

By Senator Latvala

16-00993A-12

20121890__

1 A bill to be entitled
2 An act relating to mortgage foreclosure proceedings;
3 providing a short title; specifying the public policy
4 of this state with respect to mortgage foreclosure
5 proceedings; amending s. 95.11, F.S.; specifying the
6 limitation period for initiating an action to collect
7 a deficiency following the foreclosure of certain
8 dwellings; amending s. 701.04, F.S.; specifying
9 requirements for a holder of a mortgage to provide an
10 estoppel statement to certain persons requesting the
11 payoff amount for the mortgage; specifying the
12 required contents of the estoppel statement; requiring
13 a person who provides a mortgage satisfaction to
14 provide supplemental information if the person was not
15 the owner of the mortgage; requiring certain persons
16 who are not a mortgagor to provide information showing
17 the requestor's ownership interest in the property to
18 the mortgageholder when making a request for the
19 payoff amount of the mortgage; specifying documents
20 that the person who provides the mortgage satisfaction
21 must provide to the payor of a mortgage note;
22 specifying a fee for failing to timely provide the
23 required documents to the payor; authorizing the use
24 of a summary procedure to compel compliance with
25 requirements to provide an estoppel statement or the
26 documents that must be provided by the person who
27 provides a mortgage satisfaction; creating s. 701.045,
28 F.S.; requiring certain individuals to execute
29 instruments acknowledging the satisfaction of liens

16-00993A-12

20121890__

30 and judgments and to provide a certified copy of the
31 recorded satisfaction to the person who made the full
32 payment; requiring certain persons to request return
33 of a writ of execution to be returned by the sheriff
34 as fully satisfied; requiring a person who receives
35 full payment of a judgment lien to deliver a statement
36 to the judgment debtor specifying that the lien has
37 been satisfied and released; creating s. 702.015,
38 F.S.; specifying required contents of a complaint
39 seeking to foreclose on certain types of residential
40 properties with respect to the authority of the
41 plaintiff to foreclose on the note and the location of
42 the note; creating s. 702.034, F.S.; requiring a
43 foreclosing party in certain mortgage foreclosure
44 actions to provide notice to the mortgagors and
45 tenants relating to their rights and obligations;
46 specifying the form and contents of the notice;
47 amending s. 702.035, F.S.; making technical and
48 grammatical changes to publication requirements for
49 legal notices concerning foreclosure proceedings;
50 creating s. 702.036, F.S.; requiring a court to treat
51 a challenge to a final judgment of foreclosure as a
52 claim for monetary damages under certain
53 circumstances; amending s. 702.04, F.S.; providing
54 that proceedings to foreclose a lien on certain
55 properties located in more than one county must be
56 conducted in one of the counties within which the
57 property is located; requiring the certificates of
58 title to the foreclosed property to be recorded in

16-00993A-12

20121890__

59 every county in which the property is located; making
60 technical and grammatical changes; amending s. 702.06,
61 F.S.; providing that a person who forecloses on a
62 mortgage may not initiate an action to recover a
63 deficiency if the court in the foreclosure action has
64 granted or denied a claim for a deficiency judgment;
65 requiring a separate action to recover a deficiency to
66 be initiated within a certain time period; amending s.
67 702.065, F.S.; specifying a threshold amount of a
68 claim for attorney fees below which the parties are
69 not required to file affidavits of reasonable attorney
70 fees and the court is not required to hold a hearing
71 or adjudge the requested fees as reasonable; amending
72 s. 702.10, F.S.; requiring that a complaint in a
73 foreclosure proceeding be in the form of an affidavit
74 sufficient to support a motion for a summary judgment;
75 authorizing the plaintiff to request the clerk to
76 issue a summons to the defendants to show cause why a
77 final judgment of foreclosure should not be entered;
78 specifying the time at which a show cause hearing may
79 be held; providing that the filing of defenses by
80 motion or by a responsive pleading may constitute
81 cause for the court not to enter a final judgment of
82 foreclosure; providing that the failure to file a
83 response to the summons may constitute a waiver of the
84 right to a hearing; specifying a threshold amount of a
85 claim for attorney fees below which the parties are
86 not required to file affidavits of reasonable attorney
87 fees and the court is not required to hold a hearing

16-00993A-12

20121890__

88 or adjudge the requested fees as reasonable; requiring
89 a court to promptly enter a judgment of foreclosure
90 under certain circumstances if the defendants waive
91 the right to be heard in a show cause hearing;
92 authorizing a mortgagee to request a court to order a
93 defendant to show cause why an order to make payments
94 during the pendency of a foreclosure proceeding should
95 be issued with respect to property other than a
96 homestead; creating a rebuttable presumption of the
97 homestead status of certain properties; creating s.
98 702.11, F.S.; specifying security that may be
99 determined by the court as adequate protection against
100 a loss by another person seeking to enforce the
101 mortgage; authorizing the holder of a note to initiate
102 an action against a person who wrongfully claimed to
103 be entitled to enforce the note for damages and
104 attorney fees and costs; authorizing the holder of the
105 note to pursue the recovery against any adequate
106 protections given by the person who wrongfully claimed
107 to be entitled to enforce the note; creating s.
108 702.12, F.S.; providing for the award of attorney fees
109 and the imposition of sanctions for raising
110 unsupported claims or defenses or causing an
111 unreasonable delay in a foreclosure proceeding;
112 creating s. 702.13, F.S.; establishing expedited
113 foreclosure proceedings for abandoned residential real
114 property and procedures and requirements with respect
115 thereto; creating s. 702.14, F.S.; providing
116 procedures and requirements for actions to foreclose

16-00993A-12

20121890__

117 on mortgages on actual or potential homestead
118 property; creating s. 702.15, F.S.; requiring owners
119 and landlords of property in the process of
120 foreclosure to provide certain notice and disclosures
121 to tenants or prospective tenants; providing penalties
122 for failing to give such notice or make the required
123 disclosures; creating s. 702.16, F.S.; requiring
124 certain documents to be filed contemporaneously with
125 the filing of an initial complaint for foreclosure;
126 providing for application of the act; providing an
127 effective date.

128
129 Be It Enacted by the Legislature of the State of Florida:

130
131 Section 1. This act may be cited as the "Florida Fair
132 Foreclosure Act."

133 Section 2. The public policy in this state is to encourage
134 borrowers and lenders to pursue alternatives to mortgage
135 foreclosure before filing suit and to explore possible
136 settlements in mediation. Once suit has been filed, the public
137 interest is served by maintaining the strong tradition of
138 judicial due process in mortgage foreclosure cases while moving
139 mortgage foreclosure cases to final resolution expeditiously in
140 order to return real property to the stream of commerce, but to
141 do so consistent with due process and fundamental fairness and
142 without impairing the ability of the courts to manage their
143 dockets and schedules. This act is an effort to provide
144 additional tools to the courts to assist in achieving such a
145 balance.

16-00993A-12

20121890__

146 Section 3. Paragraph (b) of subsection (2) and subsection
147 (5) of section 95.11, Florida Statutes, are amended to read:

148 95.11 Limitations other than for the recovery of real
149 property.—Actions other than for recovery of real property shall
150 be commenced as follows:

151 (2) WITHIN FIVE YEARS.—

152 (b) A legal or equitable action on a contract, obligation,
153 or liability founded on a written instrument, except for an
154 action to enforce a claim against a payment bond, which shall be
155 governed by the applicable provisions of ss. 255.05(10) and
156 713.23(1)(e), and except for an action for a deficiency
157 judgment, which shall be governed by paragraph (5)(c) and s.
158 702.06.

159 (5) WITHIN ONE YEAR.—

160 (a) An action for specific performance of a contract.

161 (b) An action to enforce an equitable lien arising from the
162 furnishing of labor, services, or material for the improvement
163 of real property.

164 (c) An action to enforce rights under the Uniform
165 Commercial Code—Letters of Credit, chapter 675.

166 (d) An action against any guaranty association and its
167 insured, with the period running from the date of the deadline
168 for filing claims in the order of liquidation.

169 (e) An action to enforce any claim against a payment bond
170 on which the principal is a contractor, subcontractor, or sub-
171 subcontractor as defined in s. 713.01, for private work as well
172 as public work, from the last furnishing of labor, services, or
173 materials or from the last furnishing of labor, services, or
174 materials by the contractor if the contractor is the principal

16-00993A-12

20121890

175 on a bond on the same construction project, whichever is later.

176 (f) Except for actions described in subsection (8), a
177 petition for extraordinary writ, other than a petition
178 challenging a criminal conviction, filed by or on behalf of a
179 prisoner as defined in s. 57.085.

