior judge
40 in any court may continue to receive a distribution of
41 his or her retirement account after providing proof of
42 termination from his or her regularly established
43 position; creating s. 702.015, F.S.; providing
44 legislative intent; specifying required contents of a
45 complaint seeking to foreclose on certain types of
46 residential properties with respect to the authority
47 of the plaintiff to foreclose on the note and the
48 location of the note; authorizing sanctions against
49 plaintiffs who fail to comply with complaint
50 requirements; providing for non-applicability to
51 proceedings involving timeshare interests; amending s.
52 702.035, F.S.; providing for the applicability of
53 electronic publication if such publication effects
54 advertisement, publication, or legal notice regarding
55 a foreclosure proceeding; providing that only the
56 costs charged by the host of the Internet website may
57 be charged as costs in the action; creating s.
58 702.036, F.S.; requiring a court to treat a collateral

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59 attack on a final judgment of foreclosure on a
60 mortgage as a claim for monetary damages under certain
61 circumstances; prohibiting such court from granting
62 certain relief affecting title to the foreclosed
63 property; providing for construction relating to the
64 rights of certain persons to seek specified types of
65 relief or pursue claims against the foreclosed
66 property under certain circumstances; amending s.
67 702.06, F.S.; limiting the amount of a deficiency
68 judgment; amending s. 702.10, F.S.; revising the class
69 of persons authorized to move for expedited
70 foreclosure to include lienholders; defining the term
71 "lienholder"; providing requirements and procedures
72 with respect to an order directed to defendants to
73 show cause why a final judgment of foreclosure should
74 not be entered; providing that certain failures by a
75 defendant to make certain filings or to make certain
76 appearances may have specified legal consequences;
77 requiring the court to enter a final judgment of
78 foreclosure and order a foreclosure sale under certain
79 circumstances; revising a restriction on a mortgagee
80 to request a court to order a mortgagor defendant to
81 make payments or to vacate the premises during an
82 action to foreclose on residential real estate to
83 provide that the restriction applies to all but owner-
84 occupied residential property; providing a presumption
85 regarding owner-occupied residential property;
86 creating s. 702.11, F.S.; providing requirements for
87 reasonable means of providing adequate protection

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88 under s. 673.3091, F.S., in mortgage foreclosures of
89 certain residential properties; providing for
90 liability of persons who wrongly claim to be holders
91 of or entitled to enforce a lost, stolen, or destroyed
92 note and cause the mortgage secured thereby to be
93 foreclosed in certain circumstances; providing for
94 construction and applicability; declaring that the act
95 is remedial in nature and applies to all mortgages
96 encumbering real property and all promissory notes
97 secured by a mortgage, whether executed before, on, or
98 after the effective date of this act; requiring that
99 employer contribution rates be adjusted; providing a
100 directive to the Division of Law Revision and
101 Information; providing legislature findings;
102 requesting the Florida Supreme Court to adopt rules
103 and forms to expedite foreclosure proceedings;
104 providing that certain specified provisions of the act
105 take effect only if the Legislature appropriates a
106 certain amount on a recurring basis to the judicial
107 system and if the Governor does not veto the
108 appropriation; providing that certain sections of the
109 act stand repealed on a stated date; providing an
110 effective date.

111
112 Be It Enacted by the Legislature of the State of Florida:

113
114 Section 1. Subsection (2) of section 45.031, Florida
115 Statutes, is amended to read:

116 45.031 Judicial sales procedure.—In any sale of real or

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117 personal property under an order or judgment, the procedures
118 provided in this section and ss. 45.0315-45.035 may be followed
119 as an alternative to any other sale procedure if so ordered by
120 the court.

121 (2) PUBLICATION OF SALE.—Notice of sale shall be published
122 once a week for 2 consecutive weeks in a newspaper of general
123 circulation, as defined in chapter 50, published in the county
124 where the sale is to be held. The second publication shall be at
125 least 5 days before the sale or, in the alternative, may be
126 published on a publicly accessible website of the clerk of the
127 court authorized by s. 50.015 in lieu of publication in another
128 form of media. The notice of sale must ~~shall~~ contain:

129 (a) A description of the property to be sold.

130 (b) The time and place of sale.

131 (c) A statement that the sale will be made pursuant to the
132 order or final judgment.

133 (d) The caption of the action.

134 (e) The name of the clerk making the sale.

135 (f) A statement that any person claiming an interest in the
136 surplus from the sale, if any, other than the property owner as
137 of the date of the lis pendens must file a claim within 60 days
138 after the sale.

139 (g) A statement of the name of the newspaper or the website
140 home page address in, or on which, the notice will be published.

141
142 The court, in its discretion, may enlarge the time of the sale.
143 Notice of the changed time of sale shall be published as
144 provided herein.

145 Section 2. Section 50.011, Florida Statutes, is amended to

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146 read:

147 50.011 Where and in what language legal notices to be
148 published.—

149 (1) Whenever by statute an official or legal advertisement
150 or a publication, or notice in a newspaper has been or is
151 directed or permitted in the nature of or in lieu of process, or
152 for constructive service, or in initiating, assuming, reviewing,
153 exercising or enforcing jurisdiction or power, or for any
154 purpose, including all legal notices and advertisements of
155 sheriffs and tax collectors, the contemporaneous and continuous
156 intent and meaning of such legislation all and singular,
157 existing or repealed, is and has been and is hereby declared to
158 be and to have been, and the rule of interpretation is and has
159 been, a publication in a newspaper printed and published
160 periodically once a week or oftener, containing at least 25
161 percent of its words in the English language, entered or
162 qualified to be admitted and entered as periodicals matter at a
163 post office in the county where published, for sale to the
164 public generally, available to the public generally for the
165 publication of official or other notices and customarily
166 containing information of a public character or of interest or
167 of value to the residents or owners of property in the county
168 where published, or of interest or of value to the general
169 public.

170 (2) As allowed by s. 45.031(2), the requirements of
171 subsection (1) do not apply to any electronic publication of a
172 notice of sale on a publicly accessible Internet website meeting
173 the standards of s. 50.015.

174 Section 3. Section 50.015, Florida Statutes, is created to

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175 read:

176 50.015 Publicly accessible Internet website.-

177 (1) A publicly accessible Internet website must be approved
178 for legal publication, advertisement, and notice by the Florida
179 Clerks of Court Operations Corporation and must:

180 (a) Maintain a notice of foreclosure action for 90 days
181 following the first day of posting or for as long as provided in
182 subsection (3), and maintain publications of sales searchable
183 and accessible to users for 10 years following the first day of
184 posting.

185 (b) Receive at least 100,000 total impressions a month,
186 which must be certified by a recognized Internet search engine.
187 As used in this paragraph, the term "impression" means the time
188 at which a notice is viewed once by a visitor on an Internet web
189 page.

190 (c) Maintain 24-hour customer support, along with live
191 electronic communication and telephone support for a minimum of
192 12 hours a day during peak-time usage, and post online tutorials
193 for users.

194 (d) Be maintained on a data center that is compliant with
195 the Statement of Auditing Standards No. 70, and the website
196 provider shall provide the clerk of court with a certificate of
197 compliance with the Standards.

