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1 A bill to be entitled
2 An act relating to judicial proceedings; providing a
3 short title; specifying public policy concerning
4 alternatives to mortgage foreclosure; amending s.
5 48.23, F.S.; providing that if the holder of an
6 unrecorded interest or lien does not intervene in
7 certain proceedings concerning property subject to a
8 lis pendens before the occurrence of judicial vesting
9 pursuant to s. 702.068, F.S., of the property
10 described in the notice, the property shall be forever
11 discharged from such unrecorded interests and liens;
12 amending s. 201.02, F.S.; deleting an obsolete
13 provision; providing the documentary stamp tax for a
14 final judgment of foreclosure vesting title in a
15 lender under a specified provision for foreclosure
16 without public sale; amending s. 701.04, F.S.;
17 revising the time period in which an estoppel
18 statement must be provided; revising the allowable
19 methods of delivery and contents of an estoppel
20 statement; prohibiting a fee for an estoppel statement
21 in certain circumstances; providing a fee for failure
22 to deliver certain documents within a specified
23 period; providing a limit on such fees; providing that
24 specified persons may rely on an estoppel statement;
25 requiring a specified certification if the person or
26 party executing a satisfaction is not shown as the
27 owner of the mortgage in the official records;
28 requiring specified requests for an estoppel statement

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29 | to include a copy of instruments showing an ownership
30 | interest in the property; revising requirements for a
31 | person required to acknowledge satisfaction of the
32 | mortgage, lien, or judgment; providing for actions to
33 | compel compliance; providing for attorney fees;
34 | creating s. 701.045, F.S.; requiring preparation and
35 | recording of an instrument acknowledging satisfaction
36 | of the lien or judgment upon full payment; requiring a
37 | copy of the recorded satisfaction provided to the
38 | person making the full payment within a specified
39 | period; providing for civil actions for compliance;
40 | providing for attorney fees; providing for
41 | responsibility for return of satisfaction when an
42 | execution has been issued and a judgment has
43 | subsequently been fully paid; providing for compliance
44 | with specified provisions relating to amendment of a
45 | judgment lien file; creating s. 702.015, F.S.;
46 | providing requirements for a complaint which seeks to
47 | foreclose a lien on real property; providing
48 | requirements for a complaint that includes a count to
49 | enforce a lost, destroyed, or stolen instrument;
50 | amending s. 702.035, F.S.; requiring the foreclosing
51 | party in a mortgage foreclosure action involving
52 | specified occupied dwellings to provide notice to
53 | certain persons; specifying the contents of such
54 | notice; providing for notice to tenants of such
55 | buildings in foreclosure; specifying the contents of
56 | such notice; creating s. 702.036, F.S.; providing for

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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57 | finality of mortgage foreclosure judgments; requiring
58 | certain actions to set aside, invalidate, or challenge
59 | the validity of a final judgment of foreclosure of a
60 | mortgage or to establish or reestablish a lien or
61 | encumbrance on the property in abrogation of the final
62 | judgment of foreclosure of a mortgage to be treated as
63 | actions for monetary damages only in certain
64 | circumstances; providing that certain persons be
65 | considered persons affiliated with the foreclosing
66 | lender for specified purposes; prohibiting claims by
67 | persons claiming to have actual promissory notes
68 | following foreclosure of a mortgage based upon the
69 | enforcement of a lost, destroyed, or stolen note;
70 | amending s. 702.04, F.S.; revising procedural
71 | provisions for foreclosure of lands in different
72 | counties; amending s. 702.06, F.S.; deleting
73 | references to actions at common law for deficiencies
74 | and original mortgagees; providing requirements for
75 | deficiency decrees in foreclosures of certain owner-
76 | occupied dwelling units; providing applicability;
77 | creating s. 702.062, F.S.; providing for extensions of
78 | time for a party to respond to an initial complaint in
79 | certain foreclosure proceedings; providing for notice
80 | when all parties have been served personally and no
81 | party defendant has filed an answer or other response
82 | denying, contesting, or asserting defenses to the
83 | plaintiff's entitlement to the foreclosure in certain
84 | circumstances; providing for entry of defaults against

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85 nonresponding parties; providing for requests for case
86 management conferences; providing for extensions or
87 stays in certain circumstances; amending s. 702.065,
88 F.S.; revising requirements for considering a mortgage
89 foreclosure proceeding uncontested; providing
90 requirements for determination of reasonable attorney
91 fees for foreclosures of certain residential
92 properties; deleting provisions relating to defaults
93 in uncontested mortgage foreclosure proceedings and
94 liquidated damages; creating s. 702.068, F.S.;
95 providing for an election by a foreclosing lender to
96 proceed without public sale in certain circumstances;
97 providing for notice of such an election; specifying
98 the contents of such notice; providing for a demand
99 for a public sale by a party; providing for
100 disposition of proceeds of a public sale; providing
101 for entry of final judgment; providing for redemption
102 of property in certain circumstances; providing for
103 deeming a debt satisfied in certain circumstances;
104 allowing for pursuit of a deficiency if a party
105 defendant elects to proceed without a public sale;
106 amending s. 702.10, F.S.; revising requirements for
107 proceedings for requests for a hearing to show cause
108 after a complaint in a foreclosure proceeding has been
109 filed which is verified in the form of an affidavit
110 sufficient to support a motion for summary judgment;
111 providing for a summons; providing for waiver of the
112 right to be heard at a hearing to show cause in

113 certain circumstances; revising terminology to allow
 114 for cases in which there are multiple defendants;
 115 providing for a rebuttable presumption that certain
 116 properties are homestead properties; providing for
 117 applicability of other procedures; creating s. 702.11,
 118 F.S.; providing requirements for reasonable means of
 119 providing adequate protection under s. 673.3091, F.S.,
 120 in mortgage foreclosures of certain residential
 121 properties; providing for liability of persons who
 122 wrongly claim to be holders of or entitled to enforce
 123 a lost, stolen, or destroyed note and caused the
 124 mortgage secured thereby to be foreclosed in certain
 125 circumstances; creating s. 702.12, F.S.; providing for
 126 attorney fees as sanctions for raising unsupported
 127 claims or defenses; providing exceptions; providing
 128 for damages for delay of litigation; specifying that
 129 the act does not apply to foreclosures of timeshare
 130 interests under specified provisions; providing a
 131 directive to the Division of Statutory Revision;
 132 providing applicability; providing an effective date.

134 Be It Enacted by the Legislature of the State of Florida:

136 Section 1. This act may be cited as the "Florida Fair
 137 Foreclosure Act."

138 Section 2. The public policy in this state is to encourage
 139 borrowers and lenders to work out alternatives to mortgage
 140 foreclosure before filing suit and to explore possible

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141 settlements in mediation. Once suit has been filed, the public
142 interest is served by maintaining the strong tradition of
143 judicial due process in mortgage foreclosure cases while moving
144 mortgage foreclosure cases to final resolution expeditiously in
145 order to get real property back into the stream of commerce, but
146 to do so consistent with due process and fundamental fairness
147 and without impairing the ability of the courts to manage their
148 dockets and schedules. This act is an effort to provide
149 additional tools to the courts to assist in achieving such a
150 balance.

151 Section 3. Paragraph (d) of subsection (1) of section
152 48.23, Florida Statutes, is amended to read:

153 48.23 Lis pendens.—

154 (1)

155 (d) Except for the interest of persons in possession or
156 easements of use, the recording of such notice of lis pendens,
157 provided that during the pendency of the proceeding it has not
158 expired pursuant to subsection (2) or been withdrawn or
159 discharged, constitutes a bar to the enforcement against the
160 property described in the notice of all interests and liens,
161 including, but not limited to, federal tax liens and levies,
162 unrecorded at the time of recording the notice unless the holder
163 of any such unrecorded interest or lien intervenes in such
164 proceedings within 30 days after the recording of the notice. If
165 the holder of any such unrecorded interest or lien does not
166 intervene in the proceedings and if such proceedings are
167 prosecuted to a public judicial sale or judicial vesting
168 pursuant to s. 702.068 of the property described in the notice,

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169 the property shall be forever discharged from all such
170 unrecorded interests and liens. If the notice of lis pendens
171 expires or is withdrawn or discharged, the expiration,
172 withdrawal, or discharge of the notice does not affect the
173 validity of any unrecorded interest or lien.

