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1 A bill to be entitled
 2 An act relating to foreclosure proceedings; providing
 3 an effective date.

4
 5 Be It Enacted by the Legislature of the State of Florida:

6
 7 Section 1. This act may be cited as the "Florida Fair
 8 Foreclosure Act."

9 Section 2. The public policy in Florida is to encourage
 10 borrowers and lenders to work out alternatives to foreclosure
 11 prior to filing suit and to explore possible settlements in
 12 mediation. Once suit has been filed, the public interest is
 13 served by moving foreclosure cases to final resolution
 14 expeditiously in order to get real property back into the stream
 15 of commerce, but to do so consistent with due process,
 16 fundamental fairness and without impairing the ability of the
 17 court to manage its docket and schedules. This bill is adopted
 18 in an effort to provide additional tools to the court to assist
 19 in achieving such a balance.

20 Section 3. Section 57.105, Florida Statutes, is repealed.

21 Section 4. Subsection (9) of section 201.02, Florida
 22 Statutes, is amended to read:

23 201.02 Tax on deeds and other instruments relating to real
 24 property or interests in real property.—

25 (9) A certificate of title issued by the clerk of court
 26 under s. 45.031(6)~~(5)~~ in a judicial sale of real property under
 27 an order or final judgment issued pursuant to a foreclosure
 28 proceeding is subject to the tax imposed by subsection (1).

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29 However, the amount of the tax shall be computed based solely on
 30 the amount of the highest and best bid received for the property
 31 at the foreclosure sale. This subsection is intended to clarify
 32 existing law and shall be applied retroactively. A final
 33 judgment of foreclosure vesting title in a lender under s.
 34 702.068 is subject to the tax imposed by subsection (1) based
 35 upon a sale price of \$100.

36 Section 5. Section 701.04, Florida Statutes, is amended to
 37 read:

38 701.04 Estoppel statement; cancellation of mortgages,
 39 liens, and judgments.-

40 (1) Within ~~14~~ 15 days after the date on which a receipt of
 41 the written request for an estoppel statement is received from
 42 of a mortgagor, the owner of an interest in the property
 43 encumbered by a mortgage, or the designee of either, requesting
 44 a payoff amount for the mortgage as of a certain date, the
 45 holder of a mortgage shall provide a written estoppel statement
 46 executed by an officer or authorized agent of the holder of the
 47 mortgage deliver to the mortgagor person making the request at a
 48 the place, fax number or email address designated in the written
 49 request. an The estoppel letter statement shall setting forth-:

50 (a) the unpaid balance of the loan secured by the mortgage,
 51 including principal, all accrued interest, and any other charges
 52 properly due under or secured by the mortgage ~~and;~~

53 (b) interest on a per-day basis for the unpaid balance for
 54 a period of no less than 20 days after the date of delivery of
 55 the estoppel statement;

56 (c) certification that the party providing the statement is

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57 the holder of the original promissory note secured thereby, or
 58 is entitled to enforce the note pursuant to s. 673.3011, as the
 59 case may be; and

60 (d) a commitment to comply with subsection (3) upon receipt
 61 of the amounts set forth in the estoppel statement.

62 (e) The mortgagee may not charge a fee for the preparation
 63 or delivery of the estoppel statement.

64 (f) Subsequent owners of the property encumbered by the
 65 mortgage, and creditors and lienholders taking an interest in
 66 the property, for a valuable consideration, and those claiming
 67 by, through and under them, may rely on the estoppel statement
 68 and shall be entitled to the benefits thereof.

69 (g) Whenever the amount of money due on any mortgage, lien,
 70 or judgment shall be fully paid to the person or party entitled
 71 to the payment thereof, the mortgagee, creditor, or assignee, or
 72 the attorney of record in the case of a judgment, to whom such
 73 payment shall have been made, shall execute in writing an
 74 instrument acknowledging satisfaction of said mortgage, lien, or
 75 judgment and have the same acknowledged, or proven, and duly
 76 entered of record in the book ~~provided by law for such purposes~~
 77 official records in the proper county. Where the person or party
 78 executing the satisfaction is not shown as the owner of the
 79 mortgage in the official records, the instrument shall be
 80 supplemented by a sworn certification that the person executing
 81 the satisfaction was then in physical possession of the original
 82 promissory note secured by the mortgage or was then a person
 83 entitled to enforce the note pursuant to s. 673.3011, as the
 84 case may be.

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85 (h) If the request is not from the mortgagor or the
 86 designee of the mortgagor, the request shall include a copy of
 87 the instrument or instruments showing an ownership interest in
 88 the property in the party then the unpaid balance of the loan
 89 secured by the mortgage need not be itemized.

90 (2) Within 60 days of the date of receipt of the full
 91 payment of the mortgage, lien, or judgment, the person required
 92 to acknowledge satisfaction of the mortgage, lien, or judgment
 93 shall send or cause to be sent ~~the recorded satisfaction~~ to the
 94 person who has made full payment ~~maker~~ of the promissory note or
 95 such other person as may be designated in writing by the payor
 96 at or after the final payment, the recorded satisfaction and
 97 either:

98 (a) the original promissory note, marked "paid in full";
 99 or

100 (b) a lost, destroyed or stolen note affidavit together
 101 with exhibits in compliance with s. 702.015 together with
 102 adequate protections as provided in s. 702.11.