198 (e) Provide 24-hour access at no charge to the chief judge
199 of each judicial circuit and his or her designee, as well as to
200 each clerk of court and each deputy clerk. The website provider
201 must develop and maintain on file and provide to each clerk of
202 court and each chief judge a disaster recovery plan for the
203 website.

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204 (2) The website provider shall publish its affidavits
205 electronically in substantial conformity with ss. 50.041 and
206 50.051 and may use an electronic notary seal.

207 (3) Legal publication, advertisement, or notice of
208 foreclosure action shall be posted within 3 business days,
209 excluding court holidays, after the date for the foreclosure
210 sale is set and shall continue for 10 days after the foreclosure
211 sale, or for 90 consecutive days, whichever period is longer.

212 (4) Each clerk of court may contract with a publicly
213 accessible Internet website provider for legal publication of
214 notice of foreclosure action as required by s. 702.035.

215 (5) A publicly accessible Internet website may charge a fee
216 of up to \$50 per notice.

217 Section 4. Paragraph (b) of subsection (2) of section
218 95.11, Florida Statutes, is amended, and paragraph (h) is added
219 to subsection (5) of that section, to read:

220 95.11 Limitations other than for the recovery of real
221 property.—Actions other than for recovery of real property shall
222 be commenced as follows:

223 (2) WITHIN FIVE YEARS.—

224 (b) A legal or equitable action on a contract, obligation,
225 or liability founded on a written instrument, except for an
226 action to enforce a claim against a payment bond, which shall be
227 governed by the applicable provisions of paragraph (5) (e), s.
228 255.05(10), s. 337.18(1), or s. 713.23(1) (e), and except for an
229 action for a deficiency judgment governed by paragraph (5) (h).

230 (5) WITHIN ONE YEAR.—

231 (h) An action to enforce a claim of a deficiency related to
232 a note secured by a mortgage against a residential property that

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233 is a one-family to four-family dwelling unit. The limitations
234 period shall commence on the day after the certificate is issued
235 by the clerk of court or the day after the mortgagee accepts a
236 deed in lieu of foreclosure.

237 Section 5. The amendments made by this act to s. 95.11,
238 Florida Statutes, apply to any action commenced on or after July
239 1, 2013, regardless of when the cause of action accrued.
240 However, any action that would not have been barred under s.
241 95.11(2)(b), Florida Statutes, before the effective date of this
242 act must be commenced within 5 years after the action accrued or
243 by July 1, 2014, whichever occurs first.

244 Section 6. Subsection (39) of section 121.021, Florida
245 Statutes, is amended to read:

246 121.021 Definitions.—The following words and phrases as
247 used in this chapter have the respective meanings set forth
248 unless a different meaning is plainly required by the context:

249 (39) (a) "Termination" occurs, except as provided in
250 paragraph (b), when a member ceases all employment relationships
251 with participating employers, however:

252 1. For retirements effective before July 1, 2010, if a
253 member is employed by any such employer within the next calendar
254 month, termination shall be deemed not to have occurred. A leave
255 of absence constitutes a continuation of the employment
256 relationship, except that a leave of absence without pay due to
257 disability may constitute termination if such member makes
258 application for and is approved for disability retirement in
259 accordance with s. 121.091(4). The department or state board may
260 require other evidence of termination as it deems necessary.

261 2. For retirements effective on or after July 1, 2010, if a

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262 member is employed by any such employer within the next 6
263 calendar months, termination shall be deemed not to have
264 occurred. A leave of absence constitutes a continuation of the
265 employment relationship, except that a leave of absence without
266 pay due to disability may constitute termination if such member
267 makes application for and is approved for disability retirement
268 in accordance with s. 121.091(4). The department or state board
269 may require other evidence of termination as it deems necessary.

270 (b) "Termination" for a member electing to participate in
271 the Deferred Retirement Option Program occurs when the program
272 participant ceases all employment relationships with
273 participating employers in accordance with s. 121.091(13),
274 however:

275 1. For termination dates occurring before July 1, 2010, if
276 the member is employed by any such employer within the next
277 calendar month, termination will be deemed not to have occurred,
278 except as provided in s. 121.091(13)(b)4.c. A leave of absence
279 shall constitute a continuation of the employment relationship.

280 2. For termination dates occurring on or after July 1,
281 2010, if the member becomes employed by any such employer within
282 the next 6 calendar months, termination will be deemed not to
283 have occurred, except as provided in s. 121.091(13)(b)4.c. A
284 leave of absence constitutes a continuation of the employment
285 relationship.

286 (c) Effective July 1, 2011, "termination" for a member
287 receiving a refund of employee contributions occurs when a
288 member ceases all employment relationships with participating
289 employers for 3 calendar months. A leave of absence constitutes
290 a continuation of the employment relationship.

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291 (d) Effective July 1, 2013, through June 30, 2016,
292 "termination" for a retired justice or judge who reached the
293 later of his or her normal retirement age or age when vested at
294 retirement and subsequently returns to temporary employment as a
295 judge in any court, as assigned by the Chief Justice of the
296 Supreme Court in accordance with s. 2, Art. V of the State
297 Constitution, occurs when the justice or judge has terminated
298 all employment relationships with employers under the Florida
299 Retirement System for at least 1 calendar month prior to
300 reemployment as a senior judge.

301 Section 7. Subsection (9) of section 121.091, Florida
302 Statutes, is amended to read:

303 121.091 Benefits payable under the system.—Benefits may not
304 be paid under this section unless the member has terminated
305 employment as provided in s. 121.021(39) (a) or begun
306 participation in the Deferred Retirement Option Program as
307 provided in subsection (13), and a proper application has been
308 filed in the manner prescribed by the department. The department
309 may cancel an application for retirement benefits when the
310 member or beneficiary fails to timely provide the information
311 and documents required by this chapter and the department's
312 rules. The department shall adopt rules establishing procedures
313 for application for retirement benefits and for the cancellation
314 of such application when the required information or documents
315 are not received.

316 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

317 (a) Any person who is retired under this chapter, except
318 under the disability retirement provisions of subsection (4),
319 may be employed by an employer that does not participate in a

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320 state-administered retirement system and receive compensation
321 from that employment without limiting or restricting in any way
322 the retirement benefits payable to that person.

323 (b) Any person whose retirement is effective before July 1,
324 2010, or whose participation in the Deferred Retirement Option
325 Program terminates before July 1, 2010, except under the
326 disability retirement provisions of subsection (4) or as
327 provided in s. 121.053, may be reemployed by an employer that
328 participates in a state-administered retirement system and
329 receive retirement benefits and compensation from that employer,
330 except that the person may not be reemployed by an employer
331 participating in the Florida Retirement System before meeting
332 the definition of termination in s. 121.021 and may not receive
333 both a salary from the employer and retirement benefits for 12
334 calendar months immediately subsequent to the date of
335 retirement. However, a DROP participant shall continue
336 employment and receive a salary during the period of
337 participation in the Deferred Retirement Option Program, as
338 provided in subsection (13).