174 Section 4. Subsections (1) and (9) of section 201.02,
175 Florida Statutes, are amended to read:

176 201.02 Tax on deeds and other instruments relating to real
177 property or interests in real property.—

178 (1) (a) On deeds, instruments, or writings whereby any
179 lands, tenements, or other real property, or any interest
180 therein, shall be granted, assigned, transferred, or otherwise
181 conveyed to, or vested in, the purchaser or any other person by
182 his or her direction, on each \$100 of the consideration therefor
183 the tax shall be 70 cents. When the full amount of the
184 consideration for the execution, assignment, transfer, or
185 conveyance is not shown in the face of such deed, instrument,
186 document, or writing, the tax shall be at the rate of 70 cents
187 for each \$100 or fractional part thereof of the consideration
188 therefor. For purposes of this section, consideration includes,
189 but is not limited to, the money paid or agreed to be paid; the
190 discharge of an obligation; and the amount of any mortgage,
191 purchase money mortgage lien, or other encumbrance, whether or
192 not the underlying indebtedness is assumed. If the consideration
193 paid or given in exchange for real property or any interest
194 therein includes property other than money, it is presumed that
195 the consideration is equal to the fair market value of the real
196 property or interest therein.

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197 (b)1. For purposes of this paragraph, the term:

198 a. "Conduit entity" means a legal entity to which real
199 property is conveyed without full consideration by a grantor who
200 owns a direct or indirect interest in the entity, or a successor
201 entity.

202 b. "Full consideration" means the consideration that would
203 be paid in an arm's length transaction between unrelated
204 parties.

205 2. When real property is conveyed to a conduit entity and
206 all or a portion of the grantor's direct or indirect ownership
207 interest in the conduit entity is subsequently transferred for
208 consideration within 3 years after ~~of~~ such conveyance, tax is
209 imposed on each such transfer of an interest in the conduit
210 entity for consideration at the rate of 70 cents for each \$100
211 or fraction thereof of the consideration paid or given in
212 exchange for the ownership interest in the conduit entity.

213 3. When an ownership interest is transferred in a conduit
214 entity that owns assets other than the real property conveyed to
215 the conduit entity, the tax shall be prorated based on the
216 percentage the value of such real property represents of the
217 total value of all assets owned by the conduit entity.

218 4. A gift of an ownership interest in a conduit entity is
219 not subject to tax to the extent there is no consideration. The
220 transfer of shares or similar equity interests in a conduit
221 entity which are dealt in or traded on public, regulated
222 security exchanges or markets is not subject to tax under this
223 paragraph.

224 5. The transfer for purposes of estate planning by a

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225 natural person of an interest in a conduit entity to an
 226 irrevocable grantor trust as described in subpart E of part I of
 227 subchapter J of chapter 1 of subtitle A of the United States
 228 Internal Revenue Code is not subject to tax under this
 229 paragraph.

230 6. The purpose of this paragraph is to impose the
 231 documentary stamp tax on the transfer for consideration of a
 232 beneficial interest in real property. The provisions of this
 233 paragraph are to be construed liberally to effectuate this
 234 purpose.

235 (c) Conversion or merger of a trust that is not a legal
 236 entity that owns real property in this state into a legal entity
 237 shall be treated as a conveyance of the real property for the
 238 purposes of this section.

239 (d) Taxes imposed by this subsection shall be paid
 240 pursuant to s. 201.133 when no document is recorded. If a
 241 document is recorded, taxes imposed by the paragraph shall be
 242 paid as required for all other taxable documents that are
 243 recorded.

244 (9) A certificate of title filed ~~issued~~ by the clerk of
 245 court under s. 45.031 (6) ~~(5)~~ in a public ~~judicial~~ sale of real
 246 property under an order or final judgment issued pursuant to a
 247 foreclosure proceeding is subject to the tax imposed by
 248 subsection (1). However, the amount of the tax shall be computed
 249 based solely on the amount of the highest and best bid received
 250 for the property at the foreclosure sale. A final judgment of
 251 foreclosure vesting title in a lender under s. 702.068 is
 252 subject to the tax imposed by subsection (1) based upon a sale

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253 price of \$100. ~~This subsection is intended to clarify existing~~
 254 ~~law and shall be applied retroactively.~~

255 Section 5. Section 701.04, Florida Statutes, is amended to
 256 read:

257 701.04 Cancellation of mortgages, liens, and judgments.—

258 (1)(a) Within 15 ~~14~~ days after the date on which a receipt
 259 ~~of the~~ written request for an estoppel statement is received
 260 from ~~of~~ a mortgagor, the holder of an interest in the property
 261 encumbered by a mortgage, or the designee of either, requesting
 262 a payoff amount for the mortgage as of a certain date, the
 263 holder of a mortgage shall provide a written estoppel statement
 264 executed by an officer or authorized agent of the holder of the
 265 mortgage deliver to the person making the request ~~mortgagor~~ at
 266 the a place, fax number, or e-mail address designated in the
 267 written request. The an estoppel statement shall set ~~letter~~
 268 ~~setting~~ forth the following:

269 1. The unpaid balance of the loan secured by the mortgage,
 270 including principal, all accrued interest, and any other charges
 271 properly due under or secured by the mortgage as of the
 272 requested date certain.

273 2. ~~and~~ Interest on a per-day basis for the unpaid balance
 274 for a period of no less than 20 days after the date of delivery
 275 of the estoppel statement.

276 3. Certification that the party providing the estoppel
 277 statement is the holder of the original promissory note secured
 278 thereby, or is the person or agent of the person entitled to
 279 enforce the note pursuant to s. 673.3011, as the case may be.

280 4. A commitment to comply with subsection (3) upon timely

281 receipt of the amounts set forth in the estoppel statement.

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

286 (c) Subsequent owners of the property encumbered by the
 287 mortgage, and creditors and lienholders taking an interest in
 288 the property, for a valuable consideration, and those claiming
 289 by, through, and under them, may rely on the estoppel statement
 290 and shall be entitled to the benefits thereof.

291 (d) Whenever the amount of money due on any mortgage or
 292 lien ~~is, or judgment shall be~~ fully paid to the person or party
 293 entitled to the payment thereof, or all obligations secured by
 294 the mortgage or lien are otherwise satisfied, the mortgagee,
 295 creditor, or assignee, or the attorney of record in the case of
 296 a judgment, to whom such payment ~~has~~ shall have been made or
 297 satisfaction has been given, shall execute in writing an
 298 instrument acknowledging satisfaction of the said mortgage,
 299 lien, or judgment and have the same acknowledged, or proven, and
 300 duly entered of record in the official records ~~book provided by~~
 301 law for such purposes in the proper county. When the person or
 302 party executing the satisfaction is not shown as the owner of
 303 the mortgage in the official records, the instrument shall be
 304 supplemented by a sworn certification that the person executing
 305 the satisfaction was then in physical possession of the original
 306 promissory note secured by the mortgage or was then a person
 307 entitled to enforce the note pursuant to s. 673.3011 and, if the
 308 latter, shall provide the specific factual basis for such

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309 authority.

310 (e) If the written request for an estoppel statement is
311 not from the mortgagor or the designee of the mortgagor, the
312 request shall include a copy of the instrument or instruments
313 showing the requestor's ownership interest in the property and
314 the unpaid balance of the loan secured by the mortgage need not
315 be itemized.