103 (3) Whenever a writ of execution has been issued,
 104 docketed, and indexed with a sheriff and the judgment upon which
 105 it was issued has been fully paid, it shall be the
 106 responsibility of the party receiving payment to request, in
 107 writing, addressed to the sheriff, return of the writ of
 108 execution as fully satisfied.

109 (4) If the documents required by subsection (3) have not
 110 been delivered within 60 days, the party who received payment on
 111 the note shall pay to the maker thereof a fee in the amount of
 112 \$100 per day for each day beyond 60 days in which the documents

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113 have not been delivered. The aggregate fees under this
 114 subsection (4) shall not exceed \$5,000.00.

115
 116 ~~In the case of a civil action arising out of the provisions of~~
 117 ~~this section, the prevailing party shall be entitled to~~
 118 ~~attorney's fees and costs.~~

119 (5) A summary proceeding pursuant to s. 51.011 may be
 120 brought to compel compliance with the various obligations and
 121 duties of this section, and the prevailing party may recover
 122 reasonable attorney's fees and costs. The court may limit
 123 recovery of fees and costs where an unreasonable number of
 124 requests for estoppel statements have been made.

125 Section 6. Section 702.015, Florida Statutes, is created
 126 to read:

127 702.015 Elements of Complaint. Lost, Destroyed or Stolen
 128 Note Affidavit.—Any complaint which seeks to foreclose a
 129 mortgage securing a lien on real property must contain
 130 affirmative allegations expressly made by the plaintiff at the
 131 time the proceeding is commenced that the plaintiff is the
 132 holder of the subject note secured by the mortgage, or allege
 133 with specificity the factual basis by which plaintiff is a
 134 person entitled to enforce the note under s. 673.3011. Where a
 135 party has been delegated the authority to institute a mortgage
 136 foreclosure action on behalf of the holder of the note, the
 137 complaint shall describe the authority of the plaintiff and
 138 identify, with specificity, the document which grants the
 139 plaintiff the authority to act on behalf of the holder of the
 140 note.

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141 (1) Unless the complaint includes a count to enforce a
 142 lost, destroyed or stolen instrument, the plaintiff shall cause
 143 the original promissory note to be filed with the court
 144 contemporaneously with and as a condition precedent to the
 145 filing of the complaint for foreclosure.

146 (2) Where the complaint includes a count to enforce a
 147 lost, destroyed or stolen instrument, an affidavit executed
 148 under penalty of perjury shall be attached to the complaint.
 149 The affidavit shall:

150 (a) detail a clear chain of all assignments for the
 151 promissory note, if any, which is the subject of the action.

152 (b) set forth facts showing that the plaintiff is entitled
 153 to enforce a lost, destroyed or stolen instrument pursuant to s.
 154 673.3091;

155 (c) include as exhibits to the affidavit such copies of the
 156 note and allonges thereto, assignments of mortgage, audit
 157 reports showing physical receipt of the original note, or other
 158 evidence of the acquisition, ownership and possession of the
 159 note as may be available to plaintiff.

160 (3) Following dismissal of the foreclosure case, and upon
 161 request of the plaintiff, the clerk may return the original
 162 promissory note without need for further order of the court.

163 Section 7. Section 702.035, Florida Statutes, is amended
 164 to read:

165 702.035 Legal notice concerning foreclosure proceedings.—

166 (1) The foreclosing party in a mortgage foreclosure action
 167 involving an owner-occupied one-family to four-family dwelling
 168 unit shall provide notice in accordance with this section to:

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169 (a) Any mortgagor having an interest in the property and
 170 record title owner of the property; and

171 (b) Any tenant of a dwelling unit in the property if the
 172 foreclosing party is seeking to foreclose the interest of the
 173 tenant.

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

175 (a) Be delivered with the summons and complaint. Such
 176 notice shall be in bold, 14-point type and the title of the
 177 notice shall be in bold, 20-point type. The notice shall be on
 178 its own page.

179 (b) Appear as follows:

180
 181 NOTICE YOU ARE IN DANGER OF LOSING YOUR HOME
 182 If you fail to respond to the summons and complaint in this
 183 foreclosure action, you may lose your home. Please read the
 184 summons and complaint carefully. You should immediately
 185 contact an attorney or your local legal aid office to
 186 obtain advice on how to protect yourself. Sending a payment
 187 to your mortgage company will not stop this foreclosure
 188 action.

189
 190 YOU MUST RESPOND BY PREPARING A DOCUMENT KNOWN AS AN ANSWER
 191 AND DELIVERING A COPY OF THE ANSWER TO THE ATTORNEY FOR THE
 192 PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ORIGINAL ANSWER
 193 WITH THE COURT. THIS LAWSUIT DOES NOT MEAN THAT YOU MUST
 194 IMMEDIATELY MOVE OUT OF YOUR PROPERTY.

195
 196 SOURCES OF INFORMATION AND ASSISTANCE:

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197 The state encourages you to become informed about your
 198 options in foreclosure. In addition to seeking assistance
 199 from an attorney or legal aid office, there are government
 200 agencies and nonprofit organizations that you may contact
 201 for cost-free information about possible options, including
 202 trying to work with your lender during this process.