339 1. A retiree who violates such reemployment limitation
340 before completion of the 12-month limitation period must give
341 timely notice of this fact in writing to the employer and to the
342 Division of Retirement or the state board and shall have his or
343 her retirement benefits suspended for the months employed or the
344 balance of the 12-month limitation period as required in sub-
345 subparagraphs b. and c. A retiree employed in violation of this
346 paragraph and an employer who employs or appoints such person
347 are jointly and severally liable for reimbursement to the
348 retirement trust fund, including the Florida Retirement System

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349 Trust Fund and the Public Employee Optional Retirement Program
350 Trust Fund, from which the benefits were paid. The employer must
351 have a written statement from the retiree that he or she is not
352 retired from a state-administered retirement system. Retirement
353 benefits shall remain suspended until repayment has been made.
354 Benefits suspended beyond the reemployment limitation shall
355 apply toward repayment of benefits received in violation of the
356 reemployment limitation.

357 a. A district school board may reemploy a retiree as a
358 substitute or hourly teacher, education paraprofessional,
359 transportation assistant, bus driver, or food service worker on
360 a noncontractual basis after he or she has been retired for 1
361 calendar month. A district school board may reemploy a retiree
362 as instructional personnel, as defined in s. 1012.01(2)(a), on
363 an annual contractual basis after he or she has been retired for
364 1 calendar month. Any member who is reemployed within 1 calendar
365 month after retirement shall void his or her application for
366 retirement benefits. District school boards reemploying such
367 teachers, education paraprofessionals, transportation
368 assistants, bus drivers, or food service workers are subject to
369 the retirement contribution required by subparagraph 2.

370 b. A community college board of trustees may reemploy a
371 retiree as an adjunct instructor or as a participant in a phased
372 retirement program within the Florida Community College System,
373 after he or she has been retired for 1 calendar month. A member
374 who is reemployed within 1 calendar month after retirement shall
375 void his or her application for retirement benefits. Boards of
376 trustees reemploying such instructors are subject to the
377 retirement contribution required in subparagraph 2. A retiree

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378 may be reemployed as an adjunct instructor for no more than 780
379 hours during the first 12 months of retirement. A retiree
380 reemployed for more than 780 hours during the first 12 months of
381 retirement must give timely notice in writing to the employer
382 and to the Division of Retirement or the state board of the date
383 he or she will exceed the limitation. The division shall suspend
384 his or her retirement benefits for the remainder of the 12
385 months of retirement. Any retiree employed in violation of this
386 sub-subparagraph and any employer who employs or appoints such
387 person without notifying the division to suspend retirement
388 benefits are jointly and severally liable for any benefits paid
389 during the reemployment limitation period. The employer must
390 have a written statement from the retiree that he or she is not
391 retired from a state-administered retirement system. Any
392 retirement benefits received by the retiree while reemployed in
393 excess of 780 hours during the first 12 months of retirement
394 must be repaid to the Florida Retirement System Trust Fund, and
395 retirement benefits shall remain suspended until repayment is
396 made. Benefits suspended beyond the end of the retiree's first
397 12 months of retirement shall apply toward repayment of benefits
398 received in violation of the 780-hour reemployment limitation.

399 c. The State University System may reemploy a retiree as an
400 adjunct faculty member or as a participant in a phased
401 retirement program within the State University System after the
402 retiree has been retired for 1 calendar month. A member who is
403 reemployed within 1 calendar month after retirement shall void
404 his or her application for retirement benefits. The State
405 University System is subject to the retired contribution
406 required in subparagraph 2., as appropriate. A retiree may be

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407 reemployed as an adjunct faculty member or a participant in a
408 phased retirement program for no more than 780 hours during the
409 first 12 months of his or her retirement. A retiree reemployed
410 for more than 780 hours during the first 12 months of retirement
411 must give timely notice in writing to the employer and to the
412 Division of Retirement or the state board of the date he or she
413 will exceed the limitation. The division shall suspend his or
414 her retirement benefits for the remainder of the 12 months. Any
415 retiree employed in violation of this sub-subparagraph and any
416 employer who employs or appoints such person without notifying
417 the division to suspend retirement benefits are jointly and
418 severally liable for any benefits paid during the reemployment
419 limitation period. The employer must have a written statement
420 from the retiree that he or she is not retired from a state-
421 administered retirement system. Any retirement benefits received
422 by the retiree while reemployed in excess of 780 hours during
423 the first 12 months of retirement must be repaid to the Florida
424 Retirement System Trust Fund, and retirement benefits shall
425 remain suspended until repayment is made. Benefits suspended
426 beyond the end of the retiree's first 12 months of retirement
427 shall apply toward repayment of benefits received in violation
428 of the 780-hour reemployment limitation.

429 d. The Board of Trustees of the Florida School for the Deaf
430 and the Blind may reemploy a retiree as a substitute teacher,
431 substitute residential instructor, or substitute nurse on a
432 noncontractual basis after he or she has been retired for 1
433 calendar month. Any member who is reemployed within 1 calendar
434 month after retirement shall void his or her application for
435 retirement benefits. The Board of Trustees of the Florida School

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436 for the Deaf and the Blind reemploying such teachers,
437 residential instructors, or nurses is subject to the retirement
438 contribution required by subparagraph 2.

439 e. A developmental research school may reemploy a retiree
440 as a substitute or hourly teacher or an education
441 paraprofessional as defined in s. 1012.01(2) on a noncontractual
442 basis after he or she has been retired for 1 calendar month. A
443 developmental research school may reemploy a retiree as
444 instructional personnel, as defined in s. 1012.01(2)(a), on an
445 annual contractual basis after he or she has been retired for 1
446 calendar month after retirement. Any member who is reemployed
447 within 1 calendar month voids his or her application for
448 retirement benefits. A developmental research school that
449 reemploys retired teachers and education paraprofessionals is
450 subject to the retirement contribution required by subparagraph
451 2.

452 f. A charter school may reemploy a retiree as a substitute
453 or hourly teacher on a noncontractual basis after he or she has
454 been retired for 1 calendar month. A charter school may reemploy
455 a retired member as instructional personnel, as defined in s.
456 1012.01(2)(a), on an annual contractual basis after he or she
457 has been retired for 1 calendar month after retirement. Any
458 member who is reemployed within 1 calendar month voids his or
459 her application for retirement benefits. A charter school that
460 reemploys such teachers is subject to the retirement
461 contribution required by subparagraph 2.

462 2. The employment of a retiree or DROP participant of a
463 state-administered retirement system does not affect the average
464 final compensation or years of creditable service of the retiree

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465 or DROP participant. Before July 1, 1991, upon employment of any
466 person, other than an elected officer as provided in s. 121.053,
467 who is retired under a state-administered retirement program,
468 the employer shall pay retirement contributions in an amount
469 equal to the unfunded actuarial liability portion of the
470 employer contribution which would be required for regular
471 members of the Florida Retirement System. Effective July 1,
472 1991, contributions shall be made as provided in s. 121.122 for
473 retirees who have renewed membership or, as provided in
474 subsection (13), for DROP participants.

475 3. Any person who is holding an elective public office
476 which is covered by the Florida Retirement System and who is
477 concurrently employed in nonelected covered employment may elect
478 to retire while continuing employment in the elective public
479 office if he or she terminates his or her nonelected covered
480 employment. Such person shall receive his or her retirement
481 benefits in addition to the compensation of the elective office
482 without regard to the time limitations otherwise provided in
483 this subsection. A person who seeks to exercise the provisions
484 of this subparagraph as they existed before May 3, 1984, may not
485 be deemed to be retired under those provisions, unless such
486 person is eligible to retire under this subparagraph, as amended
487 by chapter 84-11, Laws of Florida.

