

By Senator Passidomo

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1 A bill to be entitled
2 An act relating to foreclosure proceedings; creating
3 s. 702.12, F.S.; authorizing a lienholder to submit
4 specified documents in a foreclosure proceeding as
5 evidence of an admission by a defendant; authorizing
6 the lienholder to request that the court take judicial
7 notice of a final order entered in a bankruptcy case;
8 providing that the submission of certain documents
9 creates specified rebuttable presumptions under
10 certain circumstances; specifying that certain
11 defenses are not precluded by this act; providing an
12 effective date.

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

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16 Section 1. Section 702.12, Florida Statutes, is created to
17 read:

18 702.12 Evidence concerning foreclosure proceedings.—

19 (1) A lienholder in an action to foreclose its mortgage may
20 use as an admission by the defendant in the foreclosure
21 proceeding any document that the defendant filed under penalty
22 of perjury in a bankruptcy proceeding. In addition to the
23 matters identified in s. 90.202, the lienholder may also request
24 that the court take judicial notice of any final order entered
25 in the bankruptcy proceeding.

26 (2) The lienholder's submission in such foreclosure
27 proceeding of any document that the defendant filed in the
28 bankruptcy proceeding which evidences an intention to surrender
29 to the lienholder the property that is the subject of the
30 foreclosure proceeding and which document has not been withdrawn
31 by the defendant, together with a final order entered in the
32 bankruptcy proceeding either discharging the defendant's debts

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33 or confirming the defendant's repayment plan in which such
34 intention is contained, creates a rebuttable presumption that
35 the defendant has:

36 (a) Surrendered to the lienholder the defendant's interest
37 in the mortgaged property that is the subject of such
38 foreclosure proceeding; and

39 (b) Has waived any defenses to the foreclosure of the
40 mortgage or lien that is the subject of the foreclosure
41 proceeding and which was the subject of the document filed in
42 the bankruptcy proceeding evidencing the defendant's intention
43 to surrender the mortgaged property to the lienholder.

44 (3) This section does not preclude a defendant in a
45 foreclosure proceeding from raising a defense based upon the
46 lienholder's conduct subsequent to the filing of the document in
47 the bankruptcy proceeding which evidenced the defendant's
48 intention to surrender the mortgaged property to the lienholder.

49 Section 2. This act shall take effect July 1, 2017.