203
 204 FORECLOSURE RESCUE SCAMS:

205 Be careful of people who approach you with offers to help
 206 you keep your home. There are individuals who watch for
 207 notices of foreclosure actions in order to unfairly profit
 208 from a homeowner's distress. You should be extremely
 209 careful about any such promises and any suggestions that
 210 you pay them a fee or sign over your deed. State law
 211 requires anyone offering such services for profit to enter
 212 into a contract which fully describes the services they
 213 will perform and fees they will charge, and which prohibits
 214 them from taking any money from you until they have
 215 completed all such promised services.

216
 217 (3) The notice to any tenant required under paragraph

218 (1) (b) shall:

219 (a) Be delivered with the summons and complaint. The
 220 foreclosing party shall provide its name, address, and telephone
 221 number on the notice. The title of the notice shall be in bold,
 222 14-point type. The notice shall be on its own page.

223 (b) Appear as follows:
 224

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225 NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE
 226 Florida law requires that we provide you this notice about
 227 the foreclosure process. Please read it carefully.

228
 229 We, ...(name of foreclosing party)..., are the foreclosing
 230 party and are located at ...(foreclosing party's
 231 address).... We can be reached at ...(foreclosing party's
 232 telephone number)....

233
 234 The property you are renting is the subject of a
 235 foreclosure proceeding. If you have a lease, are not the
 236 owner of the residence, and the lease requires payment of
 237 rent that at the time it was entered into was not
 238 substantially less than the fair market rent for the
 239 property, you may be entitled to remain in occupancy under
 240 federal law which provides that, if you do not have a
 241 lease, you may be entitled to remain in your home until 90
 242 days after any person or entity who acquires title to the
 243 property provides you with a notice. The notice shall
 244 provide information regarding the name and address of the
 245 new owner and your rights to remain in your home. These
 246 rights are in addition to any others you may have if you
 247 are a subsidized tenant under federal, state, or local law
 248 or if you are a tenant subject to rent control, rent
 249 stabilization, or a federal statutory scheme. If this
 250 federal law does not apply in your situation, you may be
 251 required to vacate the property upon completion of the
 252 foreclosure.

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253 (4) Whenever a legal advertisement, publication, or notice
 254 relating to a foreclosure proceeding is required to be placed in
 255 a newspaper, it is the responsibility of the petitioner or
 256 petitioner's attorney to place such advertisement, publication,
 257 or notice. For counties having ~~with~~ more than 1 million total
 258 population as reflected in the 2000 Official Decennial Census of
 259 the United States Census Bureau as shown on the official website
 260 of the United States Census Bureau, any notice of publication
 261 required by this section shall be deemed to have been published
 262 in accordance with the law if the notice is published in a
 263 newspaper that has been entered as a periodical matter at a post
 264 office in the county in which the newspaper is published, is
 265 published a minimum of 5 days a week, exclusive of legal
 266 holidays, and has been in existence and published a minimum of 5
 267 days a week, exclusive of legal holidays, for 1 year or is a
 268 direct successor to a newspaper that has been in existence for 1
 269 year that has been published a minimum of 5 days a week,
 270 exclusive of legal holidays. The advertisement, publication, or
 271 notice shall be placed directly by the attorney for the
 272 petitioner, by the petitioner if acting pro se, or by the clerk
 273 of the court. Only the actual costs charged by the newspaper for
 274 the advertisement, publication, or notice may be charged as
 275 costs in the action.

276 Section 8. Section 702.036, Florida Statutes, is created
 277 to read:

278 702.036 Finality of Foreclosure Judgment.-

279 (1) In any action or proceeding in which a party seeks to
 280 set aside, invalidate, or challenge the validity of a final

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281 judgment of foreclosure or to establish or re-establish a lien
 282 or encumbrance on the property in abrogation of the final
 283 judgment of foreclosure, the court shall treat such request
 284 solely as a claim for money damages and shall not grant relief
 285 which adversely affects the quality or character of the title to
 286 the property, provided:

287 (a) a final judgment of foreclosure was entered as to a
 288 property;

289 (b) applicable appeals periods have run as to the final
 290 judgment of foreclosure with no appeals having been taken, or
 291 any appeals having been finally resolved;

292 (c) the property has been acquired for value, by a person
 293 not affiliated with the foreclosing lender, at a time in which
 294 no lis pendens regarding the suit to set aside, invalidate or
 295 challenge the foreclosure appears in the official records of the
 296 county; and

297 (d) the party seeking relief from the final judgment of
 298 foreclosure was properly served in the foreclosure lawsuit as
 299 provided in chapters 48 or 49, Florida Statutes.

300 (2) For purposes of this section, the following, without
 301 limitation, shall be considered persons affiliated with the
 302 foreclosing lender:

303 (a) The foreclosing lender or any loan servicer for the
 304 loan being foreclosed;

305 (b) Any past or present owner or holder of the loan being
 306 foreclosed;

307 (c) Any maintenance company, holding company, foreclosure
 308 services company, or law firm under contract to any of the

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309 foregoing with regard to the loan being foreclosed; or
 310 (d) Any parent, subsidiary, or other person who directly,
 311 or indirectly through one or more intermediaries, controls or is
 312 controlled by, or is under common control with any of the
 313 foregoing.