180 (g) Except for actions described in subsection (8), an
181 action brought by or on behalf of a prisoner, as defined in s.
182 57.085, relating to the conditions of the prisoner's
183 confinement.

184 (h) An action under s. 702.06, to collect a deficiency
185 following the foreclosure of an owner-occupied, one-family to
186 four-family dwelling unit.

187 Section 4. Section 701.04, Florida Statutes, is amended to
188 read:

189 701.04 Cancellation of mortgages, liens, and judgments.—

190 (1)(a) If a mortgagor, a holder of an interest in property
191 encumbered by a mortgage, or a designee of either makes a
192 written request for the payoff amount of the mortgage as of a
193 certain date, the holder of the mortgage shall provide a written
194 estoppel statement executed by an officer or authorized agent of
195 the holder of the mortgage to the person making the request
196 within 15 days after the date the request was received. The
197 estoppel statement shall be delivered to the place, facsimile
198 number, or e-mail address designated in the written request. The
199 estoppel statement shall set ~~Within 14 days after receipt of the~~
200 ~~written request of a mortgagor, the holder of a mortgage shall~~
201 ~~deliver to the mortgagor at a place designated in the written~~
202 ~~request an estoppel letter setting forth:~~

203 1. The unpaid balance of the loan secured by the mortgage,

16-00993A-12

20121890__

204 including principal, all accrued interest, and any other charges
205 properly due under or secured by the mortgage as of the date
206 specified in the request. ~~and~~

207 2. Interest on a per-day basis for the unpaid balance for a
208 period of at least 20 days after the date specified in the
209 request.

210 3. A certification that the party providing the estoppel
211 statement is the holder of the original promissory note secured
212 thereby, or is the person or agent of the person entitled to
213 enforce the note pursuant to s. 673.3011.

214 4. A commitment to comply with paragraph (d) upon timely
215 receipt of the amounts set forth in the estoppel statement.

216 (b) The mortgagee may not charge a fee for the preparation
217 or delivery of the first two estoppel statements requested for
218 any one mortgage in any calendar month. This paragraph is not
219 intended to limit requirements of federal law.

220 (c) Subsequent owners of the property encumbered by the
221 mortgage, and creditors and lienholders taking an interest in
222 the property for a valuable consideration, and those claiming
223 by, through, and under them, may rely on the estoppel statement
224 and are entitled to the benefits of the statement.

225 (d) Whenever the amount of money due on a ~~any~~ mortgage,
226 lien, or judgment ~~is shall be~~ fully paid to the person or party
227 entitled to ~~the~~ payment ~~thereof~~, or all obligations secured by
228 the mortgage or lien are otherwise satisfied, the mortgagee,
229 creditor, or assignee, ~~or the attorney of record in the case of~~
230 a judgment, to whom such payment ~~has shall have~~ been made or
231 satisfaction has been given, shall execute in writing an
232 instrument acknowledging satisfaction of the ~~said~~ mortgage,

16-00993A-12

20121890__

233 ~~lien, or judgment~~ and have the same acknowledged, or proven, and
234 recorded ~~duly entered of record~~ in the official records book
235 ~~provided by law for such purposes~~ in the proper county. If the
236 person or party executing the satisfaction is not shown as the
237 owner of the mortgage in the official records, the instrument
238 shall be supplemented by an affidavit that the person executing
239 the satisfaction is in physical possession of the original
240 promissory note secured by the mortgage or was entitled to
241 enforce the note pursuant to s. 673.3011. If the person was
242 entitled only to enforce the note, but was not in possession of
243 the note, the person shall provide in the affidavit the specific
244 factual basis for such authority.

245 (e) If the written request for the payoff amount for the
246 mortgage as of a certain date is not from the mortgagor or the
247 designee of the mortgagor, the request must include a copy of
248 the instrument or instruments showing the requestor's ownership
249 interest in the property. The mortgageholder, in response to the
250 request, is not required to itemize the unpaid balance of the
251 loan secured by the mortgage.

252 (2) (a) Within 60 days after ~~of~~ the date of receipt of the
253 full payment of the mortgage in accord with the estoppel
254 statement, ~~lien, or judgment,~~ the person required to acknowledge
255 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or
256 cause to be sent the recorded satisfaction to the maker of the
257 promissory note, or such other person as may be designated in
258 writing by the payor at or after the final payment, a certified
259 copy of the recorded satisfaction. The person shall send to the
260 payor of a mortgage note:

261 1. The original promissory note, marked "paid in full"; or

16-00993A-12

20121890

262 2. An affidavit stating that the note was lost, destroyed,
263 or stolen, together with exhibits in compliance with s. 702.015
264 and evidence of adequate protections as provided in s. 702.11.

265 (b) If the documents required by this subsection are not
266 delivered within 60 days, the party who received payment on the
267 note or mortgage shall pay to the maker of the promissory note
268 or its designee a fee in the amount of \$100 per day for each day
269 beyond 60 days that the documents have not been delivered. The
270 aggregate fees under this paragraph may not exceed \$5,000.

271 (3) A summary procedure pursuant to s. 51.011 may be
272 brought to compel compliance with the requirements of this
273 section, and the prevailing party shall recover reasonable
274 attorney fees and costs. The court may limit recovery of
275 attorney fees and costs if an unreasonable number of requests
276 for estoppel statements have been made. ~~person who has made the~~
277 full payment. In the case of a civil action arising out of the
278 provisions of this section, the prevailing party shall be
279 entitled to attorney's fees and costs.

280 (4)~~(2)~~ Whenever a writ of execution has been issued,
281 docketed, and indexed with a sheriff and the judgment upon which
282 it was issued has been fully paid, it is ~~shall be~~ the
283 responsibility of the party receiving payment to request, in
284 writing, addressed to the sheriff, return of the writ of
285 execution as fully satisfied.

286 Section 5. Section 701.045, Florida Statutes, is created to
287 read:

288 701.045 Cancellation of liens and judgments.—

289 (1) Whenever the amount of money due on a lien, other than
290 a mortgage, or judgment is fully paid, the person or party

16-00993A-12

20121890__

291 entitled to payment, or the creditor or assignee, to whom
292 payment has been made shall execute in writing an instrument
293 acknowledging satisfaction of the lien or judgment and have it
294 acknowledged or proven and recorded in the official records in
295 the proper county. Within 60 days after the date of receipt of
296 the full payment of the lien or judgment, the person required to
297 acknowledge satisfaction of the lien or judgment shall send a
298 certified copy of the recorded satisfaction to the person who
299 made the full payment. In the case of a civil action arising out
300 of this section, the prevailing party is entitled to attorney
301 fees and costs.

302 (2) Whenever a writ of execution has been issued, docketed,
303 and indexed with a sheriff and the judgment upon which it was
304 issued has been fully paid, the party receiving payment shall
305 request, in writing and addressed to the sheriff, return of the
306 writ of execution as fully satisfied.

307 (3) The party receiving full payment of any judgment shall
308 also comply with s. 55.206 relating to statements releasing a
309 judgment lien.

310 Section 6. Section 702.015, Florida Statutes, is created to
311 read:

312 702.015 Elements of complaint; lost, destroyed, or stolen
313 note affidavit.—

314 (1) Any complaint that seeks to foreclose a mortgage or
315 other lien on residential real property, including individual
316 units of condominiums and cooperatives, designed principally for
317 occupation by from one to four families, but not including an
318 interest in a timeshare property, which secures a promissory
319 note must:

16-00993A-12

20121890

320 (a) Contain affirmative allegations expressly made by the
321 plaintiff at the time the proceeding is commenced that the
322 plaintiff is the holder of the original note secured by the
323 mortgage; or

324 (b) Allege with specificity the factual basis by which the
325 plaintiff is a person entitled to enforce the note under s.
326 673.3011.

327 (2) If a party has been delegated the authority to
328 institute a mortgage foreclosure action on behalf of the holder
329 of the note, the complaint shall describe the authority of the
330 plaintiff and identify, with specificity, the document that
331 grants the plaintiff the authority to act on behalf of the
332 holder of the note. This subsection is intended to require
333 initial disclosure of status and pertinent facts and not to
334 modify law regarding standing or real parties in interest.

335 (3) If the plaintiff is in physical possession of the
336 original promissory note, the plaintiff must file with the
337 court, contemporaneously with and as a condition precedent to
338 the filing of the complaint for foreclosure, certification,
339 under penalty of perjury, that the plaintiff is in physical
340 possession of the original promissory note. The certification
341 must set forth the physical location of the note, the name and
342 title of the individual giving the certification, and the name
343 of the person who personally verified such physical possession,
344 and the time and date on which possession was verified. Correct
345 copies of the note and all allonges to the note must be attached
346 to the certification. The original note and the allonges must be
347 filed with the court before the entry of any judgment of
348 foreclosure or judgment on the note.