488 (c) Any person whose retirement is effective on or after
489 July 1, 2010, or whose participation in the Deferred Retirement
490 Option Program terminates on or after July 1, 2010, who is
491 retired under this chapter, except under the disability
492 retirement provisions of subsection (4) or as provided in s.
493 121.053, may be reemployed by an employer that participates in a

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494 state-administered retirement system and receive retirement
495 benefits and compensation from that employer. However, a person
496 may not be reemployed by an employer participating in the
497 Florida Retirement System before meeting the definition of
498 termination in s. 121.021 and may not receive both a salary from
499 the employer and retirement benefits for 6 calendar months after
500 meeting the definition of termination, except as provided in
501 paragraph (f). However, a DROP participant shall continue
502 employment and receive a salary during the period of
503 participation in the Deferred Retirement Option Program, as
504 provided in subsection (13).

505 1. The reemployed retiree may not renew membership in the
506 Florida Retirement System.

507 2. The employer shall pay retirement contributions in an
508 amount equal to the unfunded actuarial liability portion of the
509 employer contribution that would be required for active members
510 of the Florida Retirement System in addition to the
511 contributions required by s. 121.76.

512 3. A retiree initially reemployed in violation of this
513 paragraph and an employer that employs or appoints such person
514 are jointly and severally liable for reimbursement of any
515 retirement benefits paid to the retirement trust fund from which
516 the benefits were paid, including the Florida Retirement System
517 Trust Fund and the Public Employee Optional Retirement Program
518 Trust Fund, as appropriate. The employer must have a written
519 statement from the employee that he or she is not retired from a
520 state-administered retirement system. Retirement benefits shall
521 remain suspended until repayment is made. Benefits suspended
522 beyond the end of the retiree's 6-month reemployment limitation

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523 period shall apply toward the repayment of benefits received in
524 violation of this paragraph.

525 (d) Except as provided in paragraph (f), this subsection
526 applies to retirees, as defined in s. 121.4501(2), of the
527 Florida Retirement System Investment Plan, subject to the
528 following conditions:

529 1. A retiree may not be reemployed with an employer
530 participating in the Florida Retirement System until such person
531 has been retired for 6 calendar months.

532 2. A retiree employed in violation of this subsection and
533 an employer that employs or appoints such person are jointly and
534 severally liable for reimbursement of any benefits paid to the
535 retirement trust fund from which the benefits were paid. The
536 employer must have a written statement from the retiree that he
537 or she is not retired from a state-administered retirement
538 system.

539 (e) The limitations of this subsection apply to
540 reemployment in any capacity irrespective of the category of
541 funds from which the person is compensated except as provided in
542 paragraph (f).

543 (f) Effective July 1, 2013, through June 30, 2016, a
544 retired justice or retired judge who has reached the later of
545 his or her normal retirement age or the age when vested, who has
546 terminated all employment with employers participating under the
547 Florida Retirement System for at least 1 calendar month, and who
548 subsequently returns to temporary employment as a senior judge
549 in any court, as assigned by the Chief Justice of the Supreme
550 Court in accordance with s. 2, Art. V of the State Constitution,
551 is not subject to paragraph (c), paragraph (d), or paragraph (e)

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552 while reemployed as a senior judge.

553 Section 8. Paragraph (a) of subsection (1) of section
554 121.591, Florida Statutes, is amended to read:

555 121.591 Payment of benefits.—Benefits may not be paid under
556 the Florida Retirement System Investment Plan unless the member
557 has terminated employment as provided in s. 121.021(39)(a) or is
558 deceased and a proper application has been filed as prescribed
559 by the state board or the department. Benefits, including
560 employee contributions, are not payable under the investment
561 plan for employee hardships, unforeseeable emergencies, loans,
562 medical expenses, educational expenses, purchase of a principal
563 residence, payments necessary to prevent eviction or foreclosure
564 on an employee's principal residence, or any other reason except
565 a requested distribution for retirement, a mandatory de minimis
566 distribution authorized by the administrator, or a required
567 minimum distribution provided pursuant to the Internal Revenue
568 Code. The state board or department, as appropriate, may cancel
569 an application for retirement benefits if the member or
570 beneficiary fails to timely provide the information and
571 documents required by this chapter and the rules of the state
572 board and department. In accordance with their respective
573 responsibilities, the state board and the department shall adopt
574 rules establishing procedures for application for retirement
575 benefits and for the cancellation of such application if the
576 required information or documents are not received. The state
577 board and the department, as appropriate, are authorized to cash
578 out a de minimis account of a member who has been terminated
579 from Florida Retirement System covered employment for a minimum
580 of 6 calendar months. A de minimis account is an account

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581 containing employer and employee contributions and accumulated
582 earnings of not more than \$5,000 made under the provisions of
583 this chapter. Such cash-out must be a complete lump-sum
584 liquidation of the account balance, subject to the provisions of
585 the Internal Revenue Code, or a lump-sum direct rollover
586 distribution paid directly to the custodian of an eligible
587 retirement plan, as defined by the Internal Revenue Code, on
588 behalf of the member. Any nonvested accumulations and associated
589 service credit, including amounts transferred to the suspense
590 account of the Florida Retirement System Investment Plan Trust
591 Fund authorized under s. 121.4501(6), shall be forfeited upon
592 payment of any vested benefit to a member or beneficiary, except
593 for de minimis distributions or minimum required distributions
594 as provided under this section. If any financial instrument
595 issued for the payment of retirement benefits under this section
596 is not presented for payment within 180 days after the last day
597 of the month in which it was originally issued, the third-party
598 administrator or other duly authorized agent of the state board
599 shall cancel the instrument and credit the amount of the
600 instrument to the suspense account of the Florida Retirement
601 System Investment Plan Trust Fund authorized under s.
602 121.4501(6). Any amounts transferred to the suspense account are
603 payable upon a proper application, not to include earnings
604 thereon, as provided in this section, within 10 years after the
605 last day of the month in which the instrument was originally
606 issued, after which time such amounts and any earnings
607 attributable to employer contributions shall be forfeited. Any
608 forfeited amounts are assets of the trust fund and are not
609 subject to chapter 717.

