



26        (16) "Witness," when used as a noun, means an individual  
27 whose electronic signature is affixed to an electronic record as  
28 an attesting or subscribing witness.

29        Section 2. Subsections (1) through (8) of section 697.07,  
30 Florida Statutes, are renumbered as subsections (2) through (9),  
31 respectively, present subsections (2), (3), and (4) are amended,  
32 and new subsections (1) and (10) are added to that section, to  
33 read:

34        697.07 Assignment of rents.—

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

36        (a) "Mortgagee" means any party entitled to enforce the  
37 mortgage or assignment of rents instrument under applicable law.

38        (b) "Mortgagor" means the original mortgagor and all  
39 parties who have subsequently acquired title to the property  
40 subject to the assignment.

41        (3)-(2) If such an assignment is made, the mortgagee shall  
42 hold a lien on the rents, and the lien created by the assignment  
43 shall be perfected and effective against the mortgagor and third  
44 parties upon recordation of the mortgage or separate instrument  
45 in the public records of the county in which the real property  
46 is located, according to law.

47        (4)-(3) Unless otherwise agreed to in writing by the  
48 mortgagee and mortgagor, the lien created by the assignment of  
49 rents shall be enforceable upon the mortgagor's default and  
50 written demand for the rents made by the mortgagee to the

51 | mortgagor, whereupon the mortgagor shall turn over all rents in  
52 | the possession or control of the mortgagor at the time of the  
53 | written demand or collected thereafter (the "collected rents")  
54 | to the mortgagee less payment of any expenses authorized by the  
55 | mortgagee in writing.

56 |       ~~(5)-(4)~~ Upon application by the mortgagee or mortgagor, in  
57 | a foreclosure action, and notwithstanding any asserted defenses  
58 | or counterclaims of the mortgagor, a court of competent  
59 | jurisdiction, pending final adjudication of any action, may  
60 | require the mortgagor to deposit the collected rents into the  
61 | registry of the court, or in such other depository as the court  
62 | may designate. However, the court may authorize the use of the  
63 | collected rents, before deposit into the registry of the court  
64 | or other depository, to:

65 |           (a) Pay the reasonable expenses solely to protect,  
66 | preserve, and operate the real property, including, without  
67 | limitation, real estate taxes, and insurance, and assessments  
68 | that come due after the entry of the court's order to a  
69 | homeowners' association or association, as defined in s.  
70 | 720.301, or a corporation regulated under chapter 718 or chapter  
71 | 719;

72 |           (b) Escrow sums required by the mortgagee or separate  
73 | assignment of rents instrument; and

74 |           (c) Make payments to the mortgagee.

75 |

76 The court shall require the mortgagor to account to the court  
 77 and the mortgagee for the receipt and use of the collected rents  
 78 and may also impose other conditions on the mortgagor's use of  
 79 the collected rents.

80 (10) This section does not apply to a corporation that is  
 81 a homeowners' association or association, as defined in s.  
 82 720.301, or a corporation regulated under chapter 718 or chapter  
 83 719, that:

84 (a) Acquires title to a parcel or unit through the  
 85 foreclosure of its claim of lien, or a deed in lieu of  
 86 foreclosure, provided that title remains vested in the  
 87 association or corporation and any rents collected are applied  
 88 to assessments that are then due; or

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

91 Section 3. Subsections (1) through (3) of section 702.036,  
 92 Florida Statutes, are renumbered as subsections (2) through (4),  
 93 respectively, paragraph (a) of present subsection (1) and  
 94 present subsection (2) are amended, and new subsections (1) and  
 95 (5) are added to that section, to read:

96 702.036 Finality of ~~mortgage~~ foreclosure judgment.—

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

99 (2)~~(1)~~(a) In any action or proceeding in which a party  
 100 seeks to set aside, invalidate, or challenge the validity of a

101 final judgment of foreclosure of a mortgage or other lien, or to  
 102 establish or reestablish a lien or encumbrance on the property  
 103 in abrogation of the final judgment of foreclosure of a mortgage  
 104 or other lien, the court shall treat such request solely as a  
 105 claim for monetary damages and may not grant relief that  
 106 adversely affects the quality or character of the title to the  
 107 property, if:

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

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

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

116 4. The property has been acquired for value, by a person  
 117 not affiliated with the foreclosing mortgageholder, the  
 118 foreclosing lienholder, lender or the foreclosed owner, at a  
 119 time in which no lis pendens regarding the suit to set aside,  
 120 invalidate, or challenge the foreclosure appears in the official  
 121 records of the county where the property was located.

122 ~~(3)~~<sup>(2)</sup> For purposes of this section, the following,  
 123 without limitation, shall be considered persons affiliated with  
 124 the foreclosing lender:

125 (a) The foreclosing mortgageholder, the foreclosing

126 lienholder, lender or any loan servicer for the mortgage or lien  
 127 ~~loan~~ being foreclosed;

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

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

134 (d) Any parent entity, subsidiary, or other person who  
 135 directly, or indirectly through one or more intermediaries,  
 136 controls or is controlled by, or is under common control with,  
 137 any entity listed in paragraph (a), paragraph (b), or paragraph  
 138 (c).

139 (5) If a party seeks relief from a final judgment  
 140 foreclosing a mortgage or lien, or files a separate action  
 141 attacking such a final judgement, and the party claims that it  
 142 holds or held a lien superior in right, priority, or dignity to  
 143 the mortgage or lien foreclosed in the judgment, the court must  
 144 award reasonable attorney fees to the party prevailing on the  
 145 claim. This subsection applies whether the litigation seeking  
 146 relief from the final judgment occurs in the case in which the  
 147 judgment was entered or in any separate case or proceeding.