16-00993A-12

20121890__

349 (4) If the plaintiff seeks to enforce a lost, destroyed, or
350 stolen instrument, an affidavit executed under penalty of
351 perjury must be attached to the complaint. The affidavit must:

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

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

357 (c) Include as exhibits to the affidavit such copies of the
358 note and the allonges to the note, assignments of mortgage,
359 audit reports showing physical receipt of the original note, or
360 other evidence of the acquisition, ownership, and possession of
361 the note as may be available to the plaintiff.

362 Section 7. Section 702.034, Florida Statutes, is created to
363 read:

364 702.034 Notice of rights and obligations of mortgagors and
365 tenants by foreclosing party.—

366 (1) The foreclosing party in a mortgage foreclosure action
367 involving residential real property, including individual units
368 of condominiums and cooperatives, designed principally for
369 occupancy by from one to four families, but not including an
370 interest in a timeshare property, shall provide notice
371 substantially in accordance with this section to:

372 (a) A mortgagor having an interest in the property and the
373 record title owners of the property; and

374 (b) All tenants of a dwelling unit on the property if the
375 foreclosing party is seeking to foreclose the interest of the
376 tenants.

377 (2) The notice required under paragraph (1) (a) shall:

16-00993A-12

20121890__

378 (a) Be delivered along with the summons and complaint. The
379 notice must be in 14-point boldfaced type and the title of the
380 notice must be in 20-point boldfaced type. The notice must be on
381 its own page.

382 (b) Appear as follows:

383

384 NOTICE: YOU ARE IN DANGER OF LOSING YOUR HOME

385

386 If you fail to respond to the summons and complaint in
387 this foreclosure action, you may lose your home.

388 Please read the summons and complaint carefully. You
389 should immediately contact an attorney or your local
390 legal aid office to obtain advice on how to protect
391 yourself. Sending a payment to your mortgage company
392 will not stop this foreclosure action.

393

394 YOU MUST RESPOND BY PREPARING A FORMAL WRITTEN
395 RESPONSE AND DELIVERING A COPY OF YOUR RESPONSE TO THE
396 ATTORNEY FOR THE PLAINTIFF (LENDER) AND BY FILING THE
397 ORIGINAL RESPONSE WITH THE COURT WITHIN 20 DAYS AFTER
398 BEING SERVED. THERE IS NO CHARGE FOR FILING THE
399 WRITTEN RESPONSE. A TELEPHONE CALL OR E-MAIL TO THE
400 ATTORNEY FOR THE PLAINTIFF WILL NOT SATISFY THE
401 REQUIREMENT TO FILE A RESPONSE. THIS LAWSUIT DOES NOT
402 MEAN THAT YOU MUST IMMEDIATELY MOVE OUT OF YOUR
403 PROPERTY.

404

405 SOURCES OF INFORMATION AND ASSISTANCE:

406 The state encourages you to become informed about your

16-00993A-12

20121890__

407 options in foreclosure. You should contact a licensed
408 Florida attorney to assist you. If you cannot afford
409 an attorney, your local legal aid office may be able
410 to assist you at little or no cost. You may also wish
411 to contact government agencies and nonprofit
412 organizations that may provide you with cost-free
413 information about possible options, including working
414 with your lender during this process.

415
416 FORECLOSURE RESCUE SCAMS:

417 Be cautious of people who approach you with offers to
418 help you keep your home. Some individuals watch for
419 notices of foreclosure actions in order to unfairly
420 profit from a homeowner's distress. You should be
421 extremely cautious about any promises for help and any
422 suggestions that you should pay these individuals a
423 fee or transfer the deed to your property to them.
424 State law requires any nonattorney offering such
425 services for profit to enter into a contract that
426 fully describes the services they will perform and the
427 fees they will charge. State law also prohibits the
428 person from taking any money from you until they have
429 completed all such promised services.

430
431 (3) The notice to any tenant required under paragraph
432 (1) (b) shall:

433 (a) Be delivered with the summons and complaint. The title
434 of the notice must be in 14-point boldfaced type and the title
435 of the notice must be in 20-point boldfaced type. The notice

16-00993A-12

20121890__

436 must be on its own page.

437 (b) Appear substantially as follows:

438

439 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE

440

441 Florida law requires that you be provided with this
442 notice about the foreclosure process. Please read it
443 carefully.

444

445 We, ...(name of foreclosing party)..., are the
446 foreclosing party and are located at ...(foreclosing
447 party's address).... We can be reached at
448 ...(foreclosing party's telephone number)....

449

450 The property you are renting is the subject of a
451 foreclosure proceeding. You should file a written
452 response to this summons and complaint and deliver a
453 copy of the written response to the attorney for the
454 plaintiff and file the original with the court within
455 20 days after being served. There is no charge for
456 filing the written response. A telephone call or an e-
457 mail to the attorney for the plaintiff will not
458 satisfy the requirement to file a response. If you
459 have a written lease and are not the owner of the
460 residence, and the lease required payment of rent
461 that, at the time it was entered into, was not
462 substantially less than the fair market rent for the
463 property, you may be entitled to remain in occupancy
464 under the federal Protecting Tenants at Foreclosure

16-00993A-12

20121890__

465 Act of 2009. If you do not have a written lease, under
466 the same federal law you may be entitled to remain in
467 your home until 90 days after the person or entity
468 that acquires title to the property provides you with
469 a notice to vacate the premises. If you are a
470 subsidized tenant under federal, state, or local law
471 or if you are a tenant subject to rent control, rent
472 stabilization, or a federal statutory scheme, you may
473 have other rights. If the federal Protecting Tenants
474 at Foreclosure Act of 2009 and these other laws do not
475 apply to your situation, you may be required to vacate
476 the property upon completion of the foreclosure. The
477 filing of a foreclosure action does not automatically
478 terminate your obligation to pay rent to your
479 landlord. You should contact a licensed Florida
480 attorney to understand your rights. If you cannot
481 afford an attorney, your local legal aid office may be
482 able to assist you at little or no cost to you.

483
484 (4) Only one notice is required under this section for any
485 party defendant.

486 (5) The notice required by subsections (1)-(3) is
487 informational only. The failure to strictly comply with the
488 notice requirements of this section does not affect the validity
489 of any final judgment of foreclosure which may be granted, or
490 give rise to any independent cause of action or claim for
491 damages against the plaintiff or any other party.

492 Section 8. Section 702.035, Florida Statutes, is amended to
493 read:

16-00993A-12

20121890

494 702.035 Publication requirements for legal notices ~~notice~~
495 concerning foreclosure proceedings.—Whenever a legal
496 advertisement, publication, or notice relating to a foreclosure
497 proceeding is required to be placed in a newspaper, ~~it is the~~
498 ~~responsibility of the~~ petitioner or petitioner's attorney is
499 responsible for placing the ~~to place such~~ advertisement,
500 publication, or notice. For counties having a total population
501 greater with more than 1 million ~~total population~~ as reflected
502 in the 2010 ~~2000~~ Official Decennial Census of the United States
503 Census Bureau as shown on the official website of the United
504 States Census Bureau, any notice of publication required by this
505 section shall be deemed to have been published in accordance
506 with the law if the notice is published in a newspaper that has
507 been entered as a periodical matter at a post office in the
508 county in which the newspaper is published, is published a
509 minimum of 5 days a week, exclusive of legal holidays, and has
510 been in existence and published a minimum of 5 days a week,
511 exclusive of legal holidays, for 1 year or is a direct successor
512 to a newspaper that has been in existence for 1 year that has
513 been published a minimum of 5 days a week, exclusive of legal
514 holidays. The advertisement, publication, or notice shall be
515 placed directly by the attorney for the petitioner, by the
516 petitioner if acting pro se, or by the clerk of the court. Only
517 the actual costs charged by the newspaper for the advertisement,
518 publication, or notice may be charged as costs in the action.

