

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Altman offered the following:

Amendment (with title amendment)

Remove lines 27-253 and insert:

whose electronic signature is affixed to an electronic record to
attest or subscribe to a principal's signature on such record.

Section 2. Present subsections (1) through (8) of section
697.07, Florida Statutes, are redesignated as subsections (2)
through (9), respectively, present subsections (2), (3), and (4)
of that section are amended, and a new subsection (1) and
subsection (10) are added to that section, to read:

697.07 Assignment of rents.—

(1) For purposes of this section, the term:

(a) "Mortgagee" means a person entitled to enforce an
obligation secured by a mortgage.

Amendment No. 1

17 (b) "Mortgagor" means a person who grants a mortgage or a
18 successor in ownership of the real property described in the
19 mortgage.

20 ~~(3)(2)~~ If such an assignment is made, the mortgagee shall
21 hold a lien on the rents, and the lien created by the assignment
22 shall be perfected and effective against the mortgagor and third
23 parties upon recordation of the mortgage or separate instrument
24 in the public records of the county in which the real property
25 is located, according to law.

26 ~~(4)(3)~~ Unless otherwise agreed to in writing by the
27 mortgagee and mortgagor, the lien created by the assignment of
28 rents is ~~shall be~~ enforceable upon the mortgagor's default and
29 written demand for the rents made by the mortgagee to the
30 mortgagor, whereupon the mortgagor shall turn over all rents in
31 the possession or control of the mortgagor at the time of the
32 written demand or collected thereafter (the "collected rents")
33 to the mortgagee less payment of any expenses authorized by the
34 mortgagee in writing.

35 ~~(5)(4)~~ Upon application by the mortgagee or mortgagor, in
36 a foreclosure action, and notwithstanding any asserted defenses
37 or counterclaims of the mortgagor, a court of competent
38 jurisdiction, pending final adjudication of any action, may
39 require the mortgagor to deposit the collected rents into the
40 registry of the court, or in such other depository as the court
41 may designate. However, the court may authorize the use of the

Amendment No. 1

42 collected rents, before deposit into the registry of the court
43 or other depository, to:

44 (a) Pay the reasonable expenses solely to protect,
45 preserve, and operate the real property, including, without
46 limitation, real estate taxes, ~~and~~ insurance, and assessments
47 that become due after the entry of the court's order to a
48 homeowners' association or an association, as those terms are
49 defined in s. 720.301, or a corporation regulated under chapter
50 718 or chapter 719;

51 (b) Escrow sums required by the mortgagee or separate
52 assignment of rents instrument; and

53 (c) Make payments to the mortgagee.

54
55 The court shall require the mortgagor to account to the court
56 and the mortgagee for the receipt and use of the collected rents
57 and may also impose other conditions on the mortgagor's use of
58 the collected rents.

59 (10) This section does not apply to a corporation that is
60 a homeowners' association or an association, as those terms are
61 defined in s. 720.301, or a corporation regulated under chapter
62 718 or chapter 719, that:

63 (a) Acquires title to a parcel or unit through the
64 foreclosure of its claim of lien, or a deed in lieu of
65 foreclosure, provided that title remains vested in the

Amendment No. 1

66 association or corporation and any rents collected are applied
67 to assessments that are then due; or

68 (b) Collects rents from tenants in a parcel or unit
69 pursuant to s. 718.116(11), s. 719.108(10), or s. 720.3085(8).

70 Section 3. Present subsections (1), (2), and (3) of
71 section 702.036, Florida Statutes, are redesignated as
72 subsections (2), (3), and (4), respectively, a new subsection
73 (1) and subsection (5) are added to that section, and paragraph
74 (a) of present subsection (1) and present subsection (2) of that
75 section are amended, to read:

76 702.036 Finality of ~~mortgage~~ foreclosure judgment.-

77 (1) As used in this section, the term "property" means
78 real property.