316 (2) (a) Within 60 days after ~~of~~ the date of receipt of the
317 full payment of the mortgage in accord with the estoppel
318 statement, ~~lien, or judgment,~~ the person required to acknowledge
319 satisfaction of the mortgage, ~~lien, or judgment~~ shall send or
320 cause to be sent the recorded satisfaction to the maker of the
321 promissory note, or such other person as may be designated in
322 writing by the payor at or after the final payment, the recorded
323 satisfaction and, in the case of the payor of a mortgage note,
324 either:

325 1. The original promissory note, marked "paid in full"; or
326 2. A lost, destroyed, or stolen note affidavit together
327 with exhibits in compliance with s. 702.015 and evidence of
328 adequate protections as provided in s. 702.11 ~~person who has~~
329 ~~made the full payment. In the case of a civil action arising out~~
330 ~~of the provisions of this section, the prevailing party shall be~~
331 ~~entitled to attorney's fees and costs.~~

332 (b) If the documents required by this subsection have not
333 been delivered within 60 days, the party who received payment on
334 the note or mortgage shall pay to the maker of the promissory
335 note or its designee a fee in the amount of \$100 per day for
336 each day beyond 60 days that the documents have not been

337 delivered. The aggregate fees under this paragraph may not
 338 exceed \$5,000.

339 (3)-(2) Whenever a writ of execution has been issued,
 340 docketed, and indexed with a sheriff and the judgment upon which
 341 it was issued has been fully paid, it shall be the
 342 responsibility of the party receiving payment to request, in
 343 writing, addressed to the sheriff, return of the writ of
 344 execution as fully satisfied.

345 (4) A summary procedure pursuant to s. 51.011 may be
 346 brought to compel compliance with the various obligations and
 347 duties of this section, and the prevailing party shall recover
 348 reasonable attorney fees and costs. The court may limit recovery
 349 of attorney fees and costs when an unreasonable number of
 350 requests for estoppel statements has been made.

351 Section 6. Section 701.045, Florida Statutes, is created
 352 to read:

353 701.045 Cancellation of liens and judgments.-

354 (1) Whenever the amount of money due on any lien, other
 355 than a mortgage, or judgment is fully paid to the person or
 356 party entitled to such payment, the creditor or assignee, or the
 357 attorney of record in the case of a judgment, to whom such
 358 payment has been made shall execute in writing an instrument
 359 acknowledging satisfaction of the lien or judgment and have it
 360 acknowledged, or proven, and duly entered of record in the
 361 official records in the proper county. Within 60 days after the
 362 date of receipt of the full payment of the lien or judgment, the
 363 person required to acknowledge satisfaction of the lien or
 364 judgment shall send or cause to be sent the recorded

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365 satisfaction to the person who has made the full payment. In the
366 case of a civil action arising out of this section, the
367 prevailing party shall be entitled to attorney fees and costs.

368 (2) Whenever a writ of execution has been issued,
369 docketed, and indexed with a sheriff and the judgment upon which
370 it was issued has been fully paid, it shall be the
371 responsibility of the party receiving payment to request, in
372 writing and addressed to the sheriff, return of the writ of
373 execution as fully satisfied.

374 (3) The party receiving full payment of any judgment shall
375 also comply with s. 55.206, as appropriate.

376 Section 7. Section 702.015, Florida Statutes, is created
377 to read:

378 702.015 Elements of complaint; lost, destroyed, or stolen
379 note affidavit.—Any complaint which seeks to foreclose a lien on
380 real property which secures a promissory note must contain
381 affirmative allegations expressly made by the plaintiff at the
382 time the proceeding is commenced that the plaintiff is the
383 holder of the original note secured by the mortgage or allege
384 with specificity the factual basis by which the plaintiff is a
385 person entitled to enforce the note under s. 673.3011. When a
386 party has been delegated the authority to institute a mortgage
387 foreclosure action on behalf of the holder of the note, the
388 complaint shall describe the authority of the plaintiff and
389 identify, with specificity, the document that grants the
390 plaintiff the authority to act on behalf of the holder of the
391 note.

392 (1) Unless the complaint includes a count to enforce a

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393 lost, destroyed, or stolen instrument, the plaintiff shall cause
394 to be filed with the court, contemporaneously with and as a
395 condition precedent to the filing of the complaint for
396 foreclosure, either:

397 (a) The original promissory note; or

398 (b) Certification, under penalty of perjury, that the
399 plaintiff is in physical possession of the original promissory
400 note. Such certification must set forth the physical location of
401 the note, the name and title of the individual giving the
402 certification, and the name of the person who personally
403 verified such physical possession and the time and date on which
404 possession was verified. Correct copies of the note and all
405 allonges thereto shall be attached to the certification. The
406 original note shall be filed with the court prior to the entry
407 of any judgment of foreclosure or judgment on such note.

408 (2) When the complaint includes a count to enforce a lost,
409 destroyed, or stolen instrument, an affidavit executed under
410 penalty of perjury shall be attached to the complaint. The
411 affidavit shall:

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

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

417 (c) Include as exhibits to the affidavit such copies of
418 the note and allonges thereto, assignments of mortgage, audit
419 reports showing physical receipt of the original note, or other
420 evidence of the acquisition, ownership, and possession of the

421 note as may be available to the plaintiff.

422 (3) Following dismissal of the foreclosure case without
 423 prejudice and without completion of the foreclosure, and upon
 424 request of the plaintiff, the clerk may return the original
 425 promissory note to the plaintiff without need for further order
 426 of the court.

427 Section 8. Section 702.035, Florida Statutes, is amended
 428 to read:

429 702.035 Legal notice concerning foreclosure proceedings.—

430 (1) The foreclosing party only in a mortgage foreclosure
 431 action involving an occupied residential real property,
 432 including individual units of condominiums and cooperatives,
 433 designated principally for occupation by from one to four
 434 families, but not including an interest in a timeshare property
 435 the foreclosure of which is governed by part III of chapter 721,
 436 shall provide notice substantially in accordance with this
 437 section to:

438 (a) Any mortgagor having an interest in the property and
 439 the record title owners of the property; and

440 (b) All tenants of a dwelling unit in the property if the
 441 foreclosing party is seeking to foreclose the interest of the
 442 tenants.

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

444 (a) Be delivered with the summons and complaint. Such
 445 notice shall be in 14-point boldfaced type and the title of the
 446 notice shall be in 20-point boldfaced type. The notice shall be
 447 on its own page.

448 (b) Appear as follows:

449
450 NOTICE: YOU ARE IN DANGER OF LOSING YOUR HOME

451
452 If you fail to respond to the summons and complaint in
453 this foreclosure action, you may lose your home.

454 Please read the summons and complaint carefully. You
455 should immediately contact an attorney or your local
456 legal aid office to obtain advice on how to protect
457 yourself. Sending a payment to your mortgage company
458 will not stop this foreclosure action.

459
460 YOU MUST RESPOND BY PREPARING A DOCUMENT KNOWN AS AN
461 ANSWER AND DELIVERING A COPY OF THE ANSWER TO THE
462 ATTORNEY FOR THE PLAINTIFF (LENDER) AND FILING THE
463 ORIGINAL ANSWER WITH THE COURT WITHIN 20 DAYS AFTER
464 BEING SERVED. THERE IS NO CHARGE FOR FILING AN ANSWER.
465 A TELEPHONE CALL OR E-MAIL TO THE ATTORNEY FOR THE
466 PLAINTIFF WILL NOT SATISFY THE REQUIREMENT TO FILE AN
467 ANSWER. THIS LAWSUIT DOES NOT MEAN THAT YOU MUST
468 IMMEDIATELY MOVE OUT OF YOUR PROPERTY.

