

29 providing procedures and requirements for such
 30 foreclosures; creating s. 702.12, F.S.; requiring
 31 certain documents to be filed contemporaneously with
 32 the filing of an initial complaint for foreclosure;
 33 providing legislative intent; providing that failure
 34 to file such documents does not affect title to
 35 property subsequent to a foreclosure sale; creating s.
 36 702.13, F.S.; providing for case management
 37 conferences in foreclosure proceedings; providing that
 38 a court may not order a continuance in a mortgage
 39 foreclosure proceeding unless the owner pays
 40 assessments due to a condominium, cooperative, or
 41 homeowners' association; providing application of this
 42 act to existing cases and causes of action and
 43 existing notes and mortgages; providing an effective
 44 date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Paragraph (b) of subsection (2) of section
 49 95.11, Florida Statutes, is amended, and paragraph (h) is added
 50 to subsection (4) of that section, to read:

51 95.11 Limitations other than for the recovery of real
 52 property.—Actions other than for recovery of real property shall
 53 be commenced as follows:

54 (2) WITHIN FIVE YEARS.—

55 (b) A legal or equitable action on a contract, obligation,
 56 or liability founded on a written instrument, except for an

57 | action to enforce a claim against a payment bond, which shall be
 58 | governed by the applicable provisions of ss. 255.05(10) and
 59 | 713.23(1)(e), and except for an action for a deficiency
 60 | judgment, which shall be governed by paragraph (4)(h).

61 | (4) WITHIN TWO YEARS.-

62 | (h) An action to enforce a claim of a deficiency related
 63 | to a note secured by a mortgage against real property. The
 64 | limitations period shall commence on the 11th day after the
 65 | foreclosure sale or the day after the mortgagee accepts a deed
 66 | in lieu of foreclosure.

67 | Section 2. The amendment to s. 95.11, Florida Statutes,
 68 | made by this act shall apply to any action commenced on or after
 69 | July 1, 2012, regardless of when the cause of action accrued,
 70 | except that any action that would not have been barred under s.
 71 | 95.11(2)(b), Florida Statutes, prior to the amendments made by
 72 | this act may be commenced no later than 5 years after the action
 73 | accrued and in no event later than July 1, 2014, and if the
 74 | action is not commenced by that date, it is barred by the
 75 | amendments made by this act.

76 | Section 3. Section 702.10, Florida Statutes, is amended to
 77 | read:

78 | 702.10 Order to show cause; entry of final judgment of
 79 | foreclosure; payment during foreclosure.-

80 | (1) Any lienholder ~~After a complaint in a foreclosure~~
 81 | ~~proceeding has been filed, the mortgagee may request an order to~~
 82 | show cause for the entry of final judgment in a foreclosure
 83 | action. For purposes of this section, the term "lienholder"
 84 | includes the plaintiff and any defendant to the action who holds

85 | a lien encumbering the property or any defendant who, by virtue
 86 | of its status as a condominium association, cooperative
 87 | association, or homeowners' association, may file a lien against
 88 | the real property subject to foreclosure. Upon filing, ~~and~~ the
 89 | court shall immediately review the request and the court file in
 90 | chambers and without a hearing ~~complaint~~. If, upon examination
 91 | of the court file ~~complaint~~, the court finds that the complaint
 92 | is verified, complies with s. 702.12, and alleges a cause of
 93 | action to foreclose on real property, the court shall promptly
 94 | issue an order directed to the other parties named in the action
 95 | ~~defendant~~ to show cause why a final judgment of foreclosure
 96 | should not be entered.

97 | (a) The order shall:

98 | 1. Set the date and time for a hearing on the order to
 99 | show cause. ~~However,~~ The date for the hearing may not be ~~set~~
 100 | sooner than 20 days after the service of the order. ~~When service~~
 101 | ~~is obtained by publication, the date for the hearing may not be~~
 102 | ~~set sooner than 30 days after the first publication.~~ The hearing
 103 | must be held within 90 ~~60~~ days after the date of service.
 104 | Failure to hold the hearing within such time does not affect the
 105 | validity of the order to show cause or the jurisdiction of the
 106 | court to issue subsequent orders.