79 (2) (a) ~~(1) (a)~~ In any action or proceeding in which a party
80 seeks to set aside, invalidate, or challenge the validity of a
81 final judgment of foreclosure of a mortgage or other lien, or to
82 establish or reestablish a lien or encumbrance on the property
83 in abrogation of the final judgment of foreclosure of a mortgage
84 or other lien, the court shall treat such request solely as a
85 claim for monetary damages and may not grant relief that
86 adversely affects the quality or character of the title to the
87 property, if:

88 1. The party seeking relief from the final judgment of
89 foreclosure of the mortgage or lien was properly served in the
90 foreclosure lawsuit as provided in chapter 48 or chapter 49.

847911 - h0237-line27.docx

Published On: 2/13/2023 4:46:33 PM

Amendment No. 1

91 2. The final judgment of foreclosure of the mortgage or
92 lien was entered as to the property.

93 3. All applicable appeals periods have run as to the final
94 judgment of foreclosure of the mortgage or lien with no appeals
95 having been taken or any appeals having been finally resolved.

96 4. The property has been acquired for value, by a person
97 not affiliated with the foreclosing mortgageholder, the
98 foreclosing lienholder, lender or the foreclosed owner, at a
99 time in which no lis pendens regarding the suit to set aside,
100 invalidate, or challenge the foreclosure appears in the official
101 records of the county where the property was located.

102 ~~(3)(2)~~ For purposes of this section, the following,
103 without limitation, shall be considered persons affiliated with
104 the foreclosing ~~lender~~ mortgageholder or foreclosing lienholder:

105 (a) The foreclosing mortgageholder, the foreclosing
106 lienholder, lender or any loan servicer for the mortgage or lien
107 ~~loan~~ being foreclosed;

108 (b) Any past or present owner or holder of the mortgage or
109 lien ~~loan~~ being foreclosed;

110 (c) Any maintenance company, holding company, foreclosure
111 services company, or law firm under contract to any entity
112 listed in paragraph (a), paragraph (b), or this paragraph, with
113 regard to the mortgage or lien ~~loan~~ being foreclosed; or

114 (d) Any parent entity, subsidiary, or other person who
115 directly, or indirectly through one or more intermediaries,

Amendment No. 1

116 controls or is controlled by, or is under common control with,
117 any entity listed in paragraph (a), paragraph (b), or paragraph
118 (c).

119 (5) If a party seeks relief from a final judgment
120 foreclosing a mortgage or lien, or files a separate action
121 attacking such a final judgment, and the party claims that it
122 holds or held a lien superior in right, priority, or dignity to
123 the mortgage or lien foreclosed in the judgment, the court must
124 award reasonable attorney fees to the party prevailing on the
125 claim. This subsection applies whether the litigation seeking
126 relief from the final judgment occurs in the case in which the
127 judgment was entered or in any separate case or proceeding.

128 Section 4. Subsection (2) of section 702.10, Florida
129 Statutes, is amended to read:

130 702.10 Order to show cause; entry of final judgment of
131 foreclosure; payment during foreclosure.—

132 (2) Except as provided in paragraph (i), in any action for
133 foreclosure, ~~other than owner-occupied residential real estate,~~
134 in addition to any other relief that the court may award, the
135 plaintiff may request that the court enter an order directing
136 the mortgagor defendant to show cause why an order to make
137 payments during the pendency of the foreclosure proceedings or
138 an order to vacate the premises should not be entered.

139 (a) The order shall:

Amendment No. 1

140 1. Set the date and time for hearing on the order to show
141 cause. However, the date for the hearing may not be set sooner
142 than 20 days after the service of the order. If service is
143 obtained by publication, the date for the hearing may not be set
144 sooner than 30 days after the first publication.

145 2. Direct the time within which service of the order to
146 show cause and the complaint shall be made upon each defendant.

147 3. State that a defendant has the right to file affidavits
148 or other papers at the time of the hearing and may appear
149 personally or by way of an attorney at the hearing.

150 4. State that, if a defendant fails to appear at the
151 hearing to show cause and fails to file defenses by a motion or
152 by a verified or sworn answer, the defendant is deemed to have
153 waived the right to a hearing and in such case the court may
154 enter an order to make payment or vacate the premises.