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- 610 (1) NORMAL BENEFITS.—Under the investment plan:
- 611 (a) Benefits in the form of vested accumulations as
- 612 described in s. 121.4501(6) are payable under this subsection in
- 613 accordance with the following terms and conditions:
- 614 1. Benefits are payable only to a member, an alternate
- 615 payee of a qualified domestic relations order, or a beneficiary.
- 616 2. Benefits shall be paid by the third-party administrator
- 617 or designated approved providers in accordance with the law, the
- 618 contracts, and any applicable board rule or policy.
- 619 3. The member must be terminated from all employment with
- 620 all Florida Retirement System employers, as provided in s.
- 621 121.021(39).
- 622 4. Benefit payments may not be made until the member has
- 623 been terminated for 3 calendar months, except that the state
- 624 board may authorize by rule for the distribution of up to 10
- 625 percent of the member's account after being terminated for 1
- 626 calendar month if the member has reached the normal retirement
- 627 date as defined in s. 121.021. Effective July 1, 2013, through
- 628 June 30, 2016, a retired justice or retired judge who returns to
- 629 temporary employment as a senior judge in any court pursuant to
- 630 s. 2, Art. V of the State Constitution and meets the definition
- 631 of termination in s. 121.021(39) (d) may continue to receive a
- 632 distribution of his or her account as provided under this
- 633 paragraph after providing proof of assignment as a senior judge.
- 634 5. If a member or former member of the Florida Retirement
- 635 System receives an invalid distribution, such person must either
- 636 repay the full amount within 90 days after receipt of final
- 637 notification by the state board or the third-party administrator
- 638 that the distribution was invalid, or, in lieu of repayment, the

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639 member must terminate employment from all participating
640 employers. If such person fails to repay the full invalid
641 distribution within 90 days after receipt of final notification,
642 the person may be deemed retired from the investment plan by the
643 state board and is subject to s. 121.122. If such person is
644 deemed retired, any joint and several liability set out in s.
645 121.091(9)(d)2. is void, and the state board, the department, or
646 the employing agency is not liable for gains on payroll
647 contributions that have not been deposited to the person's
648 account in the investment plan, pending resolution of the
649 invalid distribution. The member or former member who has been
650 deemed retired or who has been determined by the state board to
651 have taken an invalid distribution may appeal the agency
652 decision through the complaint process as provided under s.
653 121.4501(9)(g)3. As used in this subparagraph, the term "invalid
654 distribution" means any distribution from an account in the
655 investment plan which is taken in violation of this section, s.
656 121.091(9), or s. 121.4501.

657 Section 9. Section 702.015, Florida Statutes, is created to
658 read:

659 702.015 Elements of complaint; lost, destroyed, or stolen
660 note affidavit.—

661 (1) The Legislature intends that this section expedite the
662 foreclosure process by ensuring initial disclosure of a
663 plaintiff's status and the facts supporting that status, thereby
664 ensuring the availability of documents necessary to the
665 prosecution of the case.

666 (2) A complaint that seeks to foreclose a mortgage or other
667 lien on residential real property, including individual units of

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668 condominiums and cooperatives, designed principally for
669 occupation by from one to four families which secures a
670 promissory note must:

671 (a) Contain affirmative allegations expressly made by the
672 plaintiff at the time the proceeding is commenced that the
673 plaintiff is the holder of the original note secured by the
674 mortgage; or

675 (b) Allege with specificity the factual basis by which the
676 plaintiff is a person entitled to enforce the note under s.
677 673.3011.

678 (3) If a plaintiff has been delegated the authority to
679 institute a mortgage foreclosure action on behalf of the person
680 entitled to enforce the note, the complaint shall describe the
681 authority of the plaintiff and identify, with specificity, the
682 document that grants the plaintiff the authority to act on
683 behalf of the person entitled to enforce the note. This
684 subsection is intended to require initial disclosure of status
685 and pertinent facts and not to modify law regarding standing or
686 real parties in interest. The term "original note" or "original
687 promissory note" means the signed or executed promissory note
688 rather than a copy thereof. The term includes any renewal,
689 replacement, consolidation, or amended and restated note or
690 instrument given in renewal, replacement, or substitution for a
691 previous promissory note. The term also includes a transferrable
692 record, as defined by the Uniform Electronic Transaction Act in
693 s. 668.50(16).

694 (4) If the plaintiff is in possession of the original
695 promissory note, the plaintiff must file under penalty of
696 perjury a certification with the court, contemporaneously with

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697 the filing of the complaint for foreclosure, that the plaintiff
698 is in possession of the original promissory note. The
699 certification must set forth the location of the note, the name
700 and title of the individual giving the certification, the name
701 of the person who personally verified such possession, and the
702 time and date on which the possession was verified. Correct
703 copies of the note and all allonges to the note must be attached
704 to the certification. The original note and the allonges must be
705 filed with the court before the entry of any judgment of
706 foreclosure or judgment on the note.

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

710 (a) Detail a clear chain of all endorsements, transfers, or
711 assignments of the promissory note that is the subject of the
712 action.

713 (b) Set forth facts showing that the plaintiff is entitled
714 to enforce a lost, destroyed, or stolen instrument pursuant to
715 s. 673.3091. Adequate protection as required under s.
716 673.3091(2) shall be provided before the entry of final
717 judgment.

718 (c) Include as exhibits to the affidavit such copies of the
719 note and the allonges to the note, audit reports showing receipt
720 of the original note, or other evidence of the acquisition,
721 ownership, and possession of the note as may be available to the
722 plaintiff.

723 (6) The court may sanction the plaintiff for failure to
724 comply with this section.

725 (7) This section does not apply to any foreclosure

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726 proceeding involving timeshare interests under part III of
727 chapter 721.

728 Section 10. Section 702.035, Florida Statutes, is amended
729 to read:

730 702.035 Legal notice concerning foreclosure proceedings.—
731 Whenever a legal advertisement, publication, or notice relating
732 to a foreclosure proceeding is required to be placed in a
733 newspaper or posted on an online website, it is the
734 responsibility of the petitioner or petitioner's attorney to
735 place such advertisement, publication, or notice. For counties
736 with more than 1 million total population as reflected in the
737 2000 Official Decennial Census of the United States Census
738 Bureau as shown on the official website of the United States
739 Census Bureau, any notice of publication required by this
740 section shall be deemed to have been published in accordance
741 with the law if the notice is published in a newspaper that has
742 been entered as a periodical matter at a post office in the
743 county in which the newspaper is published, is published a
744 minimum of 5 days a week, exclusive of legal holidays, and has
745 been in existence and published a minimum of 5 days a week,
746 exclusive of legal holidays, for 1 year or is a direct successor
747 to a newspaper that has been in existence for 1 year that has
748 been published a minimum of 5 days a week, exclusive of legal
749 holidays. If the advertisement, publication, or notice is
750 effected by an electronic publication, it shall be deemed to
751 have been published in accordance with the law if the
752 requirements of s. 50.011(2) have been met. The advertisement,
753 publication, or notice shall be placed directly by the attorney
754 for the petitioner, by the petitioner if acting pro se, or by

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755 the clerk of the court. Only the actual costs charged by the
756 newspaper or by the host of the Internet website for the
757 advertisement, publication, or notice may be charged as costs in
758 the action.

759 Section 11. Section 702.036, Florida Statutes, is created
760 to read:

761 702.036 Finality of mortgage foreclosure judgment.-

762 (1) (a) In any action or proceeding in which a party seeks
763 to set aside, invalidate, or challenge the validity of a final
764 judgment of foreclosure of a mortgage or to establish or
765 reestablish a lien or encumbrance on the property in abrogation
766 of the final judgment of foreclosure of a mortgage, the court
767 shall treat such request solely as a claim for monetary damages
768 and may not grant relief that adversely affects the quality or
769 character of the title to the property, if:

770 1. The party seeking relief from the final judgment of
771 foreclosure of the mortgage was properly served in the
772 foreclosure lawsuit as provided in chapter 48 or chapter 49.

773 2. The final judgment of foreclosure of the mortgage was
774 entered as to the property.

775 3. All applicable appeals periods have run as to the final
776 judgment of foreclosure of the mortgage with no appeals having
777 been taken or any appeals having been finally resolved.