314 (3) After foreclosure of a mortgage based upon the
 315 enforcement of a lost, destroyed or stolen note, a person, not
 316 party to the underlying foreclosure action, who claims to be the
 317 actual holder of the promissory note secured by the foreclosed
 318 mortgage, shall have no claim against the foreclosed property
 319 after it has been conveyed for valuable consideration to a
 320 person not affiliated with the foreclosing lender. Nothing in
 321 this section precludes the actual holder of the note from
 322 pursuing recovery from any adequate protection given pursuant to
 323 s. 673.3091, the party who wrongfully claimed to be the owner or
 324 holder of the promissory note, the maker of the note or any
 325 other persons against whom it may have a claim relating to the
 326 note.

327 (4) Subsection (1) shall not limit the right to pursue any
 328 other relief to which a person may be entitled, including
 329 without limitation, compensatory damages, punitive damages,
 330 statutory damages, consequential damages, injunctive relief or
 331 fees and costs, which does not adversely affect the quality or
 332 character of the title to the property as vested in the
 333 unaffiliated purchaser for value.

334 Section 9. Section 702.04, Florida Statutes, is amended
 335 to read:

336 702.04 Mortgaged lands in different counties.—When a

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337 mortgage includes lands, railroad track, right-of-way, or
 338 terminal facilities and station grounds, lying in two or more
 339 counties, it may be foreclosed in any one of said counties, and
 340 all proceedings shall be had in that county as if all the
 341 mortgaged land, railroad track, right-of-way, or terminal
 342 facilities and station grounds lay therein, except that any
 343 notice of the sale must be published in every county wherein any
 344 of the lands, railroad track, right-of-way, or terminal
 345 facilities and station grounds to be sold lie. After final
 346 disposition of the suit, the clerk of the circuit court shall
 347 prepare and forward a certified copy of the decree of
 348 foreclosure, and the certificates of title, if any, ~~and sale and~~
 349 ~~of the decree of confirmation of sale~~ to the clerk of the
 350 circuit court of every county wherein any of the mortgaged
 351 lands, railroad tracks, right-of-way, or terminal facilities and
 352 station grounds lie, to be recorded in the ~~foreign judgment book~~
 353 official records of each such county, and the costs of such
 354 copies and of the record thereof shall be taxed as costs in the
 355 cause.

356 Section 10. Section 702.06, Florida Statutes, is amended
 357 to read:

358 702.06 Deficiency decree; ~~common-law~~ suit to recover
 359 deficiency.-

360 (1) In all suits for the foreclosure of mortgages
 361 heretofore or hereafter executed, the entry of a deficiency
 362 decree for any portion of a deficiency, should one exist, shall
 363 be within the sound judicial discretion of the court, but the
 364 complainant shall also have the right to sue ~~at common law~~ to

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365 recover such deficiency, provided no suit ~~at law~~ to recover such
 366 deficiency shall be maintained against the original mortgagor in
 367 cases where the mortgage is for the purchase ~~price~~ of the
 368 property involved and where the ~~original mortgagee~~ holder of the
 369 mortgage becomes the purchaser thereof at foreclosure sale ~~and~~
 370 ~~also is granted a deficiency decree against the original~~
 371 ~~mortgagor.~~

372 (2) (a) In respect to an owner-occupied one-family to four-
 373 family dwelling unit, if a person liable to the plaintiff for
 374 the payment of the debt secured by the mortgage is made a
 375 defendant in the action, and has appeared before the court or
 376 been personally served with the summons, the final judgment may
 377 enter its judgment for that portion of the debt which remains
 378 unsatisfied, or so much thereof as the court may determine to be
 379 just and equitable, after a sale of the mortgaged property and
 380 the application of the proceeds.

381 (b) In respect to an owner-occupied one- to four-family
 382 dwelling unit, the party to whom a residue is owing may move for
 383 the entry of a deficiency judgment in the foreclosure action or
 384 file a separate action for collection of the deficiency, no
 385 later than the later of 180 days after the property has vested
 386 in the foreclosing lender or other purchaser at foreclosure, or
 387 October 1, 2013.

388 (b) If a deficiency is not pursued within the times
 389 specified in this section, the vesting of the property pursuant
 390 to s. 702.068 or proceeds of the sale, regardless of amount,
 391 shall be deemed to be in full satisfaction of the mortgage debt
 392 and a right to recover any deficiency in any subsequent action

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393 or proceeding shall be extinguished.

394 (3) The provisions of subsection (2) shall not be
 395 construed to restrict the authority of the court to determine
 396 the entitlement to any assets held by any receiver or any
 397 assignee of the rents and profits of the property.

