

HB 1149

2012

1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 95.11, F.S.; reducing the limitations period for
4 commencing an action to enforce a claim of a
5 deficiency judgment pursuant to a foreclosure action;
6 amending s. 702.06, F.S.; providing that the entry of
7 a deficiency judgment must be commenced within a
8 specified period after the date of a court foreclosure
9 sale or short sale; barring attempts to collect a
10 deficiency judgment if not commenced within such
11 period; limiting the amount of a deficiency judgment
12 in a foreclosure action; authorizing the reduction of
13 the amount of a deficiency judgment by a specified
14 insurance setoff; amending s. 702.10, F.S.;
15 authorizing certain lienholders and condominium or
16 homeowners' associations to request an order to show
17 cause for the entry of a final judgment of foreclosure
18 under certain circumstances; providing requirements
19 and procedures with respect to an order directed to
20 defendants to show cause why a final judgment of
21 foreclosure should not be entered; providing that
22 certain failures by a defendant to make certain
23 filings or to make certain appearances may have
24 specified legal consequences; requiring the court to
25 enter a final judgment of foreclosure and order a
26 foreclosure sale under certain circumstances; creating
27 s. 702.11, F.S.; establishing expedited foreclosure
28 proceedings for abandoned residential real property

HB 1149

2012

29 and procedures and requirements with respect thereto;
30 creating s. 702.12, F.S.; providing procedures and
31 requirements for actions to foreclose on mortgages on
32 actual or potential homestead property; creating s.
33 702.13, F.S.; requiring owners and landlords of
34 property in the process of foreclosure to provide
35 certain notice and disclosures to tenants or
36 prospective tenants; providing penalties for failing
37 to give such notice or make the required disclosures;
38 creating s. 702.14, F.S.; requiring certain documents
39 to be filed contemporaneously with the filing of an
40 initial complaint for foreclosure; providing an
41 effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:
44

45 Section 1. Paragraph (b) of subsection (2) of section
46 95.11, Florida Statutes, is amended, paragraphs (c) through (g)
47 of subsection (5) of that section are redesignated as paragraphs
48 (d) through (h), respectively, and a new paragraph (c) is added
49 to that subsection, to read:

50 95.11 Limitations other than for the recovery of real
51 property.—Actions other than for recovery of real property shall
52 be commenced as follows:

53 (2) WITHIN FIVE YEARS.—

54 (b) A legal or equitable action on a contract, obligation,
55 or liability founded on a written instrument, except for an
56 action to enforce a claim against a payment bond, which shall be

HB 1149

2012

57 governed by the applicable provisions of ss. 255.05(10) and
58 713.23(1)(e), and except for an action for a deficiency
59 judgment, which shall be governed by paragraph (5)(c) and s.
60 702.06.

61 (5) WITHIN ONE YEAR.—

62 (c) An action to enforce a claim of a deficiency judgment
63 pursuant to a foreclosure action in accordance with s. 702.06.

64 Section 2. Section 702.06, Florida Statutes, is amended to
65 read:

66 702.06 Deficiency judgment ~~decree~~; common-law suit to
67 recover deficiency.—In all suits for the foreclosure of
68 mortgages heretofore or hereafter executed, the entry of a
69 deficiency judgment ~~decree~~ for any portion of a deficiency,
70 should one exist, must ~~shall~~ be commenced within 1 year after
71 the sale date of the mortgaged property pursuant to a court
72 foreclosure sale or short sale. If not commenced within 1 year
73 after sale, any attempt to collect a deficiency judgment shall
74 be barred. The amount of the deficiency judgment may not exceed
75 the difference between the outstanding debt and the fair market
76 value of the property on the date of sale. The amount of the
77 deficiency judgment may be set off by the amount collected by
78 the servicer or lender pursuant to any mortgage insurance held
79 on the property purchased by the borrower. ~~the sound judicial~~
80 ~~discretion of the court, but~~ The complainant shall also have the
81 right to sue at common law to recover such deficiency, provided
82 no suit at law to recover such deficiency shall be maintained
83 against the original mortgagor in cases where the mortgage is
84 for the purchase price of the property involved and where the

HB 1149

2012

85 original mortgagee becomes the purchaser thereof at foreclosure
86 sale and also is granted a deficiency judgment ~~decree~~ against
87 the original mortgagor.