778 4. The property has been acquired for value, by a person
779 not affiliated with the foreclosing lender or the foreclosed
780 owner, at a time in which no lis pendens regarding the suit to
781 set aside, invalidate, or challenge the foreclosure appears in
782 the official records of the county where the property was
783 located.

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784 (b) This subsection does not limit the right to pursue any
785 other relief to which a person may be entitled, including, but
786 not limited to, compensatory damages, punitive damages,
787 statutory damages, consequential damages, injunctive relief, or
788 fees and costs, which does not adversely affect the ownership of
789 the title to the property as vested in the unaffiliated
790 purchaser for value.

791 (2) For purposes of this section, the following, without
792 limitation, shall be considered persons affiliated with the
793 foreclosing lender:

794 (a) The foreclosing lender or any loan servicer for the
795 loan being foreclosed;

796 (b) Any past or present owner or holder of the loan being
797 foreclosed;

798 (c) Any maintenance company, holding company, foreclosure
799 services company, or law firm under contract to any entity
800 listed in paragraph (a), paragraph (b), or this paragraph, with
801 regard to the loan being foreclosed; or

802 (d) Any parent entity, subsidiary, or other person who
803 directly, or indirectly through one or more intermediaries,
804 controls or is controlled by, or is under common control with,
805 any entity listed in paragraph (a), paragraph (b), or paragraph
806 (c).

807 (3) After foreclosure of a mortgage based upon the
808 enforcement of a lost, destroyed, or stolen note, a person who
809 is not a party to the underlying foreclosure action but who
810 claims to be the person entitled to enforce the promissory note
811 secured by the foreclosed mortgage has no claim against the
812 foreclosed property after it is conveyed for valuable

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813 consideration to a person not affiliated with the foreclosing
814 lender or the foreclosed owner. This section does not preclude
815 the person entitled to enforce the promissory note from pursuing
816 recovery from any adequate protection given pursuant to s.
817 673.3091 or from the party who wrongfully claimed to be the
818 person entitled to enforce the promissory note under s.
819 702.11(2) or otherwise, from the maker of the note, or from any
820 other person against whom it may have a claim relating to the
821 note.

822 Section 12. Section 702.06, Florida Statutes, is amended to
823 read:

824 702.06 Deficiency decree; common-law suit to recover
825 deficiency.—In all suits for the foreclosure of mortgages
826 heretofore or hereafter executed the entry of a deficiency
827 decree for any portion of a deficiency, should one exist, shall
828 be within the sound discretion of the court; however, in the
829 case of an owner-occupied residential property, the amount of
830 the deficiency may not exceed the difference between the
831 judgment amount, or in the case of a short sale, the outstanding
832 debt, and the fair market value of the property on the date of
833 sale. For purposes of this section, there is a rebuttable
834 presumption that a residential property for which a homestead
835 exemption for taxation was granted according to the certified
836 rolls of the latest assessment by the county property appraiser,
837 before the filing of the foreclosure action, is an owner-
838 occupied residential property. ~~shall be within the sound~~
839 ~~judicial discretion of the court, but~~ The complainant shall also
840 have the right to sue at common law to recover such deficiency,
841 unless the court in the foreclosure action has granted or denied

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842 ~~a claim for a deficiency judgment provided no suit at law to~~
843 ~~recover such deficiency shall be maintained against the original~~
844 ~~mortgagor in cases where the mortgage is for the purchase price~~
845 ~~of the property involved and where the original mortgagee~~
846 ~~becomes the purchaser thereof at foreclosure sale and also is~~
847 ~~granted a deficiency decree against the original mortgagor.~~

848 Section 13. Section 702.10, Florida Statutes, is amended to
849 read:

850 702.10 Order to show cause; entry of final judgment of
851 foreclosure; payment during foreclosure.-

852 (1) A lienholder ~~After a complaint in a foreclosure~~
853 ~~proceeding has been filed, the mortgagee may request an order to~~
854 ~~show cause for the entry of final judgment in a foreclosure~~
855 ~~action. For purposes of this section, the term "lienholder"~~
856 ~~includes the plaintiff and a defendant to the action who holds a~~
857 ~~lien encumbering the property or a defendant who, by virtue of~~
858 ~~its status as a condominium association, cooperative~~
859 ~~association, or homeowners' association, may file a lien against~~
860 ~~the real property subject to foreclosure. Upon filing, and the~~
861 ~~court shall immediately review the request and the court file in~~
862 ~~chambers and without a hearing complaint.~~ If, upon examination
863 of the court file ~~complaint~~, the court finds that the complaint
864 is verified, complies with s. 702.015, and alleges a cause of
865 action to foreclose on real property, the court shall promptly
866 issue an order directed to the other parties named in the action
867 ~~defendant~~ to show cause why a final judgment of foreclosure
868 should not be entered.

869 (a) The order shall:

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

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871 cause. ~~However,~~ The date for the hearing may not occur ~~be set~~
872 sooner than the later of 20 days after ~~the~~ service of the order
873 to show cause or 45 days after service of the initial complaint.
874 When service is obtained by publication, the date for the
875 hearing may not be set sooner than 30 days after the first
876 publication. ~~The hearing must be held within 60 days after the~~
877 ~~date of service. Failure to hold the hearing within such time~~
878 ~~does not affect the validity of the order to show cause or the~~
879 ~~jurisdiction of the court to issue subsequent orders.~~

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

882 3. State that the filing of defenses by a motion,
883 responsive pleading, affidavits, or other papers ~~or by a~~
884 ~~verified or sworn answer at or~~ before the hearing to show cause
885 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~
886 ~~attached~~ final judgment.

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

891 5. State that, if a ~~the~~ defendant files defenses by a
892 motion, a verified or sworn answer, affidavits, or other papers
893 or appears personally or by way of an attorney at the time of
894 the hearing, the hearing time will ~~may~~ be used to hear and
895 consider whether the defendant's motion, answer, affidavits,
896 other papers, and other evidence and argument as may be
897 presented by the defendant or the defendant's attorney raise a
898 genuine issue of material fact which would preclude the entry of
899 summary judgment or otherwise constitute a legal defense to

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900 foreclosure. The order shall also state that the court may enter
901 an order of final judgment of foreclosure at the hearing and
902 order the clerk of the court to conduct a foreclosure sale.

903 6. State that, if a the defendant fails to appear at the
904 hearing to show cause or fails to file defenses by a motion or
905 by a verified or sworn answer or files an answer not contesting
906 the foreclosure, such ~~the~~ defendant may be considered to have
907 waived the right to a hearing, and in such case, the court may
908 enter a default against such defendant and, if appropriate, a
909 final judgment of foreclosure ordering the clerk of the court to
910 conduct a foreclosure sale.

911 7. State that if the mortgage provides for reasonable
912 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
913 fees do not exceed 3 percent of the principal amount owed at the
914 time of filing the complaint, it is unnecessary for the court to
915 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
916 to be reasonable.

917 8. Attach the form of the proposed final judgment of
918 foreclosure which the movant requests the court to will enter,
919 ~~if the defendant waives the right to be heard~~ at the hearing on
920 the order to show cause.

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

924 a. If a party ~~the mortgagor~~ has been served pursuant to
925 chapter 48 with the complaint and original process, or the other
926 party is the plaintiff in the action, service of the order to
927 show cause on that party ~~order~~ may be made in the manner
928 provided in the Florida Rules of Civil Procedure.