398 Section 11. Section 702.062, Florida Statutes, is created
 399 to read:

400 702.062 Uncontested Foreclosure Proceedings.—

401 (1) In any foreclosure proceeding, plaintiff's counsel
 402 shall cause to be filed with the clerk of the court a notice of
 403 any extensions of time for a party to respond to an initial
 404 complaint which may be granted. Such notice shall be filed
 405 within the later of five days after the granting of such
 406 extension or 60 days following the effective date of this law
 407 and may be made by copy of the letter confirming the extension.
 408 This requirement is not intended to discourage any party from
 409 requesting or granting such extensions of time.

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

412 (a) All parties defendant have been served personally, by
 413 substituted service or by publication; and

414 (b) No party defendant has filed an answer or other
 415 response denying, contesting or asserting defenses to
 416 Plaintiff's entitlement to the foreclosure, and the time has run
 417 for the entry of defaults against all non-responding parties
 418 defendant.

419 (3) The court, on its own motion or motion of any party,
 420 may enter defaults against non-responding parties in accord with

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421 the Florida Rules of Civil Procedure and shall direct the
 422 plaintiff in the foreclosure action to file all affidavits,
 423 certifications and proofs necessary or appropriate for the entry
 424 of a summary judgment of foreclosure within a time certain or
 425 show cause why such a filing should not be made. The filing of
 426 these materials shall be construed as a motion for summary
 427 judgment, and the court may thereafter enter final summary
 428 judgment or set the case for trial in accord with its sound
 429 judicial discretion. Nothing herein shall be construed to
 430 restrict the authority of the court to set aside a default or a
 431 judgment granted thereon pursuant to the Florida Rules of Civil
 432 Procedure.

433 (4) Forty-eight days after the filing of the foreclosure
 434 case, any party may request a case management conference at
 435 which the court shall set definite timetables for moving the
 436 case forward.

437 (5) The court may grant extensions or stays in the
 438 proceedings on a showing that the plaintiff and property owner
 439 are engaged in good faith negotiations with regard to a mortgage
 440 modification or other settlement or otherwise as justice may
 441 require.

442 Section 12. Section 702.065, Florida Statutes, is amended
 443 to read:

444 702.065 Final judgment in uncontested proceedings;
 445 attorney's fees when default judgment entered.-

446 (1) In uncontested mortgage foreclosure proceedings, the
 447 court shall enter final judgment within 45 ~~90~~ days from the date
 448 of the close of pleadings. For the purposes of this subsection,

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449 a mortgage foreclosure proceeding is uncontested if a default
 450 has been entered against all defendants or no response an answer
 451 ~~not~~ contesting the foreclosure has been timely filed ~~or a~~
 452 ~~default judgment has been entered by the court.~~

453 (2) In a mortgage foreclosure proceeding of a residential
 454 one-family to four-family dwelling unit, when ~~a default judgment~~
 455 ~~has been entered against the mortgagor and~~ the note or mortgage
 456 provides for the award of reasonable attorney's fees, it is not
 457 necessary for the court to hold a hearing or adjudge the
 458 requested attorney's fees to be reasonable if the fees do not
 459 exceed the greater of 1.5 ~~3~~ percent of the principal amount owed
 460 at the time of filing the complaint or \$1,500, even if the note
 461 or mortgage does not specify the percentage of the original
 462 amount that would be paid as ~~liquidated damages~~. ~~Such fees~~
 463 ~~constitute liquidated damages in any proceeding to enforce the~~
 464 ~~note or mortgage~~. This section does not preclude a challenge to
 465 the reasonableness of the attorney's fees.

466 Section 13. Section 702.068, Florida Statutes, is created
 467 to read:

468 702.068 Election by Foreclosing Lender to proceed without
 469 Judicial Sale.--

470 (1) Where the amount of principal and interest, exclusive
 471 of fees and costs, owed to a foreclosing lender equals or
 472 exceeds 120% of the just value of the property subject to
 473 foreclosure, as determined by the county property appraiser in
 474 the most recent certified tax roll, the foreclosing lender may
 475 elect to foreclose without a judicial sale of the property under
 476 s. 45.031 et seq.

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477 (2) A plaintiff electing to proceed without a judicial
 478 sale may include the request to proceed under this section in
 479 any complaint or amended complaint filed, or the plaintiff or
 480 any other party may file a motion to proceed under this section
 481 at any time prior to the entry of a final judgment of
 482 foreclosure.

483 (3) Upon making the election to foreclose without a
 484 judicial sale, the party making the election shall cause notices
 485 to be sent to each party (other than the party sending the
 486 notice) as follows:

487 (a) If the election to pursue the alternate procedure is
 488 made in the complaint, the notice(s) shall be served together
 489 with the complaint on the defendants as provided in ch. 48,
 490 Florida Statutes. If the election is made after the initial
 491 service of the complaint, the notice shall be served on any
 492 party against whom a default has been entered as provided in
 493 chapter 48, Florida Statutes, and served on other parties as
 494 provided in the Florida Rules of Civil Procedure. If service is
 495 by publication, the published notice shall indicate that "the
 496 plaintiff has elected to proceed without a judicial sale as
 497 provided under s. 702.068, Florida Statutes."

