



417302

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2023	.	
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The Committee on Banking and Insurance (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 28 - 255
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



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11 subsection (10) are added to that section, to read:

12 697.07 Assignment of rents.—

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

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

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

19 (3)~~(2)~~ If such an assignment is made, the mortgagee shall
20 hold a lien on the rents, and the lien created by the assignment
21 shall be perfected and effective against the mortgagor and third
22 parties upon recordation of the mortgage or separate instrument
23 in the public records of the county in which the real property
24 is located, according to law.

25 (4)~~(3)~~ Unless otherwise agreed to in writing by the
26 mortgagee and mortgagor, the lien created by the assignment of
27 rents is ~~shall be~~ enforceable upon the mortgagor's default and
28 written demand for the rents made by the mortgagee to the
29 mortgagor, whereupon the mortgagor shall turn over all rents in
30 the possession or control of the mortgagor at the time of the
31 written demand or collected thereafter (the "collected rents")
32 to the mortgagee less payment of any expenses authorized by the
33 mortgagee in writing.

34 (5)~~(4)~~ Upon application by the mortgagee or mortgagor, in a
35 foreclosure action, and notwithstanding any asserted defenses or
36 counterclaims of the mortgagor, a court of competent
37 jurisdiction, pending final adjudication of any action, may
38 require the mortgagor to deposit the collected rents into the
39 registry of the court, or in such other depository as the court



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40 may designate. However, the court may authorize the use of the
41 collected rents, before deposit into the registry of the court
42 or other depository, to:

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

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

52 (c) Make payments to the mortgagee.

53
54 The court shall require the mortgagor to account to the court
55 and the mortgagee for the receipt and use of the collected rents
56 and may also impose other conditions on the mortgagor's use of
57 the collected rents.

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

62 (a) Acquires title to a parcel or unit through the
63 foreclosure of its claim of lien, or a deed in lieu of
64 foreclosure, provided that title remains vested in the
65 association or corporation and any rents collected are applied
66 to assessments that are then due; or

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



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

75 702.036 Finality of ~~mortgage~~ foreclosure judgment.—

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

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

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

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

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

95 4. The property has been acquired for value, by a person
96 not affiliated with the foreclosing mortgageholder, the
97 foreclosing lienholder, lender or the foreclosed owner, at a



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98 time in which no lis pendens regarding the suit to set aside,
99 invalidate, or challenge the foreclosure appears in the official
100 records of the county where the property was located.

101 (3)(2) For purposes of this section, the following, without
102 limitation, shall be considered persons affiliated with the
103 foreclosing ~~lender~~ mortgageholder or foreclosing lienholder:

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

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

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

113 (d) Any parent entity, subsidiary, or other person who
114 directly, or indirectly through one or more intermediaries,
115 controls or is controlled by, or is under common control with,
116 any entity listed in paragraph (a), paragraph (b), or paragraph
117 (c).

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



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

129 702.10 Order to show cause; entry of final judgment of
130 foreclosure; payment during foreclosure.—

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

138 (a) The order shall:

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

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

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

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

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



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

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

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

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

177 (d) If the court finds that the mortgagor has not waived
178 the right to be heard on the order to show cause, the court
179 shall, at the hearing on the order to show cause, consider the
180 affidavits and other showings made by the parties appearing and
181 make a determination of the probable validity of the underlying
182 claim alleged against the mortgagor and the mortgagor's
183 defenses. If the court determines that the plaintiff is likely
184 to prevail in the foreclosure action, the court shall enter an



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185 order requiring the mortgagor to make the payment described in
186 paragraph (e) to the plaintiff and provide for a remedy as
187 described in paragraph (f). However, the order shall be stayed
188 pending final adjudication of the claims of the parties if the
189 mortgagor files with the court a written undertaking executed by
190 a surety approved by the court in an amount equal to the unpaid
191 balance of the lien being foreclosed, including all principal,
192 interest, unpaid taxes, and insurance premiums paid by the
193 plaintiff.

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

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

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



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

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

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

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

231
232 ===== T I T L E A M E N D M E N T =====

233 And the title is amended as follows:

234 Delete lines 16 - 17

235 and insert:

236 702.10, F.S.; making conforming