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929 b. If a defendant ~~the mortgagor~~ has not been served
930 pursuant to chapter 48 with the complaint and original process,
931 the order to show cause, together with the summons and a copy of
932 the complaint, shall be served on the party ~~mortgagor~~ in the
933 same manner as provided by law for original process.

934
935 Any final judgment of foreclosure entered under this subsection
936 is for in rem relief only. ~~Nothing in~~ This subsection does not
937 ~~shall~~ preclude the entry of a deficiency judgment where
938 otherwise allowed by law. The Legislature intends that this
939 alternative procedure may run simultaneously with other court
940 procedures.

941 (b) The right to be heard at the hearing to show cause is
942 waived if a ~~the~~ defendant, after being served as provided by law
943 with an order to show cause, engages in conduct that clearly
944 shows that the defendant has relinquished the right to be heard
945 on that order. The defendant's failure to file defenses by a
946 motion or by a sworn or verified answer, affidavits, or other
947 papers or to appear personally or by way of an attorney at the
948 hearing duly scheduled on the order to show cause presumptively
949 constitutes conduct that clearly shows that the defendant has
950 relinquished the right to be heard. If a defendant files
951 defenses by a motion, ~~or by a verified or sworn answer,~~
952 affidavits, or other papers or presents evidence at or before
953 the hearing which raise a genuine issue of material fact which
954 would preclude entry of summary judgment or otherwise constitute
955 a legal defense to foreclosure, such action constitutes cause
956 and precludes the entry of a final judgment at the hearing to
957 show cause.

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958 (c) In a mortgage foreclosure proceeding, when a final
959 ~~default~~ judgment of foreclosure has been entered against the
960 mortgagor and the note or mortgage provides for the award of
961 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
962 court to hold a hearing or adjudge the requested attorney
963 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
964 percent of the principal amount owed on the note or mortgage at
965 the time of filing, even if the note or mortgage does not
966 specify the percentage of the original amount that would be paid
967 as liquidated damages.

968 (d) If the court finds that all defendants have ~~the~~
969 ~~defendant has~~ waived the right to be heard as provided in
970 paragraph (b), the court shall promptly enter a final judgment
971 of foreclosure without the need for further hearing if the
972 plaintiff has shown entitlement to a final judgment and upon the
973 filing with the court of the original note, satisfaction of the
974 conditions for establishment of a lost note, or upon a showing
975 to the court that the obligation to be foreclosed is not
976 evidenced by a promissory note or other negotiable instrument.
977 If the court finds that a ~~the~~ defendant has not waived the right
978 to be heard on the order to show cause, the court shall ~~then~~
979 determine whether there is cause not to enter a final judgment
980 of foreclosure. If the court finds that the defendant has not
981 shown cause, the court shall promptly enter a judgment of
982 foreclosure. If the time allotted for the hearing is
983 insufficient, the court may announce at the hearing a date and
984 time for the continued hearing. Only the parties who appear,
985 individually or through an attorney, at the initial hearing must
986 be notified of the date and time of the continued hearing.

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987 (2) Except as provided in paragraph (i), as part of any ~~in~~
988 an action for foreclosure, and in addition to any other relief
989 that the court may award ~~other than residential real estate, the~~
990 plaintiff ~~the mortgagee~~ may request that the court enter an
991 order directing the mortgagor defendant to show cause why an
992 order to make payments during the pendency of the foreclosure
993 proceedings or an order to vacate the premises should not be
994 entered.

995 (a) The order shall:

996 1. Set the date and time for hearing on the order to show
997 cause. However, the date for the hearing may ~~shall~~ not be set
998 sooner than 20 days after the service of the order. If ~~Where~~
999 service is obtained by publication, the date for the hearing may
1000 ~~shall~~ not be set sooner than 30 days after the first
1001 publication.

1002 2. Direct the time within which service of the order to
1003 show cause and the complaint shall be made upon each ~~the~~
1004 defendant.

1005 3. State that a ~~the~~ defendant has the right to file
1006 affidavits or other papers at the time of the hearing and may
1007 appear personally or by way of an attorney at the hearing.

1008 4. State that, if a ~~the~~ defendant fails to appear at the
1009 hearing to show cause and fails to file defenses by a motion or
1010 by a verified or sworn answer, the defendant is ~~may be~~ deemed to
1011 have waived the right to a hearing and in such case the court
1012 may enter an order to make payment or vacate the premises.

1013 5. Require the movant ~~mortgagee~~ to serve a copy of the
1014 order to show cause on the defendant ~~mortgager~~ in the following
1015 manner:

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1016 a. If a defendant ~~the mortgagor~~ has been served with the
1017 complaint and original process, service of the order may be made
1018 in the manner provided in the Florida Rules of Civil Procedure.

1019 b. If a defendant ~~the mortgagor~~ has not been served with
1020 the complaint and original process, the order to show cause,
1021 together with the summons and a copy of the complaint, shall be
1022 served on the defendant ~~mortgagor~~ in the same manner as provided
1023 by law for original process.

1024 (b) The right of a defendant to be heard at the hearing to
1025 show cause is waived if the defendant, after being served as
1026 provided by law with an order to show cause, engages in conduct
1027 that clearly shows that the defendant has relinquished the right
1028 to be heard on that order. A ~~The~~ defendant's failure to file
1029 defenses by a motion or by a sworn or verified answer or to
1030 appear at the hearing duly scheduled on the order to show cause
1031 presumptively constitutes conduct that clearly shows that the
1032 defendant has relinquished the right to be heard.

1033 (c) If the court finds that a ~~the~~ defendant has waived the
1034 right to be heard as provided in paragraph (b), the court may
1035 promptly enter an order requiring payment in the amount provided
1036 in paragraph (f) or an order to vacate.

1037 (d) If the court finds that the mortgagor has not waived
1038 the right to be heard on the order to show cause, the court
1039 shall, at the hearing on the order to show cause, consider the
1040 affidavits and other showings made by the parties appearing and
1041 make a determination of the probable validity of the underlying
1042 claim alleged against the mortgagor and the mortgagor's
1043 defenses. If the court determines that the plaintiff ~~mortgagee~~
1044 is likely to prevail in the foreclosure action, the court shall

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1045 enter an order requiring the mortgagor to make the payment
1046 described in paragraph (e) to the plaintiff mortgagee and
1047 provide for a remedy as described in paragraph (f). However, the
1048 order shall be stayed pending final adjudication of the claims
1049 of the parties if the mortgagor files with the court a written
1050 undertaking executed by a surety approved by the court in an
1051 amount equal to the unpaid balance of the lien being foreclosed
1052 ~~the mortgage on the property~~, including all principal, interest,
1053 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
1054 ~~mortgagee~~.

1055 (e) ~~If In the event~~ the court enters an order requiring the
1056 mortgagor to make payments to the plaintiff mortgagee, payments
1057 shall be payable at such intervals and in such amounts provided
1058 for in the mortgage instrument before acceleration or maturity.
1059 The obligation to make payments pursuant to any order entered
1060 under this subsection shall commence from the date of the motion
1061 filed under this section hereunder. The order shall be served
1062 upon the mortgagor no later than 20 days before the date
1063 specified for the first payment. The order may permit, but may
1064 ~~shall~~ not require, the plaintiff mortgagee to take all
1065 appropriate steps to secure the premises during the pendency of
1066 the foreclosure action.