469
470 SOURCES OF INFORMATION AND ASSISTANCE:

471 The state encourages you to become informed about your
472 options in foreclosure. You should contact a licensed
473 Florida attorney to assist you. If you cannot afford
474 an attorney, your local legal aid office may be able
475 to assist you at little or no cost to you. There are
476 also government agencies and nonprofit organizations

477 that you may contact for cost-free information about
 478 possible options, including trying to work with your
 479 lender during this process.

480
 481 FORECLOSURE RESCUE SCAMS:
 482 Be careful of people who approach you with offers to
 483 help you keep your home. There are individuals who
 484 watch for notices of foreclosure actions in order to
 485 unfairly profit from a homeowner's distress. You
 486 should be extremely careful about any such promises
 487 and any suggestions that you pay them a fee or deed
 488 over your property. State law requires any nonattorney
 489 offering such services for profit to enter into a
 490 contract which fully describes the services they will
 491 perform and fees they will charge, and which prohibits
 492 them from taking any money from you until they have
 493 completed all such promised services.

494
 495 (3) The notice to any tenant required under paragraph
 496 (1)(b) shall:

497 (a) Be delivered with the summons and complaint. The
 498 foreclosing party shall provide its name, address, and telephone
 499 number on the notice. The title of the notice shall be in 14-
 500 point boldfaced type. The notice shall be on its own page.

501 (b) Appear substantially as follows:

502
 503 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE
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505 Florida law requires that we provide you with this
506 notice about the foreclosure process. Please read it
507 carefully.

508
509 We, ...(name of foreclosing party)..., are the
510 foreclosing party and are located at ...(foreclosing
511 party's address).... We can be reached at
512 ...(foreclosing party's telephone number)....

513
514 The property you are renting is the subject of a
515 foreclosure proceeding. You should file an answer to
516 this summons and complaint and deliver a copy of the
517 answer to the attorney for the plaintiff and file the
518 original with the court within 20 days after being
519 served. There is no charge for filing an answer. A
520 telephone call or an e-mail to the attorney for the
521 plaintiff will not satisfy the requirement of filing
522 an answer. If you have a written lease and are not the
523 owner of the residence, and the lease requires payment
524 of rent that at the time it was entered into was not
525 substantially less than the fair market rent for the
526 property, you may be entitled to remain in occupancy
527 under the federal Protecting Tenants at Foreclosure
528 Act of 2009, as amended. If you do not have a written
529 lease, under the same federal law you may be entitled
530 to remain in your home until 90 days after the person
531 or entity that acquires title to the property provides
532 you with a notice. If you are a subsidized tenant

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533 under federal, state, or local law or if you are a
534 tenant subject to rent control, rent stabilization, or
535 a federal statutory scheme, you may have other rights.
536 If the federal Protecting Tenants at Foreclosure Act
537 of 2009, as amended, and these other laws do not apply
538 to your situation, you may be required to vacate the
539 property upon completion of the foreclosure. The
540 filing of a foreclosure action does not automatically
541 cease your obligation to pay rent to your landlord.
542 You should contact a licensed Florida attorney to
543 understand your rights. If you cannot afford an
544 attorney, your local legal aid office may be able to
545 assist you at little or no cost to you.

546
547 (4) Only a single notice is required under this section
548 for any party defendant.

549 (5) Whenever a legal advertisement, publication, or notice
550 relating to a foreclosure proceeding is required to be placed in
551 a newspaper, it is the responsibility of the petitioner or
552 petitioner's attorney to place such advertisement, publication,
553 or notice. For counties having ~~with~~ more than 1 million total
554 population as reflected in the 2000 Official Decennial Census of
555 the United States Census Bureau as shown on the official website
556 of the United States Census Bureau, any notice of publication
557 required by this section shall be deemed to have been published
558 in accordance with the law if the notice is published in a
559 newspaper that has been entered as a periodical matter at a post
560 office in the county in which the newspaper is published, is

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561 published a minimum of 5 days a week, exclusive of legal
 562 holidays, and has been in existence and published a minimum of 5
 563 days a week, exclusive of legal holidays, for 1 year or is a
 564 direct successor to a newspaper that has been in existence for 1
 565 year that has been published a minimum of 5 days a week,
 566 exclusive of legal holidays. The advertisement, publication, or
 567 notice shall be placed directly by the attorney for the
 568 petitioner, by the petitioner if acting pro se, or by the clerk
 569 of the court. Only the actual costs charged by the newspaper for
 570 the advertisement, publication, or notice may be charged as
 571 costs in the action.

572 Section 9. Section 702.036, Florida Statutes, is created
 573 to read:

574 702.036 Finality of mortgage foreclosure judgment.—

575 (1) (a) In any action or proceeding in which a party seeks
 576 to set aside, invalidate, or challenge the validity of a final
 577 judgment of foreclosure of a mortgage or to establish or
 578 reestablish a lien or encumbrance on the property in abrogation
 579 of the final judgment of foreclosure of a mortgage, the court
 580 shall treat such request solely as a claim for monetary damages
 581 and may not grant relief that adversely affects the quality or
 582 character of the title to the property, if:

583 1. A final judgment of foreclosure of a mortgage was
 584 entered as to a property;

585 2. All applicable appeals periods have run as to the final
 586 judgment of foreclosure of a mortgage with no appeals having
 587 been taken, or any appeals having been finally resolved;

588 3. The property has been acquired for value, by a person

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589 not affiliated with the foreclosing lender, at a time in which
590 no lis pendens regarding the suit to set aside, invalidate, or
591 challenge the foreclosure appears in the official records of the
592 county where the property was located; and

593 4. The party seeking relief from the final judgment of
594 foreclosure of a mortgage was properly served in the foreclosure
595 lawsuit as provided in chapter 48 or chapter 49.

596 (b) This subsection does not limit the right to pursue any
597 other relief to which a person may be entitled, including, but
598 not limited to, compensatory damages, punitive damages,
599 statutory damages, consequential damages, injunctive relief, or
600 fees and costs, which does not adversely affect the ownership of
601 the title to the property as vested in the unaffiliated
602 purchaser for value.

603 (2) For purposes of this section, the following, without
604 limitation, shall be considered persons affiliated with the
605 foreclosing lender:

606 (a) The foreclosing lender or any loan servicer for the
607 loan being foreclosed;

608 (b) Any past or present owner or holder of the loan being
609 foreclosed;

610 (c) Any maintenance company, holding company, foreclosure
611 services company, or law firm under contract to any entity
612 listed in paragraph (a), paragraph (b), or this paragraph, with
613 regard to the loan being foreclosed; or

614 (d) Any parent, entity, subsidiary, or other person who
615 directly, or indirectly through one or more intermediaries,
616 controls or is controlled by, or is under common control with,

617 any entity listed in paragraph (a), paragraph (b), or paragraph
 618 (c).

619 (3) After foreclosure of a mortgage based upon the
 620 enforcement of a lost, destroyed, or stolen note, a person who
 621 is not a party to the underlying foreclosure action but who
 622 claims to be the actual holder of the promissory note secured by
 623 the foreclosed mortgage shall have no claim against the
 624 foreclosed property after it has been conveyed for valuable
 625 consideration to a person not affiliated with the foreclosing
 626 lender. This section does not preclude the actual holder of the
 627 note from pursuing recovery from any adequate protection given
 628 pursuant to s. 673.3091 or from the party who wrongfully claimed
 629 to be the owner or holder of the promissory note, the maker of
 630 the note, or any other person against whom it may have a claim
 631 relating to the note.

