

By Senator Powell

24-00376-23

2023286__

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 in
10 foreclosure actions under certain circumstances;
11 providing applicability; amending s. 702.036, F.S.;
12 defining the term "property"; expanding the scope of a
13 final judgment of foreclosure to include other liens;
14 requiring the award of attorney fees in certain
15 circumstances; providing applicability; amending s.
16 702.10, F.S.; revising the class of persons authorized
17 to move for expedited foreclosure; making conforming
18 changes; defining the term "mortgagor"; providing for
19 retroactive applicability of a specified provision;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (16) is added to section 117.201,
25 Florida Statutes, to read:

26 117.201 Definitions.—As used in this part, the term:
27 (16) "Witness," when used as a noun, means an individual
28 whose electronic signature is affixed to an electronic record as
29 an attesting or subscribing witness.

24-00376-23

2023286__

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

35 697.07 Assignment of rents.—

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

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

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

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

48 (4)~~(3)~~ Unless otherwise agreed to in writing by the
49 mortgagee and mortgagor, the lien created by the assignment of
50 rents is ~~shall be~~ enforceable upon the mortgagor's default and
51 written demand for the rents made by the mortgagee to the
52 mortgagor, whereupon the mortgagor shall turn over all rents in
53 the possession or control of the mortgagor at the time of the
54 written demand or collected thereafter (the "collected rents")
55 to the mortgagee less payment of any expenses authorized by the
56 mortgagee in writing.

57 (5)~~(4)~~ Upon application by the mortgagee or mortgagor, in a
58 foreclosure action, and notwithstanding any asserted defenses or

24-00376-23

2023286__

59 counterclaims of the mortgagor, a court of competent
60 jurisdiction, pending final adjudication of any action, may
61 require the mortgagor to deposit the collected rents into the
62 registry of the court, or in such other depository as the court
63 may designate. However, the court may authorize the use of the
64 collected rents, before deposit into the registry of the court
65 or other depository, to:

66 (a) Pay the reasonable expenses solely to protect,
67 preserve, and operate the real property, including, without
68 limitation, real estate taxes, ~~and~~ insurance, and assessments
69 that become due after the entry of the court's order to a
70 homeowners' association or an association, as those terms are
71 defined in s. 720.301, or a corporation regulated under chapter
72 718 or chapter 719;

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

75 (c) Make payments to the mortgagee.

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

81 (10) This section does not apply to a corporation that is a
82 homeowners' association or an association, as those terms are
83 defined in s. 720.301, or a corporation regulated under chapter
84 718 or chapter 719, that:

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

24-00376-23

2023286__

88 association or corporation and any rents collected are applied
89 to assessments that are then due; or

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

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

98 702.036 Finality of ~~mortgage~~ foreclosure judgment.—

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

101 (2) (a) ~~(1) (a)~~ In any action or proceeding in which a party
102 seeks to set aside, invalidate, or challenge the validity of a
103 final judgment of foreclosure of a mortgage or other lien, or to
104 establish or reestablish a lien or encumbrance on the property
105 in abrogation of the final judgment of foreclosure of a mortgage
106 or other lien, the court shall treat such request solely as a
107 claim for monetary damages and may not grant relief that
108 adversely affects the quality or character of the title to the
109 property, if:

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

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

115 3. All applicable appeals periods have run as to the final
116 judgment of foreclosure of the mortgage or lien with no appeals

24-00376-23

2023286__

117 having been taken or any appeals having been finally resolved.

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

124 (3)~~(2)~~ For purposes of this section, the following, without
125 limitation, shall be considered persons affiliated with the
126 foreclosing lender:

127 (a) The foreclosing mortgageholder, the foreclosing
128 lienholder, lender or any loan servicer for the mortgage or lien
129 ~~loan~~ being foreclosed;

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

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

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

141 (5) If a party seeks relief from a final judgment
142 foreclosing a mortgage or lien, or files a separate action
143 attacking such a final judgment, and the party claims that it
144 holds or held a lien superior in right, priority, or dignity to
145 the mortgage or lien foreclosed in the judgment, the court must

24-00376-23

2023286__

146 award reasonable attorney fees to the party prevailing on the
147 claim. This subsection applies whether the litigation seeking
148 relief from the final judgment occurs in the case in which the
149 judgment was entered or in any separate case or proceeding.

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

152 702.10 Order to show cause; entry of final judgment of
153 foreclosure; payment during foreclosure.—

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

161 (a) The order shall:

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

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

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

173 4. State that, if the mortgagor ~~a defendant~~ fails to appear
174 at the hearing to show cause and fails to file defenses by a

24-00376-23

2023286__

175 motion or by a verified or sworn answer, the mortgagor ~~defendant~~
176 is deemed to have waived the right to a hearing and in such case
177 the court may enter an order to make payment or vacate the
178 premises.

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

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

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

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

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

203 (d) If the court finds that the mortgagor has not waived

24-00376-23

2023286__

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

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

231 (f) If the court enters an order requiring payments, the
232 order shall also provide that the plaintiff is entitled to

24-00376-23

2023286__

233 possession of the premises upon the failure of the mortgagor to
234 make the payment required in the order unless at the hearing on
235 the order to show cause the court finds good cause to order some
236 other method of enforcement of its order.

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

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

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

253 (j) For purposes of this subsection, the term "mortgagor"
254 means the original mortgagor and any subsequent owner or party
255 in possession of the property. The term does not include a
256 homeowners' association or an association, as those terms are
257 defined in s. 720.301, or a corporation regulated under chapter
258 718 or chapter 719, that:

259 1. Acquires title to a parcel or unit through the
260 foreclosure of its claim of lien, or a deed in lieu of
261 foreclosure, provided that title remains vested in the

24-00376-23

2023286__

262 association or corporation and any rents collected are applied
263 to assessments that are then due; or

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

266 Section 5. The amendment to s. 117.201, Florida Statutes,
267 made by this act is intended to clarify existing law and applies
268 retroactively to January 1, 2020.

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