1067 (f) ~~If In the event~~ the court enters an order requiring
1068 payments, the order shall also provide that the plaintiff is
1069 ~~mortgagee shall be~~ entitled to possession of the premises upon
1070 the failure of the mortgagor to make the payment required in the
1071 order unless at the hearing on the order to show cause the court
1072 finds good cause to order some other method of enforcement of
1073 its order.

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1074 (g) All amounts paid pursuant to this section shall be
1075 credited against the mortgage obligation in accordance with the
1076 terms of the loan documents; ~~, provided, however, that any~~
1077 payments made under this section do ~~shall~~ not constitute a cure
1078 of any default or a waiver or any other defense to the mortgage
1079 foreclosure action.

1080 (h) Upon the filing of an affidavit with the clerk that the
1081 premises have not been vacated pursuant to the court order, the
1082 clerk shall issue to the sheriff a writ for possession which
1083 shall be governed by ~~the provisions of~~ s. 83.62.

1084 (i) This subsection does not apply to foreclosure of an
1085 owner-occupied residence. For purposes of this paragraph, there
1086 is a rebuttable presumption that a residential property for
1087 which a homestead exemption for taxation was granted according
1088 to the certified rolls of the latest assessment by the county
1089 property appraiser, before the filing of the foreclosure action,
1090 is an owner-occupied residential property.

1091 Section 14. Section 702.11, Florida Statutes, is created to
1092 read:

1093 702.11 Adequate protections for lost, destroyed, or stolen
1094 notes in mortgage foreclosure.—

1095 (1) In connection with a mortgage foreclosure, the
1096 following constitute reasonable means of providing adequate
1097 protection under s. 673.3091, if so found by the court:

1098 (a) A written indemnification agreement by a person
1099 reasonably believed sufficiently solvent to honor such an
1100 obligation;

1101 (b) A surety bond;

1102 (c) A letter of credit issued by a financial institution;

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1103 (d) A deposit of cash collateral with the clerk of the
1104 court; or

1105 (e) Such other security as the court may deem appropriate
1106 under the circumstances.

1107
1108 Any security given shall be on terms and in amounts set by the
1109 court, for a time period through the running of the statute of
1110 limitations for enforcement of the underlying note, and
1111 conditioned to indemnify and hold harmless the maker of the note
1112 against any loss or damage, including principal, interest, and
1113 attorney fees and costs, that might occur by reason of a claim
1114 by another person to enforce the note.

1115 (2) Any person who wrongly claims to be the holder of or
1116 pursuant to s. 673.3011 to be entitled to enforce a lost,
1117 stolen, or destroyed note and causes the mortgage secured
1118 thereby to be foreclosed is liable to the actual holder of the
1119 note, without limitation to any adequate protections given, for
1120 actual damages suffered together with attorney fees and costs of
1121 the actual holder of the note in enforcing rights under this
1122 subsection. In addition, the actual holder of the note may
1123 pursue recovery directly against any adequate protections given.

1124 (a) The actual holder of the note is not required to pursue
1125 recovery against the maker of the note or any guarantor thereof
1126 as a condition precedent to pursuing remedies under this
1127 section.

1128 (b) This section does not limit or restrict the ability of
1129 the actual holder of the note to pursue any other claims or
1130 remedies it may have against the maker, the person who wrongly
1131 claimed to be the holder, or any person who facilitated or

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1132 participated in the claim to the note or enforcement thereof.

1133 Section 15. The Legislature finds that this act is remedial
1134 in nature and applies to all mortgages encumbering real property
1135 and all promissory notes secured by a mortgage, whether executed
1136 before, on, or after the effective date of this act. In
1137 addition, the Legislature finds that s. 702.015, Florida
1138 Statutes, as created by this act, applies to cases filed on or
1139 after July 1, 2013; however, the amendments to s. 702.10,
1140 Florida Statutes, and the creation of s. 702.11, Florida
1141 Statutes, by this act, apply to causes of action pending on the
1142 effective date of this act.

1143 Section 16. (1) Effective July 1, 2013, in order to fund
1144 the benefit changes provided in this act, the required employer
1145 contribution rates for members of the Florida Retirement System
1146 established in s. 121.71(4), Florida Statutes, must be adjusted
1147 as follows:

1148 (a) Elected Officers' Class for Justices and Judges shall
1149 be increased by 0.45 percentage points; and

1150 (b) Deferred Retirement Option Program shall be increased
1151 by 0.01 percentage points.

1152 (2) Effective July 1, 2013, in order to fund the benefit
1153 changes provided in this act, the required employer contribution
1154 rates for the unfunded actuarial liability of the Florida
1155 Retirement System established in s. 121.71(5), Florida Statutes,
1156 for the Elected Officers' Class for Justices and Judges shall be
1157 increased by 0.91 percentage points.

1158 (3) The adjustments provided in subsections (1) and (2)
1159 shall be in addition to all other changes to such contribution
1160 rates which may be enacted into law to take effect on July 1,

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1161 2013, and July 1, 2014. The Division of Law Revision and
1162 Information is requested to adjust accordingly the contribution
1163 rates provided in s. 121.71, Florida Statutes.

1164 Section 17. (1) The Legislature finds that a proper and
1165 legitimate state purpose is served if employees and retirees of
1166 the state and its political subdivisions, and the dependents,
1167 survivors, and beneficiaries of such employees and retirees, are
1168 extended the basic protections afforded by governmental
1169 retirement systems which provide fair and adequate benefits and
1170 which are managed, administered, and funded in an actuarially
1171 sound manner as required by s. 14, Article X of the State
1172 Constitution and part VII of chapter 112, Florida Statutes.
1173 Therefore, the Legislature determines and declares that this act
1174 fulfills an important state interest.

1175 (2) The Legislature further finds that the assignment of
1176 former justices and judges to temporary employment as a judge in
1177 any court, by the Chief Justice of the Supreme Court in
1178 accordance with s. 2, Art. V of the State Constitution, assists
1179 the State Courts System in managing caseloads and providing
1180 individuals and businesses with access to courts. In particular,
1181 these assignments are critically important in assisting with the
1182 disposition of the current backlog in foreclosure cases in this
1183 state. Therefore, the Legislature further determines and
1184 declares that this act fulfills an important state interest by
1185 facilitating the ability of justices and judges who retire under
1186 the Florida Retirement System to return to temporary employment
1187 as a judge in a timely manner.

1188 Section 18. The Supreme Court is requested to amend the
1189 Florida Rules of Civil Procedures to provide expedited

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1190 foreclosure proceedings in conformity with this act and is
1191 requested to develop and publish forms for use in such expedited
1192 proceedings.

1193 Section 19. Sections 6 through 8, 16, and 17 of this act
1194 shall take effect only if the Legislature appropriates during
1195 the 2013 Legislative Session the sum of at least \$1.6 million
1196 from the General Revenue Fund on a recurring basis to the
1197 judicial branch in order to fund the increased employer
1198 contributions associated with the costs of the retirement
1199 benefits granted in this act and the Governor does not veto the
1200 appropriation.

1201 Section 20. This act shall take effect upon becoming a law.