632 Section 10. Section 702.04, Florida Statutes, is amended
 633 to read:

634 702.04 ~~Mortgaged~~ Lands in different counties.—When a
 635 mortgage or other lien includes lands, railroad track, right-of-
 636 way, or terminal facilities and station grounds, lying in two or
 637 more counties, it may be foreclosed in any one of those ~~said~~
 638 counties, and all proceedings shall be had in that county as if
 639 all the ~~mortgaged~~ land, railroad track, right-of-way, or
 640 terminal facilities and station grounds lay therein, except that
 641 any notice of the sale must be published in every county wherein
 642 any of the lands, railroad track, right-of-way, or terminal
 643 facilities and station grounds to be sold lie. After final
 644 disposition of the suit, the clerk of the circuit court shall

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645 prepare and forward a certified copy of the decree of
 646 foreclosure, and the certificates of title, if any, ~~and sale and~~
 647 ~~of the decree of confirmation of sale~~ to the clerk of the
 648 circuit court of every county wherein any of the ~~mortgaged~~
 649 lands, railroad tracks, right-of-way, or terminal facilities and
 650 station grounds lie, to be recorded in the official records
 651 ~~foreign judgment book~~ of each such county, and the costs of such
 652 copies and of the recording record ~~record~~ thereof shall be taxed as
 653 costs in the cause.

654 Section 11. Section 702.06, Florida Statutes, is amended
 655 to read:

656 702.06 Deficiency decree; ~~common-law~~ suit to recover
 657 deficiency.-

658 (1) In all suits for the foreclosure of mortgages
 659 heretofore or hereafter executed, the entry of a deficiency
 660 decree for any portion of a deficiency, should one exist, shall
 661 be within the sound judicial discretion of the court, but the
 662 complainant shall also have the right to sue ~~at common law~~ to
 663 recover such deficiency, unless the court in the foreclosure
 664 action has granted or denied a deficiency judgment ~~provided no~~
 665 ~~suit at law to recover such deficiency shall be maintained~~
 666 ~~against the original mortgagor in cases where the mortgage is~~
 667 ~~for the purchase price of the property involved and where the~~
 668 ~~original mortgagee becomes the purchaser thereof at foreclosure~~
 669 ~~sale and also is granted a deficiency decree against the~~
 670 ~~original mortgagor.~~

671 (2) (a) In respect to an owner-occupied one-family to four-
 672 family dwelling unit, the party to whom a deficiency is owing

673 may move for the entry of a deficiency judgment in the
 674 foreclosure action or file a separate action for collection of
 675 the deficiency, no later than 1 year after the property has
 676 vested in the foreclosing lender or other purchaser at the
 677 foreclosure sale, or October 1, 2013, whichever is later.

678 (b) If a deficiency is not pursued within the time periods
 679 specified in this section, the vesting of the property pursuant
 680 to s. 702.068 or proceeds of the sale, regardless of the amount,
 681 shall be deemed to be in full satisfaction of the mortgage debt
 682 and a right to recover any deficiency in any subsequent action
 683 or proceeding shall be extinguished.

684 (c) This subsection does not restrict the authority of the
 685 court to determine the entitlement to any assets held by any
 686 receiver or any assignee of the rents and profits of the
 687 property.

688 Section 12. Section 702.062, Florida Statutes, is created
 689 to read:

690 702.062 Notice of extensions; defaults; case management
 691 conference.-

692 (1) In any mortgage foreclosure proceeding, other than a
 693 proceeding seeking foreclosure of a timeshare interest under
 694 part III of chapter 721, the plaintiff's counsel shall cause to
 695 be filed with the clerk of the court a notice of any extensions
 696 of time for a party to respond to an initial complaint which may
 697 be granted. Such notice shall be filed within the later of 5
 698 days after the granting of such extension or 60 days after the
 699 effective date of this act and may be made by copy of the letter
 700 confirming the extension. This requirement is not intended to

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701 discourage any party from requesting or granting such extensions
702 of time.

703 (2) Any party may notify the court and all parties as to
704 any foreclosure proceeding in which the file indicates:

705 (a) All parties defendant have been served personally by
706 substituted service or by publication; and

707 (b) No party defendant has filed an answer or other
708 response denying, contesting, or asserting defenses to the
709 plaintiff's entitlement to the foreclosure, and the time has run
710 for the entry of defaults against all nonresponding parties
711 defendant.

712 (3) The court, on its own motion or motion of any party,
713 may enter defaults against nonresponding parties in accordance
714 with the Florida Rules of Civil Procedure and shall direct the
715 plaintiff in the foreclosure action to file all affidavits,
716 certifications, and proofs necessary or appropriate for the
717 entry of a summary judgment of foreclosure within a time certain
718 or show cause why such a filing should not be made. The filing
719 of these materials shall be construed as a motion for summary
720 judgment, and the court may thereafter enter final summary
721 judgment or set the case for trial in accord with its sound
722 judicial discretion. This subsection does not restrict the
723 authority of the court to set aside a default or a judgment
724 granted thereon pursuant to the Florida Rules of Civil
725 Procedure.

726 (4) After all parties have been served and not earlier
727 than 48 days after the filing of the foreclosure case, any party
728 may request a case management conference at which the court

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729 shall set definite timetables for moving the case forward.

730 (5) The court may grant extensions or stays in the
 731 proceedings on a showing that the plaintiff and property owner
 732 defendant are engaged in mediation or good faith negotiations
 733 with regard to a loan modification or other settlement or
 734 otherwise as justice may require. The court may condition an
 735 extension or stay on the property owner or the lender, if it so
 736 chooses, paying any condominium or homeowners' association
 737 assessments coming due after the date of the extension or stay
 738 and keeping such assessments paid current through the conclusion
 739 of the foreclosure action.

740 Section 13. Section 702.065, Florida Statutes, is amended
 741 to read:

742 702.065 Final judgment in uncontested mortgage foreclosure
 743 proceedings where ~~deficiency judgment waived; attorney~~
 744 ~~attorney's~~ fees when default judgment entered.-

745 (1) In uncontested mortgage foreclosure proceedings in
 746 which the mortgagee waives the right to recoup any deficiency
 747 judgment, the court shall enter final judgment within 90 days
 748 after ~~from~~ the date of the close of pleadings. For the purposes
 749 of this subsection, a mortgage foreclosure proceeding is
 750 uncontested if a default has been entered against all defendants
 751 or no response ~~an answer not~~ contesting the foreclosure has been
 752 timely filed ~~or a default judgment has been entered by the~~
 753 ~~court.~~

754 (2) In a mortgage foreclosure proceeding, when ~~a default~~
 755 ~~judgment has been entered against the mortgagor and the note or~~
 756 mortgage provides for the award of reasonable attorney

757 ~~attorney's~~ fees, it is not necessary for the court to hold a
 758 hearing or adjudge the requested attorney ~~attorney's~~ fees to be
 759 reasonable if the fees do not exceed the greater of 1.5 ~~3~~
 760 percent of the principal amount owed at the time of filing the
 761 complaint or \$1,500, even if the note or mortgage does not
 762 specify the percentage of the original amount that would be paid
 763 ~~as liquidated damages. Such fees constitute liquidated damages~~
 764 ~~in any proceeding to enforce the note or mortgage.~~ This section
 765 does not preclude a challenge to the reasonableness of the
 766 attorney ~~attorney's~~ fees.

767 Section 14. Section 702.068, Florida Statutes, is created
 768 to read:

769 702.068 Election by foreclosing lender to proceed without
 770 public sale.—

771 (1) When the amount of principal and interest, exclusive
 772 of fees and costs, owed to a foreclosing lender equals or
 773 exceeds 120 percent of the just value of the property subject to
 774 foreclosure, as determined by the county property appraiser in
 775 the most recent certified tax roll, the foreclosing lender may
 776 elect to foreclose without a public sale of the property under
 777 chapter 45. Except as otherwise provided in this subsection,
 778 nothing in this section alters any aspect of the judicial
 779 foreclosure proceeding; the rights, remedies, and defenses
 780 available to the parties; the court rules and procedures to be
 781 followed; or the authority of the court to supervise and manage
 782 the foreclosure case.