519 Section 9. Section 702.036, Florida Statutes, is created to
520 read:

521 702.036 Finality of mortgage foreclosure judgment.—

522 (1) (a) In an action or proceeding in which a party seeks to

16-00993A-12

20121890

523 set aside, invalidate, or challenge the validity of a final
524 judgment of foreclosure of a mortgage or to establish or
525 reestablish a lien or encumbrance on the property in abrogation
526 of the final judgment of foreclosure of a mortgage, the court
527 shall treat such request solely as a claim for monetary damages
528 and may not grant relief that adversely affects the quality or
529 character of the title to the property, if:

530 1. A final judgment of foreclosure of a mortgage has been
531 entered as to a property;

532 2. All applicable appeals periods have run as to the final
533 judgment of foreclosure of a mortgage and an appeal has not been
534 filed or, if an appeal has been filed, it has not been finally
535 resolved;

536 3. The property has been acquired for value, by a person
537 not affiliated with the foreclosing lender or the foreclosed
538 owner, at a time in which no lis pendens regarding the suit to
539 set aside, invalidate, or challenge the foreclosure appears in
540 the official records of the county where the property was
541 located; and

542 4. The party seeking relief from the final judgment of
543 foreclosure of a mortgage has been properly served in the
544 foreclosure lawsuit as provided in chapter 48 or chapter 49.

545 (b) This subsection does not limit the right to pursue any
546 other relief to which a person may be entitled, including, but
547 not limited to, compensatory damages, punitive damages,
548 statutory damages, consequential damages, injunctive relief, or
549 fees and costs, and which does not adversely affect the
550 ownership of the title to the property as vested in the
551 unaffiliated purchaser for value.

16-00993A-12

20121890

552 (2) For purposes of this section, the following, without
553 limitation, shall be considered persons affiliated with the
554 foreclosing lender:

555 (a) The foreclosing lender or any loan servicer for the
556 loan being foreclosed;

557 (b) Any past or present owner or holder of the loan being
558 foreclosed;

559 (c) Any maintenance company, holding company, foreclosure
560 services company, or law firm under contract to any entity
561 listed in paragraph (a), paragraph (b), or this paragraph, with
562 regard to the loan being foreclosed; or

563 (d) Any parent entity, subsidiary, or other person who
564 directly, or indirectly through one or more intermediaries,
565 controls or is controlled by, or is under common control with,
566 any entity listed in paragraph (a), paragraph (b), or paragraph
567 (c).

568 (3) After foreclosure of a mortgage based upon the
569 enforcement of a lost, destroyed, or stolen note, a person who
570 is not a party to the underlying foreclosure action but who
571 claims to be the actual holder of the promissory note secured by
572 the foreclosed mortgage does not have a claim against the
573 foreclosed property after it has been conveyed for valuable
574 consideration to a person not affiliated with the foreclosing
575 lender or the foreclosed owner. This section does not preclude
576 the actual holder of the note from pursuing recovery from any
577 adequate protection given under s. 673.3091 by the person who
578 enforced the note or from the party who wrongfully claimed to be
579 the owner or holder of the promissory note or the maker of the
580 note or from any other person against whom the actual holder of

16-00993A-12

20121890__

581 the note may have a claim relating to the note.

582 Section 10. Section 702.04, Florida Statutes, is amended to
583 read:

584 702.04 Foreclosing mortgages and liens on Mortgaged lands
585 in different counties.-~~If~~ When a mortgage or other lien applies
586 to includes lands, railroad track, right-of-way, or terminal
587 facilities and station grounds, located lying in ~~two or~~ more
588 than one county counties, the mortgage or lien it may be
589 foreclosed in any one of the said counties where the property is
590 located., and All proceedings relating to the mortgage or lien
591 shall occur be had in the same that county as if all the
592 ~~mortgaged~~ land, railroad track, right-of-way, or terminal
593 facilities and station grounds lay in the same county. However
594 ~~therein~~, any except that notice of the sale of foreclosed
595 property must be published in every county where wherein any of
596 the lands, railroad track, right-of-way, or terminal facilities
597 and station grounds to be sold are located lie. After final
598 disposition of the suit, the clerk of the circuit court shall
599 prepare and forward a certified copy of the decree of
600 foreclosure, and the certificates of title, if any, and sale and
601 of the decree of confirmation of sale to the clerk of the
602 circuit court of every county where wherein any of the ~~mortgaged~~
603 lands, railroad tracks, right-of-way, or terminal facilities and
604 station grounds are located lie, to be recorded in the official
605 records foreign judgment book of each such county, and the costs
606 of such copies and of the recording the decree of foreclosure
607 and the certificates of title record thereof shall be taxed as
608 costs in the cause.

609 Section 11. Section 702.06, Florida Statutes, is amended to

16-00993A-12

20121890__

610 read:

611 702.06 Deficiency decree; ~~common-law~~ suit to recover
612 deficiency.-

613 (1) In an action all suits for the foreclosure of a
614 mortgage, mortgages heretofore or hereafter executed the entry
615 of a deficiency decree for any portion of a deficiency, should
616 one exist, must shall be commenced within 1 year after the sale
617 date of the mortgaged property pursuant to a court foreclosure
618 sale or short sale. If not commenced within 1 year after sale,
619 any attempt to collect a deficiency judgment shall be barred.
620 The amount of the deficiency judgment may not exceed the
621 difference between the outstanding debt and the fair market
622 value of the property on the date of sale. The amount of the
623 deficiency judgment may be set off by the amount collected by
624 the servicer or lender pursuant to any mortgage insurance held
625 on the property purchased by the borrower. the sound judicial
626 discretion of the court, but The complainant shall also have the
627 right to sue at common law to recover such deficiency, unless
628 the court in the foreclosure action has granted or denied a
629 claim for a deficiency judgment provided no suit at law to
630 recover such deficiency shall be maintained against the original
631 mortgagor in cases where the mortgage is for the purchase price
632 of the property involved and where the original mortgagee
633 becomes the purchaser thereof at foreclosure sale and also is
634 granted a deficiency decree against the original mortgagor.

635 (2) (a) With respect to an owner-occupied, one-family to
636 four-family dwelling unit, the party to whom a deficiency is
637 owing may move for the entry of a deficiency judgment in the
638 foreclosure action or file a separate action for collection of

16-00993A-12

20121890__

639 the deficiency, The separate action must be filed within 1 year
640 after the property has vested in the foreclosing lender or other
641 purchaser at the foreclosure sale.

642 (b) If a deficiency is not pursued within the time period
643 specified in this subsection, the vesting of the property or
644 proceeds of the sale, regardless of the amount, shall be deemed
645 to be in full satisfaction of the judgment debt and a right to
646 recover any deficiency in any subsequent action or proceeding is
647 extinguished.

648 (c) This subsection does not restrict the authority of the
649 court to determine the entitlement to any assets held by any
650 receiver or any assignee of the rents and profits of the
651 property.

652 Section 12. Section 702.065, Florida Statutes, is amended
653 to read:

654 702.065 Final judgment in uncontested mortgage foreclosure
655 proceedings where deficiency judgment waived; attorney
656 attorney's fees when default judgment entered.-

657 (1) In uncontested mortgage foreclosure proceedings in
658 which the mortgagee waives the right to recoup any deficiency
659 judgment, the court shall enter final judgment within 90 days
660 after from the date of the close of pleadings. For ~~the~~ purposes
661 of this subsection, a mortgage foreclosure proceeding is
662 uncontested if a default has been entered against all defendants
663 or no response an answer not contesting the foreclosure has been
664 timely filed or a default judgment has been entered by the
665 court.

666 (2) In a mortgage foreclosure proceeding, the parties are
667 not required to file affidavits of reasonable fees and the court

16-00993A-12

20121890__

668 is not required to hold a hearing or adjudge the requested
669 attorney fees to be reasonable if: ~~when a default judgment has~~
670 ~~been entered against the mortgagor and~~

671 (a) The note or mortgage provides for the award of
672 reasonable attorney attorney's fees; and, ~~it is not necessary~~
673 ~~for the court to hold a hearing or adjudge the requested~~
674 ~~attorney's fees to be reasonable if~~

675 (b) The fees do not exceed the greater of 1.5 3 percent of
676 the principal amount owed at the time of filing the complaint or
677 \$1,500,

678
679 ~~even if the note or mortgage does not specify the percentage of~~
680 ~~the original amount that would be paid as liquidated damages.~~
681 ~~Such fees constitute liquidated damages in any proceeding to~~
682 ~~enforce the note or mortgage.~~

683 (3) This section does not preclude a challenge, in the same
684 action, to the reasonableness of the attorney attorney's fees.