107 | 2. Direct the time within which service of the order to
 108 | show cause and the complaint must be made upon the defendant.

109 | 3. State that the filing of defenses by a motion,
 110 | responsive pleading, affidavits, or other papers ~~or by a~~
 111 | ~~verified or sworn answer at or~~ before the hearing to show cause
 112 | may constitute ~~constitutes~~ cause for the court not to enter ~~the~~

113 ~~attached~~ final judgment.

114 4. State that any ~~the~~ defendant has the right to file
 115 affidavits or other papers before ~~at~~ the time of the hearing to
 116 show cause and may appear personally or by way of an attorney at
 117 the hearing.

118 5. State that, if any ~~the~~ defendant files defenses by a
 119 motion, a verified or sworn answer, affidavits, or other papers
 120 or appears personally or by way of an attorney at the time of
 121 the hearing, the hearing time shall ~~may~~ be used to hear and
 122 consider the defendant's motion, answer, affidavits, other
 123 papers, and other evidence and argument as may be presented by
 124 any defendant or any defendant's counsel, and the court shall
 125 then make a determination as to whether a preponderance of the
 126 evidence and the arguments presented support entry of a final
 127 judgment of foreclosure, and if so, the court shall enter a
 128 final judgment of foreclosure ordering the clerk of the court to
 129 conduct a foreclosure sale.

130 6. State that, if a ~~the~~ defendant fails to appear at the
 131 hearing to show cause or fails to file defenses by a motion or
 132 by a verified or sworn answer or files an answer not contesting
 133 the foreclosure, such ~~the~~ defendant may be considered to have
 134 waived the right to a hearing, and in such case, the court may
 135 enter a default against such defendant and, if appropriate, a
 136 final judgment of foreclosure ordering the clerk of the court to
 137 conduct a foreclosure sale.

138 7. State that if the mortgage provides for reasonable
 139 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
 140 fees do not exceed 3 percent of the principal amount owed at the

141 time of filing the complaint, it is unnecessary for the court to
 142 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
 143 to be reasonable.

144 8. Attach the form of the proposed final judgment of
 145 foreclosure the movant requests the court to ~~will~~ enter, ~~if the~~
 146 ~~defendant waives the right to be heard~~ at the hearing on the
 147 order to show cause. The form may contain blanks for the court
 148 to enter the amounts due.

149 9. Require the party seeking final judgment ~~mortgagee~~ to
 150 serve a copy of the order to show cause on the other parties ~~the~~
 151 ~~mortgagor~~ in the following manner:

152 a. If a party ~~the mortgagor~~ has been served with the
 153 complaint and original process, or the other party is the
 154 plaintiff in the action, service of the order to show cause on
 155 that party ~~order~~ may be made in the manner provided in the
 156 Florida Rules of Civil Procedure.

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

162 c. Service of process by publication may not be used
 163 except as provided in s. 702.11.

164
 165 Any final judgment of foreclosure entered under this subsection
 166 is for in rem relief only. Nothing in this subsection shall
 167 preclude the entry of a deficiency judgment where otherwise
 168 allowed by law. It is the intent of the Legislature that this

169 alternative procedure may run simultaneously with other court
 170 procedures.

171 (b) The right to be heard at the hearing to show cause is
 172 waived if a ~~the~~ defendant, after being served as provided by law
 173 with an order to show cause, engages in conduct that clearly
 174 shows that such ~~the~~ defendant has relinquished the right to be
 175 heard on that order. Such ~~The~~ defendant's failure to file
 176 defenses by a motion or by a sworn or verified answer,
 177 affidavits, or other papers or to appear personally or by way of
 178 an attorney at the hearing duly scheduled on the order to show
 179 cause presumptively constitutes conduct that clearly shows that
 180 such ~~the~~ defendant has relinquished the right to be heard. If a
 181 defendant files defenses by a motion, ~~or by~~ a verified or sworn
 182 answer, affidavits, or other papers at or before the hearing,
 183 such action may constitute ~~constitutes~~ cause and may preclude
 184 ~~precludes~~ the entry of a final judgment at the hearing to show
 185 cause.