88 Section 3. Subsection (1) of section 702.10, Florida
89 Statutes, is amended to read:

90 702.10 Order to show cause; entry of final judgment of
91 foreclosure; payment during foreclosure.—

92 (1) After a complaint in a foreclosure proceeding has been
93 filed, the mortgagee or junior lienholders, including, but not
94 limited to, associations that have an interest in the property
95 as provided in the declaration, as that term is defined in
96 chapter 718 or chapter 720, may request an order to show cause
97 for the entry of final judgment and the court shall immediately
98 review the complaint. If, upon examination of the complaint, the
99 court finds that the complaint is verified and alleges a cause
100 of action to foreclose on real property, the court shall
101 promptly issue an order directed to the defendants named in the
102 action ~~defendant~~ to show cause why a final judgment of
103 foreclosure should not be entered.

104 (a) The order shall:

105 1. Set the date and time for hearing on the order to show
106 cause. However, the date for the hearing may not be set sooner
107 than 20 days after the service of the order. When service is
108 obtained by publication, the date for the hearing may not be set
109 sooner than 30 days after the first publication. The hearing
110 must be held within 60 days after the date of service. Failure
111 to hold the hearing within such time does not affect the
112 validity of the order to show cause or the jurisdiction of the

HB 1149

2012

113 court to issue subsequent orders.

114 2. Direct the time within which service of the order to
115 show cause and the complaint must be made upon the defendants
116 named in the action ~~defendant~~.

117 3. State that the filing of defenses by a motion or by a
118 verified or sworn answer at or before the hearing to show cause
119 constitutes cause for the court not to enter the attached final
120 judgment.

121 4. State that each ~~the~~ defendant has the right to file
122 defenses by motion, a verified or sworn answer, affidavits, or
123 other papers at the time of the hearing and to ~~may~~ appear
124 personally or by way of an attorney at the hearing.

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

137 6. State that, if a ~~the~~ defendant fails to appear at the
138 hearing to show cause or fails to file defenses by a motion or
139 by a verified or sworn answer or files an answer not contesting
140 the foreclosure, such ~~the~~ defendant may be considered to have

HB 1149

2012

141 waived the right to a hearing, and in such case, the court may
142 enter a default against such defendant and, if appropriate, a
143 final judgment of foreclosure ordering the clerk of the court to
144 conduct a foreclosure sale.

145 7. State that if the mortgage provides for reasonable
146 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
147 fees do not exceed 3 percent of the principal amount owed at the
148 time of filing the complaint, it is unnecessary for the court to
149 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
150 to be reasonable.

151 8. Attach the form of the final judgment of foreclosure
152 the court will enter, if the court determines that the plaintiff
153 is likely to prevail in the foreclosure action ~~defendant waives~~
154 ~~the right to be heard at the hearing on the order to show cause.~~

155 9. Require the mortgagee or junior lienholders, including
156 associations that have an interest in the property as provided
157 in the declaration, as that term is defined in chapter 718 or
158 chapter 720, to serve a copy of the order to show cause on the
159 mortgagor in the following manner:

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

163 b. If a defendant ~~the mortgagor~~ has not been served with
164 the complaint and original process, the order to show cause,
165 together with the summons and a copy of the complaint, shall be
166 served on such defendant ~~the mortgagor~~ in the same manner as
167 provided by law for original process, except that service of
168 process by publication may not be used on any party against whom

HB 1149

2012

169 entry of a final judgment of foreclosure is sought under this
170 subsection.

171
172 Any final judgment of foreclosure entered under this subsection
173 is for in rem relief only. ~~Nothing in~~ This subsection does not
174 ~~shall~~ preclude the entry of a deficiency judgment where
175 otherwise allowed by law.

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

191 (c) In a mortgage foreclosure proceeding, when a final
192 ~~default~~ judgment of foreclosure has been entered ~~against the~~
193 ~~mortgagor~~ and the note or mortgage provides for the award of
194 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
195 court to hold a hearing or adjudge the requested attorney
196 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3

HB 1149

2012

197 percent of the principal amount owed on the note or mortgage at
198 the time of filing, even if the note or mortgage does not
199 specify the percentage of the original amount that would be paid
200 as liquidated damages.