685 Section 13. Section 702.10, Florida Statutes, is amended to
686 read:

687 702.10 ~~Order to Show cause hearing;~~ entry of final judgment
688 of foreclosure; payment during foreclosure.-

689 (1) After a complaint in a foreclosure proceeding has been
690 filed which is verified in the form of an affidavit sufficient
691 to support a motion for summary judgment, the plaintiff
692 mortgagee may request a hearing to show cause an order to show
693 cause for the entry of final judgment and the court shall
694 immediately review the complaint. Upon such request, the clerk
695 ~~If, upon examination of the complaint, the court finds that the~~
696 ~~complaint is verified and alleges a cause of action to foreclose~~

16-00993A-12

20121890__

697 ~~on real property, the court~~ shall promptly issue a summons ~~an~~
698 ~~order~~ directed to each ~~the~~ defendant to show cause why a final
699 judgment of foreclosure should not be entered.

700 (a) The summons ~~order~~ shall:

701 1. Set the date and time for a hearing ~~on the order~~ to show
702 cause. However, the date for the hearing may not occur ~~be set~~
703 sooner than 20 days after the service of the summons or 45 days
704 after the service of the complaint, whichever is later ~~order~~. If
705 ~~when~~ service is obtained by publication, the date for the
706 hearing may not be set sooner than 55 ~~30~~ days after the first
707 publication. ~~The hearing must be held within 60 days after the~~
708 ~~date of service. Failure to hold the hearing within such time~~
709 ~~does not affect the validity of the order to show cause or the~~
710 ~~jurisdiction of the court to issue subsequent orders.~~

711 ~~2. Direct the time within which service of the order to~~
712 ~~show cause and the complaint must be made upon the defendant.~~

713 ~~2.3.~~ State that the filing of defenses by a motion or by a
714 responsive pleading ~~verified or sworn answer~~ at or before the
715 hearing to show cause may constitute ~~constitutes~~ cause for the
716 court not to enter a ~~the attached~~ final judgment of foreclosure.

717 ~~3.4.~~ State that any ~~the~~ defendant has the right to file
718 affidavits or other papers at or before the time of the hearing
719 to show cause and may appear personally or by way of an attorney
720 at the hearing.

721 ~~4.5.~~ State that, if a ~~the~~ defendant files defenses by a
722 motion, the hearing time may be used to hear the defendant's
723 motion.

724 ~~5.6.~~ State that, if a ~~the~~ defendant fails to appear at the
725 hearing to show cause or fails to file a response ~~defenses by a~~

16-00993A-12

20121890__

726 ~~motion or by a verified or sworn answer~~ or files an answer not
727 contesting the foreclosure, the defendant is deemed ~~may be~~
728 ~~considered~~ to have waived the right to a hearing and in such
729 case the court shall, unless the record shows that the relief is
730 unavailable, ~~may~~ enter a final judgment of foreclosure ordering
731 the clerk of the court to conduct a foreclosure sale.

732 ~~6.7.~~ State that the parties are not required to file
733 affidavits of reasonable fees and the court is not required to
734 hold a hearing or adjudge the requested attorney fees to be
735 reasonable if the mortgage provides for reasonable attorney
736 attorney's fees and the requested attorney ~~attorney's~~ fees do
737 not exceed the greater of 1.5 ~~3~~ percent of the principal amount
738 owed at the time of filing the complaint or \$1,500, ~~it is~~
739 ~~unnecessary for the court to hold a hearing or adjudge the~~
740 ~~requested attorney's fees to be reasonable.~~

741 ~~7.8.~~ Include as an attachment to the summons ~~Attach~~ the
742 proposed final judgment of foreclosure the plaintiff requests
743 the court to ~~will~~ enter, ~~if the defendant waives the right to be~~
744 ~~heard~~ at the hearing on the order to show cause.

745 ~~8.9.~~ Require the plaintiff mortgagee to serve a copy of the
746 summons ~~order~~ to show cause on each defendant ~~the mortgagor~~ in
747 the following manner:

748 a. If a defendant ~~the mortgagor~~ has been served with the
749 complaint and original process, service of the summons to show
750 cause on that defendant ~~order~~ may be made in the manner provided
751 in the Florida Rules of Civil Procedure.

752 b. If a defendant ~~the mortgagor~~ has not been served with
753 the complaint and original process, the summons ~~order~~ to show
754 cause, together with ~~the summons~~ and a copy of the complaint,

16-00993A-12

20121890__

755 shall be served on the defendant ~~mortgagor~~ in the same manner as
756 provided by law for original process.

757

758 Any final judgment of foreclosure entered under this subsection
759 is for in rem relief only. ~~Nothing in~~ This subsection does not
760 ~~shall~~ preclude the entry of a deficiency judgment where
761 otherwise allowed by law.

762 (b) The right to be heard at the hearing to show cause is
763 waived if a ~~the~~ defendant, after being served as provided by law
764 with a ~~an order to~~ show cause summons, fails to file a response
765 contesting the foreclosure which would be sufficient to preclude
766 the entry of a summary judgment, and fails ~~engages in conduct~~
767 ~~that clearly shows that the defendant has relinquished the right~~
768 ~~to be heard on that order. The defendant's failure to file~~
769 ~~defenses by a motion or by a sworn or verified answer or to~~
770 appear at the hearing ~~duly~~ scheduled on the ~~order to~~ show cause
771 summons ~~presumptively constitutes conduct that clearly shows~~
772 ~~that the defendant has relinquished the right to be heard. If a~~
773 defendant:

774 1. Files a response contesting the foreclosure at or before
775 the hearing and the response would be sufficient to preclude the
776 entry of a summary judgment; or

777 2. Appears at the hearing and presents evidence or argument
778 sufficient to preclude the entry of a summary judgment ~~defenses~~
779 ~~by a motion or by a verified or sworn answer at or before the~~
780 hearing,

781

782 such actions constitute ~~action constitutes~~ cause upon the
783 determination of the court as set forth in paragraph (d) and

16-00993A-12

20121890__

784 ~~shall preclude~~ precludes the entry of a final judgment at the
785 hearing to show cause.

786 (c) In a mortgage foreclosure proceeding, when a default
787 judgment has been entered against the mortgagor the parties are
788 not required to file affidavits of reasonable fees and the court
789 is not required to hold a hearing or adjudge the requested
790 attorney fees to be reasonable if: and

791 1. The note or mortgage provides for the award of
792 reasonable attorney ~~attorney's~~ fees; ~~and, it is unnecessary for~~
793 ~~the court to hold a hearing or adjudge the requested attorney's~~
794 ~~fees to be reasonable if~~

795 2. The fees do not exceed the greater of 1.5 ~~3~~ percent of
796 the principal amount owed on the note or mortgage at the time of
797 filing of the complaint or \$1,500~~7~~

798
799 ~~even if the note or mortgage does not specify the percentage of~~
800 ~~the original amount that would be paid as liquidated damages.~~

801 (d) If the court finds that each ~~the~~ defendant has waived
802 the right to be heard as provided in paragraph (b), the court
803 shall promptly enter a final judgment of foreclosure without the
804 need for a further hearing upon the filing with the court of the
805 original note, satisfaction of the conditions for establishment
806 of a lost note pursuant to law, or a showing to the court that
807 the obligation to be foreclosed is not evidenced by a promissory
808 note or other negotiable instrument. If the court finds that a
809 ~~the~~ defendant has not waived the right to be heard on the
810 summons ~~order~~ to show cause, the court shall ~~then~~ determine
811 whether ~~there is~~ cause exists ~~not~~ to enter a final judgment of
812 foreclosure. If, upon hearing, the court finds that a ~~the~~

16-00993A-12

20121890__

813 defendant has not shown cause, the court shall promptly enter a
814 judgment of foreclosure.

815 (2) In an action for a mortgage foreclosure on a property
816 other than a homestead, ~~other than residential real estate~~, the
817 mortgagee may request that the court enter an order directing
818 the mortgagor defendant to show cause why an order to make
819 payments during the pendency of the foreclosure proceedings or
820 an order to vacate the premises should not be entered.

821 (a) The order shall:

822 1. Set the date and time for hearing on the order to show
823 cause. However, the date for the hearing may ~~shall~~ not be set
824 sooner than 20 days after the service of the order. If ~~Where~~
825 service is obtained by publication, the date for the hearing may
826 ~~shall~~ not be set sooner than 30 days after the first
827 publication.

828 2. Direct the time within which service of the order to
829 show cause and the complaint shall be made upon each ~~the~~
830 defendant.

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

834 4. State that, if a ~~the~~ defendant fails to appear at the
835 hearing to show cause and fails to file defenses by a motion or
836 by a verified or sworn answer, the defendant may be deemed to
837 have waived the right to a hearing and in such case the court
838 may enter an order to make payment or vacate the premises.