186 (c) In a mortgage foreclosure proceeding, when a final
 187 ~~default~~ judgment of foreclosure has been entered against the
 188 mortgagor and the note or mortgage provides for the award of
 189 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
 190 court to hold a hearing or adjudge the requested attorney
 191 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
 192 percent of the principal amount owed on the note or mortgage at
 193 the time of filing, even if the note or mortgage does not
 194 specify the percentage of the original amount that would be paid
 195 as liquidated damages.

196 (d) If the court finds that all defendants have ~~the~~

197 ~~defendant has~~ waived the right to be heard as provided in
 198 paragraph (b), the court shall promptly enter a final judgment
 199 of foreclosure without the need for further hearing provided the
 200 plaintiff has shown entitlement to a final judgment. If the
 201 court finds that any ~~the~~ defendant has not waived the right to
 202 be heard on the order to show cause, the court shall then
 203 determine whether there is cause not to enter a final judgment
 204 of foreclosure. If the court determines that a preponderance of
 205 the evidence and the arguments presented support entry of a
 206 final judgment of foreclosure, the court shall enter a final
 207 judgment of foreclosure ordering the clerk of the court to
 208 conduct a foreclosure sale ~~finds that the defendant has not~~
 209 ~~shown cause, the court shall promptly enter a judgment of~~
 210 ~~foreclosure.~~ If the time allotted for the hearing is
 211 insufficient, the court may announce at the hearing a date and
 212 time for the continued hearing. Only the parties who appear,
 213 individually or through counsel, at the initial hearing need to
 214 be notified of the date and time of the continued hearing.

215 (2) This subsection does not apply to foreclosure of an
 216 owner-occupied residence. As part of any other ~~In an action for~~
 217 foreclosure, and in addition to any other relief that the court
 218 may award ~~other than residential real estate, the plaintiff the~~
 219 ~~mortgagee~~ may request that the court enter an order directing
 220 the mortgagor defendant to show cause why an order to make
 221 payments during the pendency of the foreclosure proceedings or
 222 an order to vacate the premises should not be entered.

223 (a) The order shall:

224 1. Set the date and time for hearing on the order to show

225 cause. However, the date for the hearing may ~~shall~~ not be set
 226 sooner than 20 days after the service of the order. If ~~where~~
 227 service is obtained by publication, the date for the hearing may
 228 ~~shall~~ not be set sooner than 30 days after the first
 229 publication.

230 2. Direct the time within which service of the order to
 231 show cause and the complaint shall be made upon each ~~the~~
 232 defendant.

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

236 4. State that, if a ~~the~~ defendant fails to appear at the
 237 hearing to show cause and fails to file defenses by a motion or
 238 by a verified or sworn answer, a ~~the~~ defendant is ~~may be~~ deemed
 239 to have waived the right to a hearing and in such case the court
 240 may enter an order to make payment or vacate the premises.

241 5. Require the movant ~~mortgagee~~ to serve a copy of the
 242 order to show cause on the defendant ~~mortgagor~~ in the following
 243 manner:

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

247 b. If a defendant ~~the mortgagor~~ has not been served with
 248 the complaint and original process, the order to show cause,
 249 together with the summons and a copy of the complaint, shall be
 250 served on the defendant ~~mortgagor~~ in the same manner as provided
 251 by law for original process.

252 (b) The right of a defendant to be heard at the hearing to

253 show cause is waived if the defendant, after being served as
 254 provided by law with an order to show cause, engages in conduct
 255 that clearly shows that the defendant has relinquished the right
 256 to be heard on that order. A ~~The~~ defendant's failure to file
 257 defenses by a motion or by a sworn or verified answer or to
 258 appear at the hearing duly scheduled on the order to show cause
 259 presumptively constitutes conduct that clearly shows that the
 260 defendant has relinquished the right to be heard.

261 (c) If the court finds that a ~~the~~ defendant has waived the
 262 right to be heard as provided in paragraph (b), the court may
 263 promptly enter an order requiring payment in the amount provided
 264 in paragraph (f) or an order to vacate.