201 (d) If the court finds that all defendants have ~~the~~
202 ~~defendant has~~ waived the right to be heard as provided in
203 paragraph (b), the court shall promptly enter a final judgment
204 of foreclosure. If the court finds that any ~~the~~ defendant has
205 not waived the right to be heard on the order to show cause, the
206 court shall then determine whether there is cause not to enter a
207 final judgment of foreclosure. If the court determines that a
208 preponderance of the evidence and the arguments presented
209 support entry of a final judgment of foreclosure, the court
210 shall enter a final judgment of foreclosure ordering the clerk
211 of the court to conduct a foreclosure sale ~~finds that the~~
212 ~~defendant has not shown cause, the court shall promptly enter a~~
213 ~~judgment of foreclosure.~~

214 Section 4. Section 702.11, Florida Statutes, is created to
215 read:

216 702.11 Expedited foreclosure of abandoned residential real
217 property.—

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

221 (a) A duly licensed process server unaffiliated with the
222 owner or servicer of any mortgage on the residential real
223 property or with the attorney or law firm representing such
224 owner or servicer has made at least three attempts to locate an

225 occupant of the residential real property. The attempts must
226 have been made at least 72 hours apart, and at least one each of
227 such attempts must have been made before 12:00 p.m., between
228 12:00 p.m. and 6:00 p.m., and between 6:00 p.m. and 10:00 p.m.
229 Each attempt must include physically knocking or ringing at the
230 door of the residential real property and such other efforts as
231 are normally sufficient to obtain a response from an occupant.

232 (b) Two or more of the following conditions exist:

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

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

237 3. Rubbish, trash, or debris has accumulated on the
238 mortgaged premises.

239 4. The premises are deteriorating and are below or in
240 imminent danger of falling below minimum community standards for
241 public safety and sanitation.

242
243 The process server making attempts to locate an occupant of the
244 residential real property may provide, by affidavit and
245 photographic or other documentation, evidence of the condition
246 of the residential real property.

247 (2) (a) The party entitled to enforce the note and mortgage
248 encumbering the residential real property appearing to be
249 abandoned must file a petition before the court seeking to
250 determine the status of the residential real property and to
251 invoke an expedited foreclosure proceeding relating to the
252 property. Upon the filing of an affidavit of diligent search and

HB 1149

2012

253 inquiry and the affidavit or documentary evidence set forth in
254 subsection (1), the court shall, upon request of the petitioner,
255 issue one or more subpoenas to the utility companies serving the
256 residential real property commanding disclosure of the status of
257 utility service to the subject property, including whether
258 utilities are currently turned off and whether all outstanding
259 utility payments have been made and, if so, by whom.

260 (b) If, after review of the response of the utility
261 companies to the subpoenas and all other matters of record, the
262 court determines the property to have been abandoned, the party
263 entitled to enforce the note and mortgage encumbering the
264 residential real property shall be entitled to foreclose the
265 mortgage using the expedited mortgage foreclosure procedures set
266 forth in s. 702.10 upon service by publication. However, service
267 must be made on associations holding liens for dues and
268 assessments and all other junior lienholders as required by law.

269 Section 5. Section 702.12, Florida Statutes, is created to
270 read:

271 702.12 Homestead; owner-occupied residential property.—

272 (1) At the time of serving the initial complaint to
273 foreclose a mortgage on an owner-occupied residential homestead
274 property, the plaintiff must give proper notice to the borrower
275 or owner that he or she has a right to request a conciliation
276 conference or mediation before the entry of final judgment in
277 the case in order to facilitate a modification or settlement
278 with the lender. Such option is available only to owners of real
279 property who have filed for homestead exemption status pursuant
280 to s. 6, Art. VII of the State Constitution on or before the

HB 1149

2012

281 date a foreclosure complaint against the property has been filed
282 with the clerk of the court. Such requirement is mandatory for
283 foreclosure plaintiffs but optional for the owners, who may
284 decline to exercise their right to a conciliation conference or
285 mediation. The fact that lenders and owners have engaged in
286 prefiling discussions does not exempt lenders from complying
287 with this section. Also, in the initial letter to the owner or
288 borrower, a lender who is a plaintiff must include a list of all
289 documents required and necessary for the lender to determine
290 whether the borrower qualifies for a loan modification with such
291 lender. Mediation or a conciliation conference is not required
292 if the homestead owner fails to notify the plaintiff of the
293 right to conduct a mediation or conciliation conference.