839 5. Require the mortgagee to serve a copy of the order to
840 show cause on the mortgagor in the following manner:

841 a. If the mortgagor has been served with the complaint and

16-00993A-12

20121890__

842 original process, service of the order may be made in the manner
843 provided in the Florida Rules of Civil Procedure.

844 b. If the mortgagor has not been served with the complaint
845 and original process, the order to show cause, together with the
846 summons and a copy of the complaint, shall be served on the
847 mortgagor in the same manner as provided by law for original
848 process.

849 (b) The right of a defendant to be heard at the hearing to
850 show cause is waived if the defendant, after being served as
851 provided by law with an order to show cause, engages in conduct
852 that clearly shows that the defendant has relinquished the right
853 to be heard on that order. A ~~The~~ defendant's failure to file
854 defenses by a motion or by a sworn or verified answer or to
855 appear at the hearing duly scheduled on the order to show cause
856 presumptively constitutes conduct that clearly shows that the
857 defendant has relinquished the right to be heard.

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

862 (d) If the court finds that the mortgagor has not waived
863 the right to be heard on the order to show cause, the court
864 shall, at the hearing on the order to show cause, consider the
865 affidavits and other showings made by the parties appearing and
866 make a determination of the probable validity of the underlying
867 claim alleged against the mortgagor and the mortgagor's
868 defenses. If the court determines that the mortgagee is likely
869 to prevail in the foreclosure action, the court shall enter an
870 order requiring the mortgagor to make the payment described in

16-00993A-12

20121890__

871 paragraph (e) to the mortgagee and provide for a remedy as
872 described in paragraph (f). However, the order shall be stayed
873 pending final adjudication of the claims of the parties if the
874 mortgagor files with the court a written undertaking executed by
875 a surety approved by the court in an amount equal to the unpaid
876 balance of the mortgage on the property, including all
877 principal, interest, unpaid taxes, and insurance premiums paid
878 by the mortgagee.

879 (e) If ~~In the event~~ the court enters an order requiring the
880 mortgagor to make payments to the mortgagee, payments shall be
881 payable at such intervals and in such amounts provided for in
882 the mortgage instrument before acceleration or maturity. The
883 obligation to make payments pursuant to any order entered under
884 this subsection shall commence from the date of the motion filed
885 under this section hereunder. The order shall be served upon the
886 mortgagor no later than 20 days before the date specified for
887 the first payment. The order may permit, but may shall not
888 require the mortgagee to take all appropriate steps to secure
889 the premises during the pendency of the foreclosure action.

890 (f) If ~~In the event~~ the court enters an order requiring
891 payments the order shall also provide that the mortgagee shall
892 be entitled to possession of the premises upon the failure of
893 the mortgagor to make the payment required in the order unless
894 at the hearing on the order to show cause the court finds good
895 cause to order some other method of enforcement of its order.

896 (g) All amounts paid pursuant to this section shall be
897 credited against the mortgage obligation in accordance with the
898 terms of the loan documents. ~~provided,~~ However, ~~that~~ any
899 payments made under this section do shall not constitute a cure

16-00993A-12

20121890__

900 of any default or a waiver or any other defense to the mortgage
901 foreclosure action.

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

906 (i) For purposes of this section, a rebuttable presumption
907 exists that a residential property for which a homestead
908 exemption for taxation was granted according to the certified
909 rolls of the latest assessment by the county property appraiser,
910 before the filing of the foreclosure action, is a homestead.

911 (3) This section does not supersede or limit other
912 procedures adopted by the court, including, but not limited to,
913 mandatory mediation and alternative dispute resolution
914 processes.

915 Section 14. Section 702.11, Florida Statutes, is created to
916 read:

917 702.11 Adequate protections for lost, destroyed, or stolen
918 notes in mortgage foreclosure.-

919 (1) In connection with a mortgage foreclosure, the court
920 may find that the person required to pay the note securing the
921 mortgage is adequately protected under s. 673.3091 against a
922 loss that may occur by reason of a claim by another person to
923 enforce the mortgage if the person seeking to enforce the
924 mortgage provides:

925 (a) A written indemnification agreement by a person
926 reasonably believed sufficiently solvent to honor such an
927 obligation;

928 (b) A surety bond;

16-00993A-12

20121890

929 (c) A letter of credit issued by a financial institution;

930 (d) A deposit of cash collateral with the clerk of the
931 court; or

932 (e) Such other security as the court may deem appropriate
933 under the circumstances.

934
935 Any security given shall be on terms and in amounts set by the
936 court, for a time period through the running of the statute of
937 limitations for enforcement of the underlying note, and
938 conditioned to indemnify and hold harmless the maker of the note
939 against any loss or damage, including principal, interest, and
940 attorney fees and costs, which might occur by reason of a claim
941 by another person to enforce the note.

942 (2) Any person who wrongly claimed to be the holder of or,
943 pursuant to s. 673.3011, wrongly claimed to be entitled to
944 enforce a lost, stolen, or destroyed note and caused the
945 mortgage secured by the note to be foreclosed is liable to the
946 actual holder of the note for actual damages suffered, together
947 with attorney fees and costs of the actual holder of the note in
948 enforcing rights under this section. The extent of the liability
949 is not limited to any adequate protections given under s.
950 673.3091. In addition, the actual holder of the note may pursue
951 recovery directly against any adequate protections given.

952 (a) The actual holder of the note is not required to pursue
953 recovery against the maker of the note or any guarantor of the
954 note as a condition precedent to pursuing remedies under this
955 section.

956 (b) This section does not limit or restrict the ability of
957 the actual holder of the note to pursue any other claims or

16-00993A-12

20121890__

958 remedies it may have against the maker, the person who wrongly
959 claimed to be the holder, or any person who facilitated or
960 participated in the claim to the note or enforcement of the
961 note.

962 Section 15. Section 702.12, Florida Statutes, is created to
963 read:

964 702.12 Attorney fees; sanctions for raising unsupported
965 claims or defenses; damages for delay of litigation.—Section
966 57.105, which authorizes attorney fees and sanctions for raising
967 unsupported claims or defenses or for causing an unreasonable
968 delay, applies to mortgage foreclosure actions.

969 Section 16. Section 702.13, Florida Statutes, is created to
970 read:

971 702.13 Expedited foreclosure of abandoned residential real
972 property.—

973 (1) As used in this section, the term “abandoned
974 residential real property” means residential real property that
975 is deemed abandoned upon a showing that:

976 (a) A duly licensed process server unaffiliated with the
977 owner or servicer of any mortgage on the residential real
978 property or with the attorney or law firm representing such
979 owner or servicer has made at least three attempts to locate an
980 occupant of the residential real property. The attempts must
981 have been made at least 72 hours apart, and at least one each of
982 such attempts must have been made before 12 p.m., between 12
983 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt
984 must include physically knocking or ringing at the door of the
985 residential real property and such other efforts as are normally
986 sufficient to obtain a response from an occupant.

16-00993A-12

20121890__

- 987 (b) Two or more of the following conditions exist:
988 1. Windows or entrances to the premises are boarded up or
989 closed off or multiple window panes are broken and unrepaired.
990 2. Doors to the premises are smashed through, broken off,
991 unhinged, or continuously unlocked.
992 3. Rubbish, trash, or debris has accumulated on the
993 mortgaged premises.
994 4. The premises are deteriorating and are below or in
995 imminent danger of falling below minimum community standards for
996 public safety and sanitation.

997
998 The process server making attempts to locate an occupant of the
999 residential real property may provide, by affidavit and
1000 photographic or other documentation, evidence of the condition
1001 of the residential real property.

1002 (2) (a) The party entitled to enforce the note and mortgage
1003 encumbering the residential real property appearing to be
1004 abandoned must file a petition before the court seeking to
1005 determine the status of the residential real property and to
1006 invoke an expedited foreclosure proceeding relating to the
1007 property. Upon the filing of an affidavit of diligent search and
1008 inquiry and the affidavit or documentary evidence set forth in
1009 subsection (1), the court shall, upon request of the petitioner,
1010 issue one or more subpoenas to the utility companies serving the
1011 residential real property commanding disclosure of the status of
1012 utility service to the subject property, including whether
1013 utilities are currently turned off and whether all outstanding
1014 utility payments have been made and, if so, by whom.

1015 (b) If, after review of the response of the utility

16-00993A-12

20121890

1016 companies to the subpoenas and all other matters of record, the
1017 court determines the property to have been abandoned, the party
1018 entitled to enforce the note and mortgage encumbering the
1019 residential real property shall be entitled to foreclose the
1020 mortgage using the expedited mortgage foreclosure procedures set
1021 forth in s. 702.10 upon service by publication. However, service
1022 must be made on associations holding liens for dues and
1023 assessments and all other junior lienholders as required by law.