498 (b) The notice provided to the owners of the property,
 499 tenants, holders of subordinate liens and other interests in the
 500 property and any other defendants shall be, on its own page, in
 501 bold, 14-point type and the title of the notice shall be in
 502 bold, 20-point type, and in substantially the form below:

503
 504 NOTICE OF FORECLOSURE WITHOUT SALE

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505 Florida Law requires that we provide you notice that this
 506 foreclosure may proceed without a judicial sale. Please read it
 507 carefully.
 508 You have been identified as the owner of, the holder of a
 509 mortgage or lien on, or otherwise having an interest in property
 510 located at [PROPERTY ADDRESS] which is subject to foreclosure.
 511 You are hereby notified that [NAME AND ADDRESS OF PLAINTIFF] has
 512 filed a foreclosure lawsuit with regard to the property and has
 513 elected to proceed without a judicial sale pursuant to s.
 514 702.068, Florida Statutes. Under this provision, after the
 515 entry of a final judgment of foreclosure the property will vest
 516 automatically in the foreclosing lender. There will not be a
 517 public sale of the property, and you may lose your equity in
 518 this property or any equity which would be available to pay
 519 subordinate liens you may hold.
 520 At any time prior to the entry of a final judgment of
 521 foreclosure, you may demand a traditional public judicial sale
 522 in order to protect any equity in the property, but anyone
 523 making such a demand will initially be responsible for paying
 524 the costs of advertising, notice and other expenses relating to
 525 that sale. Under certain circumstances those costs may be
 526 repaid from the proceeds of the public sale.
 527 NOTE: the right to demand a judicial sale at any time
 528 prior to the entry of a final judgment does not extend the 20
 529 days to initially respond to the complaint.
 530 If you have any questions about this notice or the lawsuit, you
 531 should immediately consult a Florida attorney.
 532 (c) The foregoing notice is informational only. Defects in

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533 the content of this notice shall not invalidate any title vested
 534 without a judicial sale under this section, so long as proper
 535 service has been obtained.

536 (d) The election to proceed without a judicial sale and
 537 the delivery of notices shall occur no less than 15 days prior
 538 to the entry of a final judgment of foreclosure.

539 (3) At any time prior to the entry of a final order of
 540 foreclosure without a judicial sale, any party may demand a
 541 public sale by filing such demand with the clerk of the court.
 542 If a public sale is demanded, the court shall proceed with the
 543 foreclosure and sale under other applicable law. The party
 544 demanding a judicial sale under this section shall deposit with
 545 the clerk an amount sufficient to pay all costs of noticing and
 546 advertising the sale and any clerk's fee or other service fees
 547 charged in connection with the sale. Such costs may be taxed
 548 as costs in the case if the price returned at sale exceeds the
 549 amount determined in the final judgment to be owed under the
 550 mortgage to the foreclosing lender. Such amount shall include
 551 principal, interest, expenses, attorneys' fees and costs.

552 (4) Upon finding that all requirements of this section and
 553 conditions for the granting of a final judgment of foreclosure
 554 have been satisfied, and no judicial sale has been demanded, the
 555 court may, as is consistent with justice and sound judicial
 556 discretion, enter a final judgment in foreclosure.

557 (a) The final judgment shall take effect no sooner than 10
 558 days after the entry thereof and shall vest all of the owners'
 559 right, title and interest in and to the property subject to
 560 foreclosure in the plaintiff or plaintiff's designee as

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561 identified in the final judgment, and, if so found by the court,
 562 that the defendant(s) and all persons claiming under or against
 563 defendant(s) since the filing of the notice of lis pendens shall
 564 be foreclosed of all estate or claim in the property, except as
 565 to claims or rights under chapter 718 or chapter 720, Florida
 566 Statutes, if any.

567 (b) The owner or any party defendant may redeem the
 568 property at any time prior to the final judgment becoming
 569 effective.

570 (c) The final judgment shall recite the just value of the
 571 property as determined by the county property appraiser and
 572 include a finding that the principal and interest owed to the
 573 foreclosing lender equals or exceeds 120% of the just value.

574 (d) After the property has been vested in the foreclosing
 575 lender, the clerk, if so requested, shall issue a certificate of
 576 title

577 (5) Where the foreclosing lender elected to foreclose
 578 without a judicial sale, upon entry of a judgment vesting title
 579 in the plaintiff under this section, the debt that was secured
 580 by the foreclosed mortgage shall be deemed satisfied and any
 581 right to pursue a deficiency decree or other action to enforce
 582 such note is waived. Where a party defendant elected to proceed
 583 without a judicial sale, the plaintiff may pursue a deficiency
 584 if and as otherwise permitted by law.

585 Section 14. Section 702.10, Florida Statutes, is amended
 586 to read:

587 702.10 ~~Order to show~~ Show cause; entry of final judgment
 588 of foreclosure; payment during foreclosure.-

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589 (1) After a complaint in a foreclosure proceeding has been
 590 filed which is verified in the form of an affidavit sufficient
 591 to support a motion for summary judgment, the plaintiff
 592 ~~mortgagee~~ may request ~~an order to show cause for the entry of~~
 593 ~~final judgment and the court shall immediately review the~~
 594 ~~complaint. If, upon examination of the complaint, the court~~
 595 ~~finds that the complaint is verified and alleges a cause of~~
 596 ~~action to foreclose on real property, the court~~ a final hearing.
 597 Upon such request, the clerk shall promptly issue a summons ~~an~~
 598 ~~order~~ directed to each ~~the~~ defendant to show cause why a final
 599 judgment of foreclosure should not be entered.