783 (2) A plaintiff electing to proceed without a public sale
 784 may include the request to proceed under this section in any

785 complaint or amended complaint filed, or the plaintiff or any
 786 other party may file a motion to proceed under this section at
 787 any time prior to the entry of a final judgment of foreclosure.

788 (3) Upon making the election to foreclose without a public
 789 sale, the party making the election shall cause notices to be
 790 sent to each party, other than the party sending the notice, as
 791 follows:

792 (a) If the election to proceed without a public sale is
 793 made in the complaint, the notice shall be served together with
 794 the complaint on the defendants as provided in chapter 48 or
 795 chapter 49. If the election is made after the initial service of
 796 the complaint, the notice shall be served on any party against
 797 whom a default has been entered as provided in chapter 48 or
 798 chapter 49 and served on other parties as provided in the
 799 Florida Rules of Civil Procedure. If service is by publication,
 800 the published notice shall indicate that "the plaintiff has
 801 elected to proceed without a public sale as provided under
 802 section 702.068, Florida Statutes."

803 (b) The notice provided to the owners of the property,
 804 tenants, holders of subordinate liens and other interests in the
 805 property, and any other defendants shall be on its own page, in
 806 14-point boldfaced type and the title of the notice shall be in
 807 20-point boldfaced type, and in substantially the following
 808 form:

809
 810 NOTICE OF FORECLOSURE WITHOUT PUBLIC SALE

811
 812 Florida Law requires that we provide you notice

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813 that this foreclosure may proceed without a public
814 sale. Please read it carefully.

815
816 You have been identified as the owner of, the
817 holder of a mortgage or lien on, or otherwise having
818 an interest in property located at ...(property
819 address)... which is subject to foreclosure. You are
820 hereby notified that ...(name and address of
821 plaintiff)... has filed a foreclosure lawsuit with
822 regard to the property and has elected to proceed
823 without a public sale pursuant to section 702.068,
824 Florida Statutes. Under this provision, after the
825 entry of a final judgment of foreclosure the property
826 will vest automatically in the foreclosing lender.
827 There will not be a public sale of the property, and
828 you may lose your equity in this property or any
829 equity that would be available to pay subordinate
830 liens you may hold.

831 At any time prior to the entry of a final
832 judgment of foreclosure, you may demand a traditional
833 public sale in order to protect any equity in the
834 property, but anyone making such a demand will
835 initially be responsible for paying \$450 towards the
836 costs of advertising, notice, and other expenses
837 relating to that public sale. Under certain
838 circumstances, those costs may be repaid from the
839 proceeds of the public sale.

840 NOTE: The right to demand a public sale at any

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841 time prior to the entry of a final judgment does not
842 extend the 20-day period to initially respond to the
843 complaint.

844 If you have any questions about this notice or
845 the lawsuit, you should immediately consult a licensed
846 Florida attorney.

847
848 (c) The notice in paragraph (b) is informational only.
849 Nonmaterial defects in the content of this notice do not
850 invalidate any title vested without a public sale under this
851 section, as long as proper service has been obtained.

852 (d) The election to proceed without a public sale and the
853 delivery of notices may occur not later than 15 days before the
854 entry of a final judgment of foreclosure.

855 (4) At any time before the entry of a final order of
856 foreclosure without a public sale, any party may demand a public
857 sale by filing a demand for such with the clerk of the court. If
858 a public sale is demanded, the court shall proceed with the
859 foreclosure and sale under other applicable law. The party
860 demanding a public sale under this section shall
861 contemporaneously deposit with the clerk \$450 conditioned to pay
862 all costs of noticing and advertising the public sale and any
863 clerk's fee or other service fees charged in connection with the
864 public sale.

865 (a) If the price returned at the public sale exceeds the
866 amount determined in the final judgment to be owed under the
867 mortgage to the foreclosing lender, including principal, accrued
868 interest, expenses, attorney fees and costs, and the costs of

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869 noticing and advertising the sale, any clerk's fees or other
870 service fees shall be taxed as costs and reimbursed to the party
871 making the cost deposit, up to the amount of such deposit.

872 (b) If the price returned at the public sale does not
873 exceed the amount owed under the mortgage to the foreclosing
874 lender, the cost deposit shall be applied to repay the
875 foreclosing lender for the actual costs of noticing and
876 advertising the public sale and any clerk's fees and other
877 service fees, with any excess being returned to the party making
878 the cost deposit.

879 (5) Upon finding that all requirements of this section and
880 conditions for the granting of a final judgment of foreclosure
881 have been satisfied, and no public sale has been demanded, the
882 court may, as is consistent with justice and sound judicial
883 discretion, enter a final judgment in foreclosure.

884 (a) The final judgment shall take effect no sooner than 10
885 days after the entry thereof and, upon the recording of the
886 certificate of title issued pursuant to paragraph (d), shall
887 vest all of the owners' right, title, and interest in and to the
888 property subject to foreclosure in the plaintiff or plaintiff's
889 designee as identified in the final judgment, and, if so found
890 by the court, that each defendant and all persons claiming under
891 or against each defendant since the filing of the notice of lis
892 pendens shall be foreclosed of all estate or claim in the
893 property, except as to claims or rights under chapter 718 or
894 chapter 720, if any.

895 (b) The owner or any party defendant may redeem the
896 property at any time prior to the final judgment becoming

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897 effective. Upon redemption:

898 1. The clerk shall cause a notice of redemption to be
899 filed in the court records and in the official records and to
900 cause an order, if any, approving or ratifying the redemption to
901 be filed in the official records; and

902 2. The plaintiff shall cause the mortgage to be satisfied
903 of record.

904 (c) The final judgment shall recite the just value of the
905 property as determined by the county property appraiser and
906 include a finding that the principal and accrued interest owed
907 to the foreclosing lender equals or exceeds 120 percent of the
908 just value.

909 (d) After the time provided in the final judgment for
910 redemption, and provided redemption has not occurred, the clerk
911 shall issue a certificate of title vesting title to the property
912 in the foreclosing plaintiff or its designee.

913 (6) When the foreclosing lender elects to foreclose
914 without a public sale, upon entry of a judgment and issuing the
915 certificate of title under this section, the debt that was
916 secured by the foreclosed mortgage shall be deemed satisfied and
917 any right to pursue a deficiency decree or other action to
918 enforce such note is waived. When a party defendant elects to
919 proceed without a public sale, the plaintiff may pursue a
920 deficiency if and as otherwise permitted by law.

921 Section 15. Section 702.10, Florida Statutes, is amended
922 to read:

923 702.10 ~~Order to Show cause; entry of final judgment of~~
924 ~~foreclosure; payment during foreclosure.~~—

925 (1) After a complaint in a foreclosure proceeding has been
 926 filed which is verified in the form of an affidavit sufficient
 927 to support a motion for summary judgment, the plaintiff
 928 ~~mortgagee~~ may request a hearing to show cause ~~an order to show~~
 929 ~~cause for the entry of final judgment and the court shall~~
 930 ~~immediately review the complaint.~~ Upon such request, the clerk
 931 ~~If, upon examination of the complaint, the court finds that the~~
 932 ~~complaint is verified and alleges a cause of action to foreclose~~
 933 ~~on real property, the court~~ shall promptly issue a summons ~~an~~
 934 ~~order~~ directed to each ~~the~~ defendant to show cause why a final
 935 judgment of foreclosure should not be entered.

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

937 1. Set the date and time for a hearing ~~on the order~~ to
 938 show cause. However, the date for the hearing may not occur ~~be~~
 939 ~~set~~ sooner than the later of 20 days after the service of the
 940 summons or 45 days after the service of the complaint ~~order~~.