294 (a) In all actions to foreclose on mortgages on
295 residential properties that have filed for homestead exemption,
296 or in cases in which the homestead status of the property is
297 unknown or in doubt, the plaintiff must file with the complaint,
298 and attach to the summons, a "Notice to Homeowners Facing
299 Foreclosure." Parties shall require the notice to accompany the
300 summons to be served upon each defendant and must advise
301 recipients of the availability of a mediation or conciliation
302 conference. The requirement that the notice be attached to all
303 summons in residential foreclosure filings or where the
304 homestead status is unknown is to ensure that a homestead owner
305 is not inadvertently overlooked. The notice may be in
306 substantially the following form and must include the
307 information contained in the following form:
308

NOTICE TO HOMEOWNERS FACING FORECLOSURE

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

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

2. Lenders who file suit seeking to foreclose liens on homestead property are required by s. 702.12, Florida Statutes, to contact you and to invite you to participate in at least one mandatory Conciliation Telephone Conference or Mediation before the case can be concluded. The purpose of the Conciliation Telephone Conference or Mediation is for you to have an open and frank discussion about the alleged default and to consider alternatives to foreclosure. These may include such things as refinancing, partial forgiveness of debt, transferring title to qualified third parties, clarifying the amount required to reinstate or pay off the loan, deeds in lieu of foreclosure, protecting the property pending transfer of title, and establishing a mutually agreeable date for

337 relinquishing possession. Communications between the
338 parties and discussions during the conciliation conference
339 are NOT confidential and may be referred to in future
340 court proceedings. Communications between the parties at a
341 mediation are confidential and must follow applicable law
342 related to mediations.

343 3. The Conciliation Telephone Conference will occur
344 as soon as possible after you receive this notice.
345 Although your lender should attempt to contact you to
346 schedule a mutually convenient date for the conference or
347 mediation, to avoid miscommunication, if you wish to take
348 advantage of the program, you should promptly provide the
349 attorney filing the complaint with a letter stating your
350 current contact information. Include your e-mail addresses
351 and telephone numbers. Enclose a copy of this notice with
352 your letter. However, this option is for the benefit of
353 the homeowner, and you may decline to participate at any
354 time. If you choose not to respond to this notice or to
355 the lender's invitation to participate in a Conciliation
356 Telephone Conference or Mediation, litigation will proceed
357 in the normal course.

358 4. There are three ways to participate in the
359 Conciliation Telephone Conference or Mediation: by
360 yourself, by hiring your own lawyer, or, if you qualify,
361 by a volunteer attorney's assistance. Your lender may
362 require you to sign legal papers confirming any
363 understanding or agreement you may reach. Make sure you
364 read and understand all documents before signing. If you

365 do not have an attorney, it is recommended that you hire a
366 member of The Florida Bar to review the documents before
367 signing. If no agreement is reached, the case will proceed
368 in due course to its conclusion.

369 5. You may qualify for a volunteer attorney to be
370 present with you during the Conciliation Telephone
371 Conference or Mediation. Call The Florida Bar or legal aid
372 programs in your area to determine whether you are
373 eligible for this pro bono (free) service. These attorneys
374 are volunteering their time as a public service to assist
375 in your discussions with the lender. You will not be
376 charged for their time and advice. However, you must agree
377 to appear in person on time for the Conciliation Telephone
378 Conference or Mediation and be willing to communicate with
379 your attorney and participate in good faith in your
380 discussions with lenders. The attorney may withdraw from
381 assisting you at any time if you fail to comply with these
382 requirements. Private communications between you and the
383 pro bono attorney are confidential.

384
385 IMPORTANT: Notice of limited legal representation.—The
386 volunteer attorney assisting you in the Conciliation
387 Telephone Conference or Mediation may limit his or her
388 services to discussions with the lender and assisting you
389 in exploring realistic alternatives to foreclosure. Unless
390 specifically agreed to by the pro bono attorney in
391 writing, he or she is NOT representing you for any other
392 purpose in the case and will NOT be filing any papers or

393 pleadings in your case. YOU HAVE TWENTY (20) DAYS AFTER
394 SERVICE OF THE SUMMONS AND COMPLAINT IN WHICH TO FILE YOUR
395 OWN ANSWER OR RESPONSE IN THIS CASE. Unless you hire an
396 attorney, it is YOUR responsibility to file the proper
397 papers to prevent a default from being entered and to
398 fully represent your legal interests.
399

