

2023286er

1  
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)

2023286er

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

2023286er

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

2023286er

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

2023286er

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

2023286er

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.

2023286er

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

2023286er

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

2023286er

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,

2023286er

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.