941 When service is obtained by publication, the date for the
 942 hearing may not be set sooner than 55 ~~30~~ days after the first
 943 publication. ~~The hearing must be held within 60 days after the~~
 944 ~~date of service. Failure to hold the hearing within such time~~
 945 ~~does not affect the validity of the order to show cause or the~~
 946 ~~jurisdiction of the court to issue subsequent orders.~~

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

949 ~~2.3.~~ State that the filing of defenses by a motion or by a
 950 responsive pleading verified or sworn answer at or before the
 951 hearing to show cause may constitute ~~constitutes~~ cause for the
 952 court not to enter ~~the attached~~ final judgment.

953 3.4. State that any ~~the~~ defendant has the right to file
 954 affidavits or other papers at or before the time of the hearing
 955 to show cause and may appear personally or by way of an attorney
 956 at the hearing.

957 4.5. State that, if any ~~the~~ defendant files defenses by a
 958 motion, the hearing time may be used to hear the defendant's
 959 motion.

960 5.6. State that, if any ~~the~~ defendant fails to appear at
 961 the hearing to show cause or fails to file a response ~~defenses~~
 962 ~~by a motion or by a verified or sworn answer~~ or files an answer
 963 not contesting the foreclosure, ~~the~~ defendant shall ~~may~~ be
 964 deemed ~~considered~~ to have waived the right to a hearing and in
 965 such case the court shall, unless the record shows that the
 966 relief is unavailable, ~~may~~ enter a final judgment of foreclosure
 967 ordering the clerk of the court to conduct a foreclosure sale.

968 6.7. State that if the mortgage provides for reasonable
 969 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
 970 fees do not exceed the greater of 1.5 ~~3~~ percent of the principal
 971 amount owed at the time of filing the complaint or \$1,500, it is
 972 unnecessary for the court to hold a hearing or adjudge the
 973 requested attorney ~~attorney's~~ fees to be reasonable.

974 7.8. Attach the proposed final judgment of foreclosure the
 975 plaintiff requests the court to ~~will~~ enter, ~~if the defendant~~
 976 ~~waives the right to be heard~~ at the hearing on the order to show
 977 cause.

978 8.9. Require the plaintiff ~~mortgagee~~ to serve a copy of
 979 the summons ~~order~~ to show cause on each defendant ~~the mortgagor~~
 980 in the following manner:

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

985 b. If a defendant ~~the mortgagor~~ has not been served with
 986 the complaint and original process, the summons ~~order~~ to show
 987 cause, together with ~~the summons and~~ a copy of the complaint,
 988 shall be served on the defendant ~~mortgagor~~ in the same manner as
 989 provided by law for original process.

990
 991 Any final judgment of foreclosure entered under this subsection
 992 is for in rem relief only. Nothing in this subsection shall
 993 preclude the entry of a deficiency judgment where otherwise
 994 allowed by law.

995 (b) The right to be heard at the hearing to show cause is
 996 waived if a ~~the~~ defendant, after being served as provided by law
 997 with a ~~an~~ order to show cause summons, fails to file a response
 998 contesting the foreclosure ~~engages in conduct that clearly shows~~
 999 ~~that the defendant has relinquished the right to be heard on~~
 1000 ~~that order. The defendant's failure to file defenses by a motion~~
 1001 ~~or by a sworn or verified answer or~~ fails to appear at the
 1002 hearing duly scheduled on the ~~order to show cause~~ summons
 1003 ~~presumptively constitutes conduct that clearly shows that the~~
 1004 ~~defendant has relinquished the right to be heard. If a defendant~~
 1005 files a response contesting the foreclosure ~~defenses by a motion~~
 1006 ~~or by a verified or sworn answer at or before the hearing, such~~
 1007 response may constitute ~~action constitutes~~ cause upon the
 1008 determination of the court as set forth in paragraph (d) and may

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1009 preclude ~~precludes~~ the entry of a final judgment at the hearing
 1010 to show cause.

1011 (c) In a mortgage foreclosure proceeding, when a default
 1012 judgment has been entered against the mortgagor and the note or
 1013 mortgage provides for the award of reasonable attorney
 1014 ~~attorney's~~ fees, it is unnecessary for the court to hold a
 1015 hearing or adjudge the requested attorney ~~attorney's~~ fees to be
 1016 reasonable if the fees do not exceed the greater of 1.5 ~~3~~
 1017 percent of the principal amount owed on the note or mortgage at
 1018 the time of filing of the complaint or \$1,500, even if the note
 1019 or mortgage does not specify the percentage of the original
 1020 amount that would be paid ~~as liquidated damages~~.

1021 (d) If the court finds that each ~~the~~ defendant has waived
 1022 the right to be heard as provided in paragraph (b), the court
 1023 shall promptly enter a final judgment of foreclosure without the
 1024 need for a further hearing upon either the filing with the court
 1025 of the original note or satisfaction of the conditions for
 1026 establishment of the lost note pursuant to law. If the court
 1027 finds that a ~~the~~ defendant has not waived the right to be heard
 1028 on the order to show cause, the court shall then determine
 1029 whether there is cause not to enter a final judgment of
 1030 foreclosure. If the court finds that a ~~the~~ defendant has not
 1031 shown cause, the court shall promptly enter a judgment of
 1032 foreclosure.

1033 (2) In an action for a mortgage foreclosure, on properties
 1034 other than a homestead ~~other than residential real estate~~, the
 1035 mortgagee may request that the court enter an order directing
 1036 the mortgagor defendant to show cause why an order to make

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1037 | payments during the pendency of the foreclosure proceedings or
 1038 | an order to vacate the premises should not be entered.

1039 | (a) The order shall:

1040 | 1. Set the date and time for hearing on the order to show
 1041 | cause. However, the date for the hearing shall not be set sooner
 1042 | than 20 days after the service of the order. Where service is
 1043 | obtained by publication, the date for the hearing shall not be
 1044 | set sooner than 30 days after the first publication.

1045 | 2. Direct the time within which service of the order to
 1046 | show cause and the complaint shall be made upon each ~~the~~
 1047 | defendant.

1048 | 3. State that a ~~the~~ defendant has the right to file
 1049 | affidavits or other papers at the time of the hearing and may
 1050 | appear personally or by way of an attorney at the hearing.

1051 | 4. State that, if a ~~the~~ defendant fails to appear at the
 1052 | hearing to show cause and fails to file defenses by a motion or
 1053 | by a verified or sworn answer, ~~the~~ defendant may be deemed to
 1054 | have waived the right to a hearing and in such case the court
 1055 | may enter an order to make payment or vacate the premises.

1056 | 5. Require the mortgagee to serve a copy of the order to
 1057 | show cause on the mortgagor in the following manner:

1058 | a. If the mortgagor has been served with the complaint and
 1059 | original process, service of the order may be made in the manner
 1060 | provided in the Florida Rules of Civil Procedure.

1061 | b. If the mortgagor has not been served with the complaint
 1062 | and original process, the order to show cause, together with the
 1063 | summons and a copy of the complaint, shall be served on the
 1064 | mortgagor in the same manner as provided by law for original

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1065 process.

1066 (b) The right of a defendant to be heard at the hearing to
1067 show cause is waived if the defendant, after being served as
1068 provided by law with an order to show cause, engages in conduct
1069 that clearly shows that the defendant has relinquished the right
1070 to be heard on that order. A ~~The~~ defendant's failure to file
1071 defenses by a motion or by a sworn or verified answer or to
1072 appear at the hearing duly scheduled on the order to show cause
1073 presumptively constitutes conduct that clearly shows that the
1074 defendant has relinquished the right to be heard.

1075 (c) If the court finds that a ~~the~~ defendant has waived the
1076 right to be heard as provided in paragraph (b), the court may
1077 promptly enter an order requiring payment in the amount provided
1078 in paragraph (f) or an order to vacate.