400 (b) An action to foreclose homestead properties may not be
401 scheduled for summary judgment or final hearing in this state
402 until a Conciliation Telephone Conference or Mediation is
403 conducted or attempted between lenders and owners and an
404 Attorney's Certificate of Compliance with this requirement has
405 been filed with the clerk of the court. If the owners cannot be
406 located, or if they fail to notify the plaintiff of or fail to
407 make themselves available for conferences or mediations, this
408 fact shall be noted on the Attorney's Certificate of Compliance,
409 in which instance the action may proceed to disposition. The
410 assigned judges shall monitor the case files for compliance with
411 this requirement and may cancel summary judgment hearings in
412 which an Attorney's Certificate of Compliance has not been
413 filed. The Attorney's Certificate of Compliance may be in
414 substantially the following form and must include the
415 information contained in the following form:
416

417 IN THE JUDICIAL CIRCUIT OF FLORIDA
418 IN AND FOR COUNTY
419 ...(plaintiffs)...
420 vs. ...(defendants)...., Case No.

Attorney's Certificate of Compliance With
Section 702.12, Florida Statutes

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

The undersigned attorney certifies to the court as follows:

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

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

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

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

d. Other:

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

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

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

HB 1149

2012

449 5. Other:

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

452 a. Mortgagors did not respond to the Notice to
453 Homeowners Facing Foreclosure attached to the summons and
454 complaint.

455 b. Mortgagors expressed no interest in Mediation or
456 declined.

457 c. Mortgagors responded to Notice to Homeowners
458 Facing Foreclosure but failed to attend the Mediation.

459 d. Other:

460 7. The Mediation occurred but ended in impasse.

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

464 9. Other:

465
466 Dated this day of, 20 ..

467
468 ...(signature)... / ...(printed name)...; Bar No.

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

470
471 cc: All parties

472
473 FILE THIS ORIGINAL DOCUMENT WITH THE CLERK OF THE COURT.

474
475 (c) The following requirements and procedures apply to the
476 Conciliation Telephone Conference:

477 1. Responsibility for determining that the subject
478 property is a homestead and for scheduling the Conciliation
479 Telephone Conference shall be the affirmative duty of the lender
480 or the lender's counsel. The conference shall occur as soon as
481 possible after the case is filed, but no later than 90 days
482 after notice to the lender from the borrower of the borrower's
483 intent to exercise the borrower's right to conciliation
484 conference.

485 2. A list of all documents required by the lender to
486 review from the borrower shall be submitted to the borrower
487 pursuant to this subsection with the service of the initial
488 complaint. After notification to the plaintiff by the borrower
489 or defendant that he or she wishes to participate in a
490 conciliation conference, an updated list of documents, if any,
491 required to be reviewed by the plaintiff or lender shall be
492 delivered to the borrower or defendant. The borrower or
493 defendant must produce the documents required by the lender at
494 least 14 days before the conciliation conference to provide the
495 lender adequate time to review the borrower's financial
496 documents and determine a suitable alternative to foreclosure,
497 if one exists, before the conference.

498 3. At the Conciliation Telephone Conference, the lender
499 shall arrange for the participation of knowledgeable persons,
500 including attorneys, loss mitigation staff, and others who can
501 confirm the amount and type of default and who are authorized to
502 make binding commitments regarding alternatives to litigation,
503 including refinancing, partial forgiveness of debt, approving
504 sales to third parties, clarifying the amount required to

HB 1149

2012

505 reinstate or discharge the loan, requesting deeds in lieu of
506 foreclosure, implementing procedures for the protection of the
507 premises, and establishing a mutually agreeable date for
508 relinquishing possession.

509 4. If consensus is reached in conference on one or more
510 issues, the affected parties shall set a deadline for the
511 completion or occurrence of all conditions or actions. The terms
512 of the consensus shall be reviewed in conference and promptly
513 memorialized in writing by the lender with a copy provided to
514 the owner. However, actions, conditions, or events agreed to by
515 the parties shall occur or be completed within 45 days after the
516 date of the conference at which the consensus was reached,
517 unless the parties agree in writing to an earlier date. The date
518 set for compliance or action shall be a firm deadline, unless
519 the completion or occurrence date is extended in writing with
520 the consent of both parties and confirmed by court order.

