

1 A bill to be entitled
2 An act relating to legal instruments; amending s.
3 117.201, F.S.; defining the term "witness"; amending
4 s. 697.07, F.S.; defining the terms "mortgagee" and
5 "mortgagor"; requiring that a lien created by an
6 assignment of rents be perfected against a mortgagor
7 in addition to third parties under certain conditions;
8 making technical changes; revising the types of
9 expenses that may be paid by collected rents under
10 certain circumstances; providing applicability;
11 amending s. 702.036, F.S.; defining the term
12 "property"; expanding the scope of a final judgment of
13 foreclosure to include other liens; requiring the
14 award of attorney fees in certain circumstances;
15 amending s. 702.10, F.S.; conforming provisions to
16 changes made by the act; defining the term
17 "mortgagor"; providing for retroactive applicability;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:
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22 Section 1. Subsection (16) is added to section 117.201,
23 Florida Statutes, to read:

24 117.201 Definitions.—As used in this part, the term:
25 (16) "Witness," when used as a noun, means an individual

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

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

33 697.07 Assignment of rents.—

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

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

37 (b) "Mortgagor" means a person who grants a mortgage or a
 38 successor in ownership of the real property described in the
 39 mortgage.

40 (3)-(2) If such an assignment is made, the mortgagee shall
 41 hold a lien on the rents, and the lien created by the assignment
 42 shall be perfected and effective against the mortgagor and third
 43 parties upon recordation of the mortgage or separate instrument
 44 in the public records of the county in which the real property
 45 is located, according to law.

46 (4)-(3) Unless otherwise agreed to in writing by the
 47 mortgagee and mortgagor, the lien created by the assignment of
 48 rents is ~~shall be~~ enforceable upon the mortgagor's default and
 49 written demand for the rents made by the mortgagee to the
 50 mortgagor, whereupon the mortgagor shall turn over all rents in

51 the possession or control of the mortgagor at the time of the
 52 written demand or collected thereafter (the "collected rents")
 53 to the mortgagee less payment of any expenses authorized by the
 54 mortgagee in writing.

55 ~~(5)(4)~~ Upon application by the mortgagee or mortgagor, in
 56 a foreclosure action, and notwithstanding any asserted defenses
 57 or counterclaims of the mortgagor, a court of competent
 58 jurisdiction, pending final adjudication of any action, may
 59 require the mortgagor to deposit the collected rents into the
 60 registry of the court, or in such other depository as the court
 61 may designate. However, the court may authorize the use of the
 62 collected rents, before deposit into the registry of the court
 63 or other depository, to:

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

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

73 (c) Make payments to the mortgagee.

74
 75 The court shall require the mortgagor to account to the court

76 and the mortgagee for the receipt and use of the collected rents
 77 and may also impose other conditions on the mortgagor's use of
 78 the collected rents.

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

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

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

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

95 702.036 Finality of ~~mortgage~~ foreclosure judgment.—

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

98 (2) ~~(a)-(1)-(a)~~ In any action or proceeding in which a party
 99 seeks to set aside, invalidate, or challenge the validity of a
 100 final judgment of foreclosure of a mortgage or other lien, or to

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

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

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

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

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

121 ~~(3)-(2)~~ For purposes of this section, the following,
 122 without limitation, shall be considered persons affiliated with
 123 the foreclosing mortgageholder or foreclosing lienholder ~~lender~~:

124 (a) The foreclosing mortgageholder, the foreclosing
 125 lienholder, lender or any loan servicer for the mortgage or lien

126 ~~loan~~ being foreclosed;

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

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

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

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

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

149 702.10 Order to show cause; entry of final judgment of
 150 foreclosure; payment during foreclosure.—

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

158 (a) The order shall:

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

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

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

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

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

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

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

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

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

197 (d) If the court finds that the mortgagor has not waived
198 the right to be heard on the order to show cause, the court
199 shall, at the hearing on the order to show cause, consider the
200 affidavits and other showings made by the parties appearing and

201 make a determination of the probable validity of the underlying
202 claim alleged against the mortgagor and the mortgagor's
203 defenses. If the court determines that the plaintiff is likely
204 to prevail in the foreclosure action, the court shall enter an
205 order requiring the mortgagor to make the payment described in
206 paragraph (e) to the plaintiff and provide for a remedy as
207 described in paragraph (f). However, the order shall be stayed
208 pending final adjudication of the claims of the parties if the
209 mortgagor files with the court a written undertaking executed by
210 a surety approved by the court in an amount equal to the unpaid
211 balance of the lien being foreclosed, including all principal,
212 interest, unpaid taxes, and insurance premiums paid by the
213 plaintiff.

214 (e) If the court enters an order requiring the mortgagor
215 to make payments to the plaintiff, payments shall be payable at
216 such intervals and in such amounts provided for in the mortgage
217 instrument before acceleration or maturity. The obligation to
218 make payments pursuant to any order entered under this
219 subsection shall commence from the date of the motion filed
220 under this section. The order shall be served upon the mortgagor
221 no later than 20 days before the date specified for the first
222 payment. The order may permit, but may not require, the
223 plaintiff to take all appropriate steps to secure the premises
224 during the pendency of the foreclosure action.

225 (f) If the court enters an order requiring payments, the

226 order shall also provide that the plaintiff is entitled to
227 possession of the premises upon the failure of the mortgagor to
228 make the payment required in the order unless at the hearing on
229 the order to show cause the court finds good cause to order some
230 other method of enforcement of its order.

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

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

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

247 (j) For purposes of this subsection, the term "mortgagor"
248 means a person who grants a mortgage or a successor in ownership
249 of the real property described in the mortgage. The term does
250 not include a homeowners' association or an association, as

251 those terms are defined in s. 720.301, or a corporation
 252 regulated under chapter 718 or chapter 719, that:

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

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

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

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