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

601 1. Set the date and time for a show cause hearing ~~on the~~
 602 ~~order to show cause~~. However, the date for the hearing may not
 603 occur be set sooner than the later of 20 days after the service
 604 of the summons ~~order~~ or 45 days after the service of the
 605 complaint. When service is obtained by publication, the date for
 606 the hearing may not be set sooner than ~~30~~ 55 days after the
 607 first publication. The hearing must be held within 60 days after
 608 the date of service. Failure to hold the hearing within such
 609 time does not affect the validity of the summons ~~order~~ to show
 610 cause or the jurisdiction of the court to issue ~~subsequent~~
 611 orders

612 2. Direct the time pursuant to this Section within which
 613 service of the summons ~~order~~ to show cause and the complaint
 614 must be made upon the defendant.

615 3. State that the filing of defenses by a motion or by a
 616 responsive pleading ~~verified or sworn answer~~ at or before the

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617 hearing to show cause may constitute ~~constitutes~~ cause for the
 618 court not to enter ~~the attached~~ final judgment .

619 4. State that the defendant has the right to file
 620 affidavits or other papers at or before the time of the show
 621 cause hearing and may appear personally or by way of an attorney
 622 at the hearing.

623 5. State that, if the defendant files defenses by a
 624 motion, the hearing time may be used to hear the defendant's
 625 motion.

626 6. State that, if a ~~the~~ defendant fails to appear at the
 627 hearing to show cause or fails to file a response ~~defenses by a~~
 628 ~~motion or by a verified or sworn answer~~ or files an answer not
 629 contesting the foreclosure, that ~~the~~ defendant shall ~~may~~ be
 630 deemed ~~considered~~ to have waived the right to a hearing and in
 631 such case the court shall, unless the record shows that the
 632 relief is unavailable, ~~may~~ enter a final judgment of foreclosure
 633 ordering the clerk of the court to conduct a foreclosure sale.

634 7. State that if the mortgage provides for reasonable
 635 attorney's fees and the requested attorney's fees do not exceed
 636 the greater of 1.5 ~~3~~ percent of the principal amount owed at the
 637 time of filing the complaint or \$1,500.00, it is unnecessary for
 638 the court to hold a hearing or adjudge the requested attorney's
 639 fees to be reasonable.

640 8. Attach the proposed final judgment of foreclosure the
 641 plaintiff requests the court to ~~will~~ enter, ~~if the defendant~~
 642 ~~waives the right to be heard~~ at the hearing on the order to show
 643 cause.

644 9. Require the plaintiff ~~mortgager~~ to serve a copy of the

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645 summons ~~order~~ to show cause on each defendant ~~the mortgagor~~ in
 646 the following manner:

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

651 b. If a defendant ~~the mortgagor~~ has not been served with
 652 the complaint and original process, the summons ~~order~~ to show
 653 cause, together with ~~the summons~~ and a copy of the complaint,
 654 shall be served on that defendant ~~that mortgagor~~ in the same
 655 manner as provided by law for original process.

656
 657 Any final judgment of foreclosure entered under this subsection
 658 is for in rem relief only. Nothing in this subsection shall
 659 preclude the entry of a deficiency judgment where otherwise
 660 allowed by law.

661 (b) The right to be heard at the hearing to show cause is
 662 waived if a ~~the~~ defendant, after being served as provided by law
 663 with a ~~an~~ ~~order~~ show cause summons, fails to file a response
 664 contesting the foreclosure ~~engages in conduct that clearly shows~~
 665 ~~that the defendant has relinquished the right to be heard on~~
 666 ~~that order. The defendant's failure to file defenses by a motion~~
 667 ~~or by a sworn or verified answer or~~ fails to appear at the
 668 hearing duly scheduled on the ~~order~~ show cause summons,
 669 ~~presumptively constitutes conduct that clearly shows that the~~
 670 ~~defendant has relinquished the right to be heard. If a defendant~~
 671 files a response contesting the foreclosure ~~defenses by a motion~~
 672 ~~or by a verified or sworn answer~~ at or before the hearing, such

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673 action may constitute ~~constitutes~~ cause and may preclude
 674 ~~precludes~~ the entry of a final judgment at the hearing to show
 675 cause.

676 (c) In a mortgage foreclosure proceeding, when a default
 677 judgment has been entered against the mortgagor and the note or
 678 mortgage provides for the award of reasonable attorney's fees,
 679 it is unnecessary for the court to hold a hearing or adjudge the
 680 requested attorney's fees to be reasonable if the fees do not
 681 exceed the greater of 1.5 ~~3~~ percent of the principal amount owed
 682 on the note or mortgage at the time of filing of the complaint
 683 or \$1,500.00, even if the note or mortgage does not specify the
 684 percentage of the original amount that would be paid ~~as~~
 685 ~~liquidated damages~~.