1079 (d) If the court finds that the mortgagor has not waived
1080 the right to be heard on the order to show cause, the court
1081 shall, at the hearing on the order to show cause, consider the
1082 affidavits and other showings made by the parties appearing and
1083 make a determination of the probable validity of the underlying
1084 claim alleged against the mortgagor and the mortgagor's
1085 defenses. If the court determines that the mortgagee is likely
1086 to prevail in the foreclosure action, the court shall enter an
1087 order requiring the mortgagor to make the payment described in
1088 paragraph (e) to the mortgagee and provide for a remedy as
1089 described in paragraph (f). However, the order shall be stayed
1090 pending final adjudication of the claims of the parties if the
1091 mortgagor files with the court a written undertaking executed by
1092 a surety approved by the court in an amount equal to the unpaid

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1093 balance of the mortgage on the property, including all
1094 principal, interest, unpaid taxes, and insurance premiums paid
1095 by the mortgagee.

1096 (e) In the event the court enters an order requiring the
1097 mortgagor to make payments to the mortgagee, payments shall be
1098 payable at such intervals and in such amounts provided for in
1099 the mortgage instrument before acceleration or maturity. The
1100 obligation to make payments pursuant to any order entered under
1101 this subsection shall commence from the date of the motion filed
1102 hereunder. The order shall be served upon the mortgagor no later
1103 than 20 days before the date specified for the first payment.
1104 The order may permit, but shall not require the mortgagee to
1105 take all appropriate steps to secure the premises during the
1106 pendency of the foreclosure action.

1107 (f) In the event the court enters an order requiring
1108 payments the order shall also provide that the mortgagee shall
1109 be entitled to possession of the premises upon the failure of
1110 the mortgagor to make the payment required in the order unless
1111 at the hearing on the order to show cause the court finds good
1112 cause to order some other method of enforcement of its order.

1113 (g) All amounts paid pursuant to this section shall be
1114 credited against the mortgage obligation in accordance with the
1115 terms of the loan documents, provided, however, that any
1116 payments made under this section shall not constitute a cure of
1117 any default or a waiver or any other defense to the mortgage
1118 foreclosure action.

1119 (h) Upon the filing of an affidavit with the clerk that
1120 the premises have not been vacated pursuant to the court order,

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1121 the clerk shall issue to the sheriff a writ for possession which
 1122 shall be governed by the provisions of s. 83.62.

1123 (i) For purposes of this section, there is a rebuttable
 1124 presumption that a residential property for which a homestead
 1125 exemption for taxation was granted according to the certified
 1126 rolls of the latest assessment by the county property appraiser,
 1127 before the filing of the foreclosure action, is a homestead
 1128 residence.

1129 (3) This section does not supersede or limit other
 1130 procedures adopted by the court, including, but not limited to,
 1131 mandatory mediation and alternative dispute resolution
 1132 processes.

1133 Section 16. Section 702.11, Florida Statutes, is created
 1134 to read:

1135 702.11 Adequate protections for lost, destroyed, or stolen
 1136 notes in mortgage foreclosure.-

1137 (1) In connection with the mortgage foreclosure of a one-
 1138 family to four-family residential property, the following
 1139 constitute reasonable means of providing adequate protection
 1140 under s. 673.3091:

1141 (a) A written indemnification agreement by a person
 1142 reasonably believed sufficiently solvent to honor such an
 1143 obligation;

1144 (b) A surety bond;

1145 (c) A letter of credit issued by a financial institution;

1146 (d) A deposit of cash collateral with the clerk of the
 1147 court; or

1148 (e) Such other security as the court may deem appropriate

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1149 under the circumstances.

1150

1151 Any security given shall be on terms and in amounts set by the
1152 court, for a time period through the running of the statute of
1153 limitations for enforcement of the underlying note, and
1154 conditioned to indemnify and hold harmless the maker of the note
1155 against any loss or damage, including principal, interest, and
1156 attorney fees and costs, that might occur by reason of a claim
1157 by another person to enforce the note.

1158 (2) Any person who wrongly claimed to be the holder of or
1159 pursuant to s. 673.3011 to be entitled to enforce a lost,
1160 stolen, or destroyed note and caused the mortgage secured
1161 thereby to be foreclosed shall be liable to the actual holder of
1162 the note, without limitation to any adequate protections given,
1163 for actual damages suffered together with attorney fees and
1164 costs of the actual holder of the note in enforcing rights under
1165 this subsection.

1166 (a) The actual holder of the note is not required to
1167 pursue recovery against the maker of the note or any guarantor
1168 thereof as a condition precedent to pursuing remedies under this
1169 subsection.

1170 (b) This subsection does not limit or restrict the ability
1171 of the actual holder of the note to pursue any other claims or
1172 remedies it may have against the maker, the person who wrongly
1173 claimed to be the holder, or any person who facilitated or
1174 participated in the claim to the note or enforcement thereof.

1175 Section 17. Section 702.12, Florida Statutes, is created
1176 to read:

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1177 702.12 Attorney fee as sanctions for raising unsupported
 1178 claims or defenses; exceptions; service of motions; damages for
 1179 delay of litigation.—

1180 (1) In any mortgage foreclosure action, upon the court's
 1181 initiative or motion of any party, the court shall award a
 1182 reasonable attorney fee, including prejudgment interest, to be
 1183 paid to the prevailing party in equal amounts by the losing
 1184 party and the losing party's attorney on any claim or defense at
 1185 any time during a civil proceeding or action in which the court
 1186 finds that the losing party or the losing party's attorney knew
 1187 or should have known that a claim or defense when initially
 1188 presented to the court or at any time before trial:

1189 (a) Was not supported by the material facts necessary to
 1190 establish the claim or defense; or

1191 (b) Would not be supported by the application of then-
 1192 existing law to those material facts.

1193 (2) At any time in any civil proceeding or action in which
 1194 the moving party proves by a preponderance of the evidence that
 1195 any action taken by the opposing party, including, but not
 1196 limited to, the filing of any pleading or part thereof, the
 1197 assertion of or response to any discovery demand, the assertion
 1198 of any claim or defense, or the response to any request by any
 1199 other party, was taken primarily for the purpose of unreasonable
 1200 delay, the court shall award damages to the moving party for its
 1201 reasonable expenses incurred in obtaining the order, which may
 1202 include attorney fees, and other loss resulting from the
 1203 improper delay.

1204 (3) Notwithstanding subsections (1) and (2), monetary

1205 sanctions may not be awarded:

1206 (a) Under paragraph (1)(b) if the court determines that
 1207 the claim or defense was initially presented to the court as a
 1208 good faith argument for the extension, modification, or reversal
 1209 of existing law or the establishment of new law, as it applied
 1210 to the material facts, with a reasonable expectation of success.

1211 (b) Under paragraph (1)(a) or paragraph (1)(b) against the
 1212 losing party's attorney if he or she has acted in good faith,
 1213 based on the representations of his or her client as to the
 1214 existence of those material facts.

1215 (c) Under paragraph (1)(b) against a represented party.

1216 (4) A motion by a party seeking sanctions under this
 1217 section must be served but may not be filed with or presented to
 1218 the court unless, within 21 days after service of the motion,
 1219 the challenged paper, claim, defense, contention, allegation, or
 1220 denial is not withdrawn or appropriately corrected.

1221 (5) The provisions of this section are supplemental to
 1222 other sanctions or remedies available under law or under court
 1223 rules.

1224 Section 18. This act does not apply to the foreclosure of
 1225 liens on timeshare interests under the Timeshare Lien
 1226 Foreclosure Act, part III of chapter 721, Florida Statutes.

1227 Section 19. The Division of Statutory Revision is directed
 1228 to replace the phrase "the effective date of this act" wherever
 1229 it occurs in this act with the date this act becomes a law.

1230 Section 20. This act is intended to be remedial in nature
 1231 and shall apply to any action filed after the effective date of
 1232 this act.

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Section 21. This act shall take effect October 1, 2012.