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

150 702.10 Order to show cause; entry of final judgment of

151 foreclosure; payment during foreclosure.—

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

159 (a) The order shall:

160 1. Set the date and time for hearing on the order to show  
161 cause. However, the date for the hearing may not be set sooner  
162 than 20 days after the service of the order. If service is  
163 obtained by publication, the date for the hearing may not be set  
164 sooner than 30 days after the first publication.

165 2. Direct the time within which service of the order to  
166 show cause and the complaint shall be made upon the mortgagor  
167 ~~each defendant~~.

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

171 4. State that, if the mortgagor ~~a defendant~~ fails to  
172 appear at the hearing to show cause and fails to file defenses  
173 by a motion or by a verified or sworn answer, the mortgagor  
174 ~~defendant~~ is deemed to have waived the right to a hearing and in  
175 such case the court may enter an order to make payment or vacate

176 the premises.

177 5. Require the movant to serve a copy of the order to show  
178 cause on the mortgagor ~~defendant~~ in the following manner:

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

182 b. If the mortgagor ~~a defendant~~ has not been served with  
183 the complaint and original process, the order to show cause,  
184 together with the summons and a copy of the complaint, shall be  
185 served on the mortgagor ~~defendant~~ in the same manner as provided  
186 by law for original process.

187 (b) The right of the mortgagor ~~a defendant~~ to be heard at  
188 the hearing to show cause is waived if the mortgagor ~~defendant~~,  
189 after being served as provided by law with an order to show  
190 cause, engages in conduct that clearly shows that the mortgagor  
191 ~~defendant~~ has relinquished the right to be heard on that order.  
192 The mortgagor's ~~A defendant's~~ failure to file defenses by a  
193 motion or by a sworn or verified answer or to appear at the  
194 hearing duly scheduled on the order to show cause presumptively  
195 constitutes conduct that clearly shows that the mortgagor  
196 ~~defendant~~ has relinquished the right to be heard.

197 (c) If the court finds that the mortgagor ~~a defendant~~ has  
198 waived the right to be heard as provided in paragraph (b), the  
199 court may promptly enter an order requiring payment in the  
200 amount provided in paragraph (f) or an order to vacate.



201 (d) If the court finds that the mortgagor has not waived  
202 the right to be heard on the order to show cause, the court  
203 shall, at the hearing on the order to show cause, consider the  
204 affidavits and other showings made by the parties appearing and  
205 make a determination of the probable validity of the underlying  
206 claim alleged against the mortgagor and the mortgagor's  
207 defenses. If the court determines that the plaintiff is likely  
208 to prevail in the foreclosure action, the court shall enter an  
209 order requiring the mortgagor to make the payment described in  
210 paragraph (e) to the plaintiff and provide for a remedy as  
211 described in paragraph (f). However, the order shall be stayed  
212 pending final adjudication of the claims of the parties if the  
213 mortgagor files with the court a written undertaking executed by  
214 a surety approved by the court in an amount equal to the unpaid  
215 balance of the lien being foreclosed, including all principal,  
216 interest, unpaid taxes, and insurance premiums paid by the  
217 plaintiff.

218 (e) If the court enters an order requiring the mortgagor  
219 to make payments to the plaintiff, payments shall be payable at  
220 such intervals and in such amounts provided for in the mortgage  
221 instrument before acceleration or maturity. The obligation to  
222 make payments pursuant to any order entered under this  
223 subsection shall commence from the date of the motion filed  
224 under this section. The order shall be served upon the mortgagor  
225 no later than 20 days before the date specified for the first

226 payment. The order may permit, but may not require, the  
227 plaintiff to take all appropriate steps to secure the premises  
228 during the pendency of the foreclosure action.

229 (f) If the court enters an order requiring payments, the  
230 order shall also provide that the plaintiff is entitled to  
231 possession of the premises upon the failure of the mortgagor to  
232 make the payment required in the order unless at the hearing on  
233 the order to show cause the court finds good cause to order some  
234 other method of enforcement of its order.

235 (g) All amounts paid pursuant to this section shall be  
236 credited against the mortgage obligation in accordance with the  
237 terms of the loan documents; however, payments made under this  
238 section do not constitute a cure of any default or a waiver or  
239 any other defense to the mortgage foreclosure action.

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

244 (i) This subsection does not apply to foreclosure of an  
245 owner-occupied residence. For purposes of this paragraph, there  
246 is a rebuttable presumption that a residential property for  
247 which a homestead exemption for taxation was granted according  
248 to the certified rolls of the latest assessment by the county  
249 property appraiser, before the filing of the foreclosure action,  
250 is an owner-occupied residential property.

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251 (j) For purposes of this subsection, the term "mortgagor"  
252 means the original mortgagor and any subsequent owner or party  
253 in possession of the property. The term does not include a  
254 homeowners' association or association, as defined in s.  
255 720.301, or a corporation regulated under chapter 718 or chapter  
256 719, that:

257 1. Acquires title to a parcel or unit through the  
258 foreclosure of its claim of lien, or a deed in lieu of  
259 foreclosure, provided that title remains vested in the  
260 association or corporation and any rents collected are applied  
261 to assessments that are then due; or

262 2. Collects rents from the tenants in the parcel or unit  
263 pursuant to s. 718.116(11), s. 719.108(10), or s. 720.3085(8).

264 Section 5. The amendment to s. 117.201, Florida Statutes,  
265 in this act is intended to clarify existing law and applies  
266 retroactively to January 1, 2020.

267 Section 6. This act shall take effect July 1, 2023.