1024 Section 17. Section 702.14, Florida Statutes, is created to
1025 read:

1026 702.14 Homestead; owner-occupied residential property.-

1027 (1) At the time of serving the initial complaint to
1028 foreclose a mortgage on an owner-occupied residential homestead
1029 property, the plaintiff must give proper notice to the borrower
1030 or owner that he or she has a right to request a conciliation
1031 conference or mediation before the entry of final judgment in
1032 the case in order to facilitate a modification or settlement
1033 with the lender. Such option is available only to owners of real
1034 property who have filed for homestead exemption status pursuant
1035 to s. 6, Art. VII of the State Constitution on or before the
1036 date a foreclosure complaint against the property has been filed
1037 with the clerk of the court. Such requirement is mandatory for
1038 foreclosure plaintiffs but optional for the owners, who may
1039 decline to exercise their right to a conciliation conference or
1040 mediation. The fact that lenders and owners have engaged in
1041 prefiling discussions does not exempt lenders from complying
1042 with this section. Also, in the initial letter to the owner or
1043 borrower, a lender who is a plaintiff must include a list of all
1044 documents required and necessary for the lender to determine

16-00993A-12

20121890__

1045 whether the borrower qualifies for a loan modification with such
1046 lender. Mediation or a conciliation conference is not required
1047 if the homestead owner fails to notify the plaintiff of the
1048 right to conduct a mediation or conciliation conference.

1049 (a) In all actions to foreclose on mortgages on residential
1050 properties that have filed for homestead exemption, or in cases
1051 in which the homestead status of the property is unknown or in
1052 doubt, the plaintiff must file with the complaint, and attach to
1053 the summons, a "Notice to Homeowners Facing Foreclosure."
1054 Parties shall require the notice to accompany the summons to be
1055 served upon each defendant and must advise recipients of the
1056 availability of a mediation or conciliation conference. The
1057 requirement that the notice be attached to all summons in
1058 residential foreclosure filings or where the homestead status is
1059 unknown is to ensure that a homestead owner is not inadvertently
1060 overlooked. The notice may be in substantially the following
1061 form and must include the information contained in the following
1062 form:

1063
1064 NOTICE TO HOMEOWNERS FACING FORECLOSURE

1065
1066 Owners of homestead properties facing foreclosure are
1067 eligible to participate in a Foreclosure Conciliation
1068 Conference (FCC) or Mediation to ascertain whether
1069 they qualify for a loan modification with the
1070 Lender/Plaintiff in this case or for settlement
1071 purposes. The features of the FCC or Mediation are as
1072 follows:

- 1073 1. This is voluntary for homestead owners. To

16-00993A-12

20121890__

1074 qualify, you must have filed for the Florida homestead
1075 exemption with the county property appraiser on the
1076 subject property on or before the date the foreclosure
1077 case was filed with the clerk of the court. This
1078 option is not available to renters or to nonhomestead
1079 owners.

1080 2. Lenders who file suit seeking to foreclose
1081 liens on homestead property are required by s. 702.12,
1082 Florida Statutes, to contact you and to invite you to
1083 participate in at least one mandatory Conciliation
1084 Telephone Conference or Mediation before the case can
1085 be concluded. The purpose of the Conciliation
1086 Telephone Conference or Mediation is for you to have
1087 an open and frank discussion about the alleged default
1088 and to consider alternatives to foreclosure. These may
1089 include such things as refinancing, partial
1090 forgiveness of debt, transferring title to qualified
1091 third parties, clarifying the amount required to
1092 reinstate or pay off the loan, deeds in lieu of
1093 foreclosure, protecting the property pending transfer
1094 of title, and establishing a mutually agreeable date
1095 for relinquishing possession. Communications between
1096 the parties and discussions during the conciliation
1097 conference are NOT confidential and may be referred to
1098 in future court proceedings. Communications between
1099 the parties at a mediation are confidential and must
1100 follow applicable law related to mediations.

1101 3. The Conciliation Telephone Conference will
1102 occur as soon as possible after you receive this

16-00993A-12

20121890__

1103 notice. Although your lender should attempt to contact
1104 you to schedule a mutually convenient date for the
1105 conference or mediation, to avoid miscommunication, if
1106 you wish to take advantage of the program, you should
1107 promptly provide the attorney filing the complaint
1108 with a letter stating your current contact
1109 information. Include your e-mail addresses and
1110 telephone numbers. Enclose a copy of this notice with
1111 your letter. However, this option is for the benefit
1112 of the homeowner, and you may decline to participate
1113 at any time. If you choose not to respond to this
1114 notice or to the lender's invitation to participate in
1115 a Conciliation Telephone Conference or Mediation,
1116 litigation will proceed in the normal course.

1117 4. There are three ways to participate in the
1118 Conciliation Telephone Conference or Mediation: by
1119 yourself, by hiring your own lawyer, or, if you
1120 qualify, by a volunteer attorney's assistance. Your
1121 lender may require you to sign legal papers confirming
1122 any understanding or agreement you may reach. Make
1123 sure you read and understand all documents before
1124 signing. If you do not have an attorney, it is
1125 recommended that you hire a member of The Florida Bar
1126 to review the documents before signing. If no
1127 agreement is reached, the case will proceed in due
1128 course to its conclusion.

1129 5. You may qualify for a volunteer attorney to be
1130 present with you during the Conciliation Telephone
1131 Conference or Mediation. Call The Florida Bar or legal

16-00993A-12

20121890__

1132 aid programs in your area to determine whether you are
1133 eligible for this pro bono (free) service. These
1134 attorneys are volunteering their time as a public
1135 service to assist in your discussions with the lender.
1136 You will not be charged for their time and advice.
1137 However, you must agree to appear in person on time
1138 for the Conciliation Telephone Conference or Mediation
1139 and be willing to communicate with your attorney and
1140 participate in good faith in your discussions with
1141 lenders. The attorney may withdraw from assisting you
1142 at any time if you fail to comply with these
1143 requirements. Private communications between you and
1144 the pro bono attorney are confidential.

1145
1146 IMPORTANT: Notice of limited legal representation.—The
1147 volunteer attorney assisting you in the Conciliation
1148 Telephone Conference or Mediation may limit his or her
1149 services to discussions with the lender and assisting
1150 you in exploring realistic alternatives to
1151 foreclosure. Unless specifically agreed to by the pro
1152 bono attorney in writing, he or she is NOT
1153 representing you for any other purpose in the case and
1154 will NOT be filing any papers or pleadings in your
1155 case. YOU HAVE TWENTY (20) DAYS AFTER SERVICE OF THE
1156 SUMMONS AND COMPLAINT IN WHICH TO FILE YOUR OWN ANSWER
1157 OR RESPONSE IN THIS CASE. Unless you hire an attorney,
1158 it is YOUR responsibility to file the proper papers to
1159 prevent a default from being entered and to fully
1160 represent your legal interests.

16-00993A-12

20121890__

1161
1162 (b) An action to foreclose homestead properties may not be
1163 scheduled for summary judgment or final hearing in this state
1164 until a Conciliation Telephone Conference or Mediation is
1165 conducted or attempted between lenders and owners and an
1166 Attorney's Certificate of Compliance with this requirement has
1167 been filed with the clerk of the court. If the owners cannot be
1168 located, or if they fail to notify the plaintiff of or fail to
1169 make themselves available for conferences or mediations, this
1170 fact shall be noted on the Attorney's Certificate of Compliance,
1171 in which instance the action may proceed to disposition. The
1172 assigned judges shall monitor the case files for compliance with
1173 this requirement and may cancel summary judgment hearings in
1174 which an Attorney's Certificate of Compliance has not been
1175 filed. The Attorney's Certificate of Compliance may be in
1176 substantially the following form and must include the
1177 information contained in the following form:

1178
1179 IN THE JUDICIAL CIRCUIT OF FLORIDA
1180 IN AND FOR COUNTY
1181 ...(plaintiffs)...
1182 vs. ...(defendants)..., Case No.

1183
1184 Attorney's Certificate of Compliance With
1185 Sec. 6.12, Florida Statutes

1186
1187 NOTE: This form is required in foreclosure cases filed against
1188 homestead property and must be filed with the clerk of the court
1189 at the time the summary judgment hearing is scheduled.

16-00993A-12

20121890

1190

1191 The undersigned attorney certifies to the court as follows:

1192 1. A Conciliation Telephone Conference was attempted but
1193 did not occur because:

1194 a. Mortgagors did not respond to the Notice to Homeowners
1195 Facing Foreclosure attached to the summons and complaint.

