

By the Committees on Rules; Judiciary; and Banking and Insurance; and Senator Passidomo

595-04127-17

2017660c3

1 A bill to be entitled  
2 An act relating to bankruptcy matters in foreclosure  
3 proceedings; creating s. 702.12, F.S.; authorizing  
4 lienholders to use certain documents as an admission  
5 in an action to foreclose a mortgage; providing that  
6 submission of certain documents in a foreclosure  
7 action creates a rebuttable presumption that the  
8 defendant has waived any defenses to the foreclosure;  
9 requiring a court to take judicial notice of final  
10 orders entered in bankruptcy cases; providing  
11 construction; providing applicability; providing an  
12 effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 702.12, Florida Statutes, is created to  
17 read:

18 702.12 Actions in foreclosure.—

19 (1) (a) A lienholder, in an action to foreclose a mortgage,  
20 may submit any document the defendant filed in the defendant's  
21 bankruptcy case under penalty of perjury for use as an admission  
22 by the defendant.

23 (b) A rebuttable presumption that the defendant has waived  
24 any defenses to the foreclosure is created if a lienholder  
25 submits documents filed in the defendant's bankruptcy case  
26 which:

27 1. Evidence the defendant's intention to surrender to the  
28 lienholder the property that is the subject of the foreclosure;

29 2. Have not been withdrawn by the defendant; and

595-04127-17

2017660c3

30       3. Show that a final order has been entered in the  
31 defendant's bankruptcy case which discharges the defendant's  
32 debts or confirms the defendant's repayment plan that provides  
33 for the surrender of the property.

34       (2) Pursuant to s. 90.203, a court shall take judicial  
35 notice of any order entered in a bankruptcy case upon the  
36 request of a lienholder.

37       (3) This section does not preclude the defendant in a  
38 foreclosure action from raising a defense based upon the  
39 lienholder's action or inaction subsequent to the filing of the  
40 document filed in the bankruptcy case which evidenced the  
41 defendant's intention to surrender the mortgaged property to the  
42 lienholder.

43       (4) This section applies to any foreclosure action filed on  
44 or after October 1, 2017.

45       Section 2. This act shall take effect October 1, 2017.