155 5. Require the movant to serve a copy of the order to show
156 cause on the defendant in the following manner:

157 a. If a defendant has been served with the complaint and
158 original process, service of the order may be made in the manner
159 provided in the Florida Rules of Civil Procedure.

160 b. If a defendant has not been served with the complaint
161 and original process, the order to show cause, together with the
162 summons and a copy of the complaint, shall be served on the
163 defendant in the same manner as provided by law for original
164 process.

Amendment No. 1

165 (b) The right of a defendant to be heard at the hearing to
166 show cause is waived if the defendant, after being served as
167 provided by law with an order to show cause, engages in conduct
168 that clearly shows that the defendant has relinquished the right
169 to be heard on that order. A defendant's failure to file
170 defenses by a motion or by a sworn or verified answer or to
171 appear at the hearing duly scheduled on the order to show cause
172 presumptively constitutes conduct that clearly shows that the
173 defendant has relinquished the right to be heard.

174 (c) If the court finds that a defendant has waived the
175 right to be heard as provided in paragraph (b), the court may
176 promptly enter an order requiring payment in the amount provided
177 in paragraph (f) or an order to vacate.

178 (d) If the court finds that the mortgagor has not waived
179 the right to be heard on the order to show cause, the court
180 shall, at the hearing on the order to show cause, consider the
181 affidavits and other showings made by the parties appearing and
182 make a determination of the probable validity of the underlying
183 claim alleged against the mortgagor and the mortgagor's
184 defenses. If the court determines that the plaintiff is likely
185 to prevail in the foreclosure action, the court shall enter an
186 order requiring the mortgagor to make the payment described in
187 paragraph (e) to the plaintiff and provide for a remedy as
188 described in paragraph (f). However, the order shall be stayed
189 pending final adjudication of the claims of the parties if the

847911 - h0237-line27.docx

Published On: 2/13/2023 4:46:33 PM

Amendment No. 1

190 mortgagor files with the court a written undertaking executed by
191 a surety approved by the court in an amount equal to the unpaid
192 balance of the lien being foreclosed, including all principal,
193 interest, unpaid taxes, and insurance premiums paid by the
194 plaintiff.

195 (e) If the court enters an order requiring the mortgagor
196 to make payments to the plaintiff, payments shall be payable at
197 such intervals and in such amounts provided for in the mortgage
198 instrument before acceleration or maturity. The obligation to
199 make payments pursuant to any order entered under this
200 subsection shall commence from the date of the motion filed
201 under this section. The order shall be served upon the mortgagor
202 no later than 20 days before the date specified for the first
203 payment. The order may permit, but may not require, the
204 plaintiff to take all appropriate steps to secure the premises
205 during the pendency of the foreclosure action.

206 (f) If the court enters an order requiring payments, the
207 order shall also provide that the plaintiff is entitled to
208 possession of the premises upon the failure of the mortgagor to
209 make the payment required in the order unless at the hearing on
210 the order to show cause the court finds good cause to order some
211 other method of enforcement of its order.

212 (g) All amounts paid pursuant to this section shall be
213 credited against the mortgage obligation in accordance with the
214 terms of the loan documents; however, payments made under this

Amendment No. 1

215 section do not constitute a cure of any default or a waiver or
216 any other defense to the mortgage foreclosure action.

217 (h) Upon the filing of an affidavit with the clerk that
218 the premises have not been vacated pursuant to the court order,
219 the clerk shall issue to the sheriff a writ for possession which
220 shall be governed by s. 83.62.

221 (i) This subsection does not apply to foreclosure of an
222 owner-occupied residence. For purposes of this paragraph, there
223 is a rebuttable presumption that a residential property for
224 which a homestead exemption for taxation was granted according
225 to the certified rolls of the latest assessment by the county
226 property appraiser, before the filing of the foreclosure action,
227 is an owner-occupied residential property.

228 (j) For purposes of this subsection, the term "mortgagor"
229 means a person who grants a mortgage or a successor in ownership
230 of the real property described in the mortgage. The term does
231 not include a

232

233

234 **T I T L E A M E N D M E N T**

235 Remove lines 15-16 and insert:

236 amending s. 702.10, F.S.;