

By the Committee on Banking and Insurance; and Senator Powell

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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.; defining the term "mortgagor"; providing
17 for retroactive applicability of a specified
18 provision; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
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. Present subsections (1) through (8) of section
29 697.07, Florida Statutes, are redesignated as subsections (2)

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30 through (9), respectively, present subsections (2), (3), and (4)
31 of that section are amended, and a new subsection (1) and
32 subsection (10) are added to that 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 a
56 foreclosure action, and notwithstanding any asserted defenses or
57 counterclaims of the mortgagor, a court of competent
58 jurisdiction, pending final adjudication of any action, may

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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 a
80 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

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

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

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

99 (2) (a) ~~(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

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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)~~(2)~~ For purposes of this section, the following, without
123 limitation, shall be considered persons affiliated with the
124 foreclosing mortgageholder or foreclosing lienholder ~~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 judgment, 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

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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 each defendant.

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

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

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

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

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

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

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

198 (d) If the court finds that the mortgagor has not waived
199 the right to be heard on the order to show cause, the court
200 shall, at the hearing on the order to show cause, consider the
201 affidavits and other showings made by the parties appearing and
202 make a determination of the probable validity of the underlying
203 claim alleged against the mortgagor and the mortgagor's

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

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

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

232 (g) All amounts paid pursuant to this section shall be

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233 credited against the mortgage obligation in accordance with the
234 terms of the loan documents; however, payments made under this
235 section do not constitute a cure of any default or a waiver or
236 any other defense to the mortgage foreclosure action.

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

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

248 (j) For purposes of this subsection, the term "mortgagor"
249 means a person who grants a mortgage or a successor in ownership
250 of the real property described in the mortgage. The term does
251 not include a homeowners' association or an association, as
252 those terms are defined in s. 720.301, or a corporation
253 regulated under chapter 718 or chapter 719, that:

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

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

261 Section 5. The amendment to s. 117.201, Florida Statutes,

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262 made by this act is intended to clarify existing law and applies
263 retroactively to January 1, 2020.

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