

By Senator Passidomo

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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 orders
10 entered in bankruptcy cases under certain
11 circumstances; providing construction; providing
12 applicability; providing an 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 Actions in foreclosure.—

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

23 (b) A rebuttable presumption that the defendant has waived
24 any defense 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 Have not been withdrawn by the defendant; and

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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 an order entered in a bankruptcy case upon the request
36 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, 2018.

45 Section 2. This act shall take effect October 1, 2018.