686 (d) If the court finds that each ~~the~~ defendant has waived
 687 the right to be heard as provided in paragraph (b), the court
 688 shall promptly enter a final judgment of foreclosure without the
 689 need for a further hearing upon either the filing with the court
 690 of the original note or satisfaction of the conditions for
 691 establishment of the lost note pursuant to law. If the court
 692 finds that a ~~the~~ defendant has not waived the right to be heard
 693 on the order to show cause, the court shall then determine
 694 whether there is cause not to enter a final judgment of
 695 foreclosure. If the court finds that a ~~the~~ defendant has not
 696 shown cause, the court shall promptly enter a judgment of
 697 foreclosure.

698 (2) In an action for foreclosure, on properties other than
 699 homestead residential real estate, the mortgagee may request
 700 that the court enter an order directing the mortgagor defendant

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701 to show cause why an order to make payments during the pendency
 702 of the foreclosure proceedings or an order to vacate the
 703 premises should not be entered.

704 (a) The order shall:

705 1. Set the date and time for hearing on the order to show
 706 cause. However, the date for the hearing shall not be set sooner
 707 than 20 days after the service of the order. Where service is
 708 obtained by publication, the date for the hearing shall not be
 709 set sooner than 30 days after the first publication.

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

712 3. State that the defendant has the right to file
 713 affidavits or other papers at the time of the hearing and may
 714 appear personally or by way of an attorney at the hearing.

715 4. State that, if the defendant fails to appear at the
 716 hearing to show cause and fails to file defenses by a motion or
 717 by a verified or sworn answer, the defendant may be deemed to
 718 have waived the right to a hearing and in such case the court
 719 may enter an order that defendant make payments or vacate the
 720 premises.

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

723 a. If the mortgagor has been served with the complaint and
 724 original process, service of the order may be made in the manner
 725 provided in the Florida Rules of Civil Procedure.

726 b. If the mortgagor has not been served with the complaint
 727 and original process, the order to show cause, together with the
 728 summons and a copy of the complaint, shall be served on the

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729 | mortgagor in the same manner as provided by law for original
 730 | process.

731 | (b) At the hearing on the order to show cause, the court
 732 | shall consider the affidavits and other showings made by the
 733 | parties appearing and make a determination of the probable
 734 | validity of the underlying claim alleged against the mortgagor
 735 | and the defenses. If the court determines that a mortgagor is
 736 | likely to prevail in the foreclosure action, the court may enter
 737 | an order requiring the mortgagor to make the payment described
 738 | in paragraph (c) to the mortgagee and provide for a remedy as
 739 | described in paragraph (d). However, the order shall be stayed
 740 | pending final adjudication of the claims of the parties if the
 741 | mortgagor files with the court a written undertaking executed by
 742 | a surety approved by the court or posts in the court's registry
 743 | an amount equal to the unpaid balance of the mortgage on the
 744 | property, including all principal, interest, unpaid taxes, and
 745 | insurance premiums paid by the mortgagee.

746 | (c) In the event the court enters an order requiring the
 747 | mortgagor to make payments to the mortgagee, payments shall be
 748 | payable at such intervals and in such amounts provided for in
 749 | the mortgage instrument before acceleration or maturity. The
 750 | obligation to make payments pursuant to any order entered under
 751 | this subsection shall commence from the date of the order. The
 752 | order shall be served upon the mortgagor no later than 20 days
 753 | before the date specified for the first payment. The order may
 754 | permit, but shall not require the mortgagee to take all
 755 | appropriate steps to secure the premises during the pendency of
 756 | the foreclosure action.

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757 (d) In the event the court enters an order requiring
 758 payments the order shall also provide that the mortgagee shall
 759 be entitled to possession of the premises upon the failure of
 760 the mortgagor to make the payment required in the order unless
 761 at the hearing on the order to show cause the court finds good
 762 cause to order some other method of enforcement of its order.

763 (e) All amounts paid pursuant to this section shall be
 764 credited against the mortgage obligation in accordance with the
 765 terms of the loan documents, provided, however, that any
 766 payments made under this section shall not constitute a cure of
 767 any default or a waiver or any other defense to the mortgage
 768 foreclosure action.

769 (f) Upon the filing of an affidavit with the clerk that
 770 the premises have not been vacated pursuant to the court order,
 771 the clerk shall issue to the sheriff a writ for possession which
 772 shall be governed by the provisions of s. 83.62.

773 (g) All amounts paid pursuant to this section shall be
 774 credited against the mortgage obligation in accordance with the
 775 terms of the loan documents, provided, however, that any
 776 payments made under this section shall not constitute a cure of
 777 any default or a waiver or any other defense to the mortgage
 778 foreclosure action.

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

783 (i) For the purposes of this section, the term homestead
 784 residence shall be defined as, a residential property for which

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785 a homestead exemption for taxation was granted according to the
 786 certified rolls of the assessment by the county property
 787 appraiser, prior to the filing of the foreclosure action.

788 (3) This section shall not supersede procedures adopted by
 789 the court, including but not limited to alternative dispute
 790 resolution processes.

791 Section 15. Section 702.11 is created to read:

792 702.11 Adequate Protections for Lost, Destroyed or Stolen
 793 Notes.-

794 (1) In connection with the foreclosure of a one to four
 795 family residential property, the following constitute reasonable
 796 means of providing adequate protection under s. 673.3091

797 (a) A