521 5. Upon the timely performance of the agreed-upon
522 conditions or events, counsel for the lender shall file an
523 Attorney's Certificate of Compliance with the clerk of the court
524 advising the court that litigation is ready to resume or that
525 the case is being voluntarily dismissed. In those instances in
526 which a deadline has been set, the Attorney's Certificate of
527 Compliance may not be filed until all conditions have been
528 performed or the time for their performance has expired. If
529 consensus is not reached in conference, or if the owners have
530 declined to participate in the conference or do not respond to
531 the Notice to Homeowners Facing Foreclosure attached to the

HB 1149

2012

532 summons and complaint, the Attorney's Certificate of Compliance
533 may be filed and the case shall proceed to disposition.

534 6. The parties shall participate in the Conciliation
535 Telephone Conference in good faith, conducting themselves in a
536 civil and respectful manner.

537 (d) The following requirements and procedures apply to
538 Mediation:

539 1. Responsibility for determining that the subject
540 property is a homestead and for scheduling the Mediation shall
541 be the affirmative duty of the lender or the lender's counsel.
542 Mediation shall occur as soon as possible after the case is
543 filed, but no later than 90 days after notice to the lender from
544 the borrower of the borrower's intent to exercise the borrower's
545 right to Mediation.

546 2. A list of all documents required by the lender to
547 review from the borrower shall be submitted to the borrower
548 pursuant to this subsection with the service of the initial
549 complaint. After notification to the plaintiff by the borrower
550 or defendant that he or she wishes to participate in Mediation,
551 an updated list of documents, if any, required to be reviewed by
552 the plaintiff or lender shall be delivered to the borrower or
553 defendant. The borrower or defendant must produce the documents
554 required by the lender at least 14 days before Mediation to
555 provide the lender adequate time to review the borrower's
556 financial documents and determine a suitable alternative to
557 foreclosure, if one exists, before Mediation.

558 3. At Mediation, the lender shall arrange for the
559 participation of knowledgeable persons, including attorneys,

HB 1149

2012

560 loss mitigation staff, and others who can confirm the amount and
561 type of default and who are authorized to make binding
562 commitments regarding alternatives to litigation, including
563 refinancing, partial forgiveness of debt, approving sales to
564 third parties, clarifying the amount required to reinstate or
565 discharge the loan, requesting deeds in lieu of foreclosure,
566 implementing procedures for the protection of the premises, and
567 establishing a mutually agreeable date for relinquishing
568 possession.

569 4. After completion of Mediation, counsel for the lender
570 shall file an Attorney's Certificate of Compliance with the
571 clerk of the court advising the court that litigation is ready
572 to resume or that the case is being voluntarily dismissed. If
573 the Mediation results in an impasse, or if the owners have
574 declined to participate in the Mediation or do not respond to
575 the Notice to Homeowners Facing Foreclosure attached to the
576 summons and complaint, the Attorney's Certificate of Compliance
577 may be filed and the case shall proceed to disposition.

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

580 Section 6. Section 702.13, Florida Statutes, is created to
581 read:

582 702.13 Rental of property in foreclosure process.—The
583 owner or landlord, as defined in chapter 83, of property that is
584 in the foreclosure process may not rent the property without
585 giving full notice and disclosure to the tenants or prospective
586 tenants that the property is in the legal process of
587 foreclosure. Failure to do so is actionable under ss. 501.201-

HB 1149

2012

588 501.213. The process of foreclosure includes the time in which
589 the plaintiff files a foreclosure complaint until certificate of
590 title is issued to the new owner after a final judgment of
591 foreclosure.

592 Section 7. Section 702.14, Florida Statutes, is created to
593 read:

594 702.14 Required documents to accompany complaint at
595 initial filing.—Contemporaneously with the filing of the initial
596 complaint for foreclosure, the plaintiff must file the necessary
597 documents to support an entry of summary judgment, including,
598 but not limited to, the original note, or a lost note affidavit,
599 each mortgage, assignments of all mortgages and notes, and any
600 other documents required for the court to ascertain the owner
601 and holder of each note and mortgage on the property.

602 Section 8. This act shall take effect July 1, 2012.