1196 b. Mortgagors expressed no interest in the conference or
1197 declined.

1198 c. Mortgagors responded to the Notice to Homeowners Facing
1199 Foreclosure but failed to attend the Conference.

1200 d. Other:

1201 2. The Conference occurred but an agreement was not
1202 possible.

1203 3. The Conference occurred and agreement on some issues was
1204 reached, but deadlines set for performance or conditions were
1205 not met or have expired.

1206 4. The Conference occurred and all issues between the
1207 parties have been resolved. This case will be dismissed on or
1208 before ... (date)....

1209 5. Other:

1210 6. A Mediation was attempted but did not occur because:

1211 a. Mortgagors did not respond to the Notice to Homeowners
1212 Facing Foreclosure attached to the summons and complaint.

1213 b. Mortgagors expressed no interest in Mediation or
1214 declined.

1215 c. Mortgagors responded to Notice to Homeowners Facing
1216 Foreclosure but failed to attend the Mediation.

1217 d. Other:

1218 7. The Mediation occurred but ended in impasse.

16-00993A-12

20121890__

1219 8. The Mediation occurred and all issues between the
 1220 parties have been resolved. This case will be dismissed on or
 1221 before ... (date)....

1222 9. Other:

1223
 1224 Dated this day of, 20 .

1225
 1226 ... (signature)... / ... (printed name)...; Bar No.

1227 Attorney for ... (name)... / E-mail: ; Telephone:

1228
 1229 cc: All parties

1230
 1231 FILE THIS ORIGINAL DOCUMENT WITH THE CLERK OF THE COURT.

1232
 1233 (c) The following requirements and procedures apply to the
 1234 Conciliation Telephone Conference:

1235 1. Responsibility for determining that the subject property
 1236 is a homestead and for scheduling the Conciliation Telephone
 1237 Conference shall be the affirmative duty of the lender or the
 1238 lender's counsel. The conference shall occur as soon as possible
 1239 after the case is filed, but no later than 90 days after notice
 1240 to the lender from the borrower of the borrower's intent to
 1241 exercise the borrower's right to conciliation conference.

1242 2. A list of all documents required by the lender to review
 1243 from the borrower shall be submitted to the borrower pursuant to
 1244 this subsection with the service of the initial complaint. After
 1245 notification to the plaintiff by the borrower or defendant that
 1246 he or she wishes to participate in a conciliation conference, an
 1247 updated list of documents, if any, required to be reviewed by

16-00993A-12

20121890

1248 the plaintiff or lender shall be delivered to the borrower or
1249 defendant. The borrower or defendant must produce the documents
1250 required by the lender at least 14 days before the conciliation
1251 conference to provide the lender adequate time to review the
1252 borrower's financial documents and determine a suitable
1253 alternative to foreclosure, if one exists, before the
1254 conference.

1255 3. At the Conciliation Telephone Conference, the lender
1256 shall arrange for the participation of knowledgeable persons,
1257 including attorneys, loss mitigation staff, and others who can
1258 confirm the amount and type of default and who are authorized to
1259 make binding commitments regarding alternatives to litigation,
1260 including refinancing, partial forgiveness of debt, approving
1261 sales to third parties, clarifying the amount required to
1262 reinstate or discharge the loan, requesting deeds in lieu of
1263 foreclosure, implementing procedures for the protection of the
1264 premises, and establishing a mutually agreeable date for
1265 relinquishing possession.

1266 4. If consensus is reached in conference on one or more
1267 issues, the affected parties shall set a deadline for the
1268 completion or occurrence of all conditions or actions. The terms
1269 of the consensus shall be reviewed in conference and promptly
1270 memorialized in writing by the lender with a copy provided to
1271 the owner. However, actions, conditions, or events agreed to by
1272 the parties shall occur or be completed within 45 days after the
1273 date of the conference at which the consensus was reached,
1274 unless the parties agree in writing to an earlier date. The date
1275 set for compliance or action shall be a firm deadline, unless
1276 the completion or occurrence date is extended in writing with

16-00993A-12

20121890__

1277 the consent of both parties and confirmed by court order.

1278 5. Upon the timely performance of the agreed-upon
1279 conditions or events, counsel for the lender shall file an
1280 Attorney's Certificate of Compliance with the clerk of the court
1281 advising the court that litigation is ready to resume or that
1282 the case is being voluntarily dismissed. In those instances in
1283 which a deadline has been set, the Attorney's Certificate of
1284 Compliance may not be filed until all conditions have been
1285 performed or the time for their performance has expired. If
1286 consensus is not reached in conference, or if the owners have
1287 declined to participate in the conference or do not respond to
1288 the Notice to Homeowners Facing Foreclosure attached to the
1289 summons and complaint, the Attorney's Certificate of Compliance
1290 may be filed and the case shall proceed to disposition.

1291 6. The parties shall participate in the Conciliation
1292 Telephone Conference in good faith, conducting themselves in a
1293 civil and respectful manner.

1294 (d) The following requirements and procedures apply to
1295 Mediation:

1296 1. Responsibility for determining that the subject property
1297 is a homestead and for scheduling the Mediation shall be the
1298 affirmative duty of the lender or the lender's counsel.
1299 Mediation shall occur as soon as possible after the case is
1300 filed, but no later than 90 days after notice to the lender from
1301 the borrower of the borrower's intent to exercise the borrower's
1302 right to Mediation.

1303 2. A list of all documents required by the lender to review
1304 from the borrower shall be submitted to the borrower pursuant to
1305 this subsection with the service of the initial complaint. After

16-00993A-12

20121890

1306 notification to the plaintiff by the borrower or defendant that
1307 he or she wishes to participate in Mediation, an updated list of
1308 documents, if any, required to be reviewed by the plaintiff or
1309 lender shall be delivered to the borrower or defendant. The
1310 borrower or defendant must produce the documents required by the
1311 lender at least 14 days before Mediation to provide the lender
1312 adequate time to review the borrower's financial documents and
1313 determine a suitable alternative to foreclosure, if one exists,
1314 before Mediation.

1315 3. At Mediation, the lender shall arrange for the
1316 participation of knowledgeable persons, including attorneys,
1317 loss mitigation staff, and others who can confirm the amount and
1318 type of default and who are authorized to make binding
1319 commitments regarding alternatives to litigation, including
1320 refinancing, partial forgiveness of debt, approving sales to
1321 third parties, clarifying the amount required to reinstate or
1322 discharge the loan, requesting deeds in lieu of foreclosure,
1323 implementing procedures for the protection of the premises, and
1324 establishing a mutually agreeable date for relinquishing
1325 possession.

1326 4. After completion of Mediation, counsel for the lender
1327 shall file an Attorney's Certificate of Compliance with the
1328 clerk of the court advising the court that litigation is ready
1329 to resume or that the case is being voluntarily dismissed. If
1330 the Mediation results in an impasse, or if the owners have
1331 declined to participate in the Mediation or do not respond to
1332 the Notice to Homeowners Facing Foreclosure attached to the
1333 summons and complaint, the Attorney's Certificate of Compliance
1334 may be filed and the case shall proceed to disposition.

16-00993A-12

20121890__

1335 5. The parties shall participate in Mediation in good
1336 faith, conducting themselves in a civil and respectful manner.

1337 Section 18. Section 702.15, Florida Statutes, is created to
1338 read:

1339 702.15 Rental of property in foreclosure process.—The owner
1340 or landlord, as defined in chapter 83, of property that is in
1341 the foreclosure process may not rent the property without giving
1342 full notice and disclosure to the tenants or prospective tenants
1343 that the property is in the legal process of foreclosure.

1344 Failure to do so is actionable under ss. 501.201-501.213. The
1345 process of foreclosure includes the time in which the plaintiff
1346 files a foreclosure complaint until certificate of title is
1347 issued to the new owner after a final judgment of foreclosure.

1348 Section 19. Section 702.16, Florida Statutes, is created to
1349 read:

1350 702.16 Required documents to accompany complaint at initial
1351 filing.—Contemporaneously with the filing of the initial
1352 complaint for foreclosure, the plaintiff must file the necessary
1353 documents to support an entry of summary judgment, including,
1354 but not limited to, the original note, or a lost note affidavit,
1355 each mortgage, assignments of all mortgages and notes, and any
1356 other documents required for the court to ascertain the owner
1357 and holder of each note and mortgage on the property.

1358 Section 20. This act is intended to be remedial in nature
1359 and applies to any action filed on or after the effective date
1360 of this act.

1361 Section 21. This act shall take effect upon becoming a law.