265 (d) If the court finds that the mortgagor has not waived
 266 the right to be heard on the order to show cause, the court
 267 shall, at the hearing on the order to show cause, consider the
 268 affidavits and other showings made by the parties appearing and
 269 make a determination of the probable validity of the underlying
 270 claim alleged against the mortgagor and the mortgagor's
 271 defenses. If the court determines that the plaintiff mortgagee
 272 is likely to prevail in the foreclosure action, the court shall
 273 enter an order requiring the mortgagor to make the payment
 274 described in paragraph (e) to the plaintiff mortgagee and
 275 provide for a remedy as described in paragraph (f). However, the
 276 order shall be stayed pending final adjudication of the claims
 277 of the parties if the mortgagor files with the court a written
 278 undertaking executed by a surety approved by the court in an
 279 amount equal to the unpaid balance of the lien being foreclosed
 280 ~~the mortgage on the property~~, including all principal, interest,

281 unpaid taxes, and insurance premiums paid by a plaintiff ~~the~~
 282 ~~mortgagee~~.

283 (e) If ~~In the event~~ the court enters an order requiring
 284 the mortgagor to make payments to the plaintiff ~~mortgagee~~,
 285 payments shall be payable at such intervals and in such amounts
 286 provided for in the mortgage instrument before acceleration or
 287 maturity. The obligation to make payments pursuant to any order
 288 entered under this subsection shall commence from the date of
 289 the motion filed under this section ~~hereunder~~. The order shall
 290 be served upon the mortgagor no later than 20 days before the
 291 date specified for the first payment. The order may permit, but
 292 may ~~shall~~ not require, the plaintiff ~~mortgagee~~ to take all
 293 appropriate steps to secure the premises during the pendency of
 294 the foreclosure action.

295 (f) If ~~In the event~~ the court enters an order requiring
 296 payments, the order shall also provide that the plaintiff is
 297 ~~mortgagee shall be~~ entitled to possession of the premises upon
 298 the failure of the mortgagor to make the payment required in the
 299 order unless at the hearing on the order to show cause the court
 300 finds good cause to order some other method of enforcement of
 301 its order.

302 (g) All amounts paid pursuant to this section shall be
 303 credited against the mortgage obligation in accordance with the
 304 terms of the loan documents; ~~provided, however, that any~~
 305 payments made under this section do ~~shall~~ not constitute a cure
 306 of any default or a waiver or any other defense to the mortgage
 307 foreclosure action.

308 (h) Upon the filing of an affidavit with the clerk that

CS/HB 213

2012

309 the premises have not been vacated pursuant to the court order,
 310 the clerk shall issue to the sheriff a writ for possession which
 311 shall be governed by the provisions of s. 83.62.

312 (i) For purposes of this subsection, there is a rebuttable
 313 presumption that a residential property for which a homestead
 314 exemption for taxation was granted according to the certified
 315 rolls of the latest assessment by the county property appraiser,
 316 before the filing of the foreclosure action, is an owner-
 317 occupied residential property.

318 (3) The Supreme Court is requested to amend the Rules of
 319 Civil Procedure to provide for expedited foreclosure proceedings
 320 in conformity with this section. The Supreme Court is requested
 321 to develop and publish forms for use under this section.

322 Section 4. Section 702.11, Florida Statutes, is created to
 323 read:

324 702.11 Expedited foreclosure of abandoned residential real
 325 property.-

326 (1) As used in this section, the term "abandoned
 327 residential real property" means residential real property that
 328 is deemed abandoned upon a showing that:

329 (a) A duly licensed process server has made at least three
 330 attempts to locate an occupant of the residential real property.
 331 The attempts must have been made at least 72 hours apart, and at
 332 least one of such attempts must have been made before 12 p.m.,
 333 between 12 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each
 334 attempt must include physically knocking or ringing at the door
 335 of the residential real property and such other efforts as are
 336 normally sufficient to obtain a response from an occupant. The

337 process server must have no business affiliation with the owner
 338 or servicer of any mortgage on the residential real property or
 339 with the attorney or law firm representing such owner or
 340 servicer.

341 (b) Two or more of the following conditions appear:

342 1. Windows or entrances to the premises are boarded up or
 343 closed off or multiple window panes are broken and unrepaired.

344 2. Doors to the premises are smashed through, broken off,
 345 unhinged, or continuously unlocked.

346 3. Rubbish, trash, or debris has accumulated on the
 347 mortgaged premises.

348 4. The premises are deteriorating and are below or in
 349 imminent danger of falling below minimum community standards for
 350 public safety and sanitation.

351 5. Interviews with at least two neighbors in at least two
 352 different households indicate that the residence has been
 353 abandoned. The neighbors must be adjoining, across the street in
 354 view of the home, or across the hall in a condominium or
 355 cooperative.

356

357 The process server making attempts to locate an occupant of the
 358 residential real property may provide, by affidavit and
 359 photographic or other documentation, evidence of the condition
 360 of the residential real property.

361 (2)(a) Any party to a foreclosure action regarding
 362 residential real property appearing to be abandoned must file a
 363 petition before the court seeking to determine the status of the
 364 residential real property and to invoke an expedited foreclosure

365 proceeding relating to the property. Upon the filing of an
 366 affidavit of diligent search and inquiry and the affidavit or
 367 documentary evidence set forth in subsection (1), the clerk
 368 shall, upon request of the petitioner, issue subpoenas to
 369 electrical and water utilities serving the residential real
 370 property commanding disclosure of the status of utility service
 371 to the subject property, including whether utilities are
 372 currently turned off and whether all outstanding utility
 373 payments have been made and, if so, by whom.

374 (b) If, after review of the response of the utility
 375 companies to the subpoenas and all other matters of record, the
 376 court determines the property to have been abandoned, the party
 377 entitled to enforce the note and mortgage encumbering the
 378 residential real property shall be entitled to foreclose the
 379 mortgage using the expedited mortgage foreclosure procedures set
 380 forth in s. 702.10 upon service by publication. However, service
 381 must be made on associations holding liens for dues and
 382 assessments and all other junior lienholders as required by law.

383 Section 5. Section 702.12, Florida Statutes, is created to
 384 read:

385 702.12 Elements of foreclosure complaint; lost, destroyed,
 386 or stolen note affidavit.—The complaint in a foreclosure action
 387 alleging breach of a promissory note secured by a mortgage must
 388 contain affirmative allegations expressly made by the plaintiff
 389 at the time the proceeding is commenced that the plaintiff is
 390 the holder of the original note secured by the mortgage or must
 391 allege, with specificity, the factual basis by which the
 392 plaintiff is a person entitled to enforce the note under s.

393 673.3011 or under other applicable law. When a party has been
 394 delegated the authority to institute a mortgage foreclosure
 395 action on behalf of the holder of the note, the complaint shall
 396 describe the authority of the plaintiff and identify, with
 397 specificity, the document that grants the plaintiff the
 398 authority to act on behalf of the holder of the note.

399 (1) Unless the complaint includes a count to enforce a
 400 lost, destroyed, or stolen instrument, the plaintiff shall cause
 401 to be filed with the court, contemporaneously with and as a
 402 condition precedent to the filing of the complaint for
 403 foreclosure, either:

- 404 (a) The original promissory note; or
- 405 (b) Certification, under penalty of perjury, that the
 406 plaintiff is in physical possession of the original promissory
 407 note. Such certification must set forth the physical location of
 408 the note, the name and title of the individual giving the
 409 certification, and the name of the person who personally
 410 verified such physical possession and the time and date on which
 411 possession was verified. Correct copies of the note and all
 412 allonges thereto shall be attached to the certification. The
 413 original note shall then be filed with the court prior to the
 414 entry of any judgment of foreclosure or judgment on such note.
 415 However, if the real property is in two or more jurisdictions
 416 and the original note has been filed with the clerk in another
 417 jurisdiction, the court may accept any competent proof of such
 418 note filed in the other jurisdiction.

419 (2) When the complaint includes a count to enforce a lost,
 420 destroyed, or stolen instrument, an affidavit executed under

421 penalty of perjury shall be attached to the complaint. The
 422 affidavit shall:

423 (a) Detail a clear chain of all assignments for the
 424 promissory note that is the subject of the action.

425 (b) Set forth facts showing that the plaintiff is entitled
 426 to enforce a lost, destroyed, or stolen instrument pursuant to
 427 s. 673.3091.

428 (c) Include as exhibits to the affidavit such copies of
 429 the note and allonges thereto, assignments of mortgage, audit
 430 reports showing physical receipt of the original note, or other
 431 evidence of the acquisition, ownership, and possession of the
 432 note as may be available to the plaintiff.

433 (3) If the foreclosure case is dismissed without prejudice
 434 and without completion of a foreclosure sale, upon request of
 435 the plaintiff the clerk must return the original promissory note
 436 to the plaintiff without need for further order of the court.

437 (4) The Legislature intends that the requirements of this
 438 section are to expedite the foreclosure process by ensuring
 439 initial disclosure of a plaintiff's status and the facts
 440 supporting that status and thereby ensuring the availability of
 441 documents necessary to the prosecution of the case. This section
 442 does not modify existing law regarding standing or real parties
 443 in interest. The court may sanction the plaintiff for failure to
 444 comply with this section, but any noncompliance with this
 445 section does not affect the validity of a foreclosure sale or
 446 title to real property subsequent to a foreclosure sale.

447 Section 6. Section 702.13, Florida Statutes, is created to
 448 read:

449 702.13 Defaults and case management conferences in
 450 foreclosure actions.-

451 (1) In any mortgage foreclosure case in which all
 452 defendants have been served and the defendants have failed to
 453 timely file an answer or other response denying, contesting, or
 454 asserting defenses to the plaintiff's entitlement to the
 455 foreclosure, the court, on its own motion or motion of any
 456 party, may enter defaults against nonresponding parties in
 457 accordance with the Florida Rules of Civil Procedure.
 458 Thereafter, the court shall direct the plaintiff in the
 459 foreclosure action to file all affidavits, certifications, and
 460 proofs necessary or appropriate for the entry of a summary
 461 judgment of foreclosure within a time certain or show cause why
 462 such a filing should not be made. The filing of these materials
 463 shall be construed as a motion for summary judgment, and the
 464 court may enter final summary judgment or set the case for trial
 465 in accord with its sound judicial discretion. This subsection
 466 does not restrict the authority of the court to set aside a
 467 default or a judgment granted thereon pursuant to the Florida
 468 Rules of Civil Procedure.

469 (2) After all parties have been served and not earlier
 470 than 48 days after the filing of the foreclosure case, any party
 471 may request a case management conference at which the court
 472 shall set definite timetables for moving the case forward. If
 473 any other hearings are set in the case, the case management
 474 conference shall be conducted at the same time as the scheduled
 475 case. At the conference, the court may grant extensions or stays
 476 in the proceedings on a showing that the plaintiff and property

477 owner defendant are engaged in mediation or good faith
478 negotiations with regard to a loan modification or other
479 settlement only if the property owner pays, or the lender agrees
480 to pay, applicable condominium, cooperative, or homeowners'
481 association assessments coming due after the entry of the
482 extension or stay and keeps such assessments paid current
483 through the conclusion of the foreclosure action.

484 Section 7. The amendments to s. 702.10, Florida Statutes,
485 and the creation of ss. 702.11 and 702.13, Florida Statutes, by
486 this act are remedial in nature and shall apply to causes of
487 action pending on the effective date of this act. Section
488 702.12, Florida Statutes, as created by this act, applies to
489 cases filed on or after July 1, 2012.

490 Section 8. The Legislature finds that this act is remedial
491 in nature. Accordingly, it is the intent of the Legislature that
492 this act shall apply to all mortgages encumbering real property
493 and all promissory notes secured by a mortgage, whether executed
494 before, on, or after the effective date of this act.

495 Section 9. This act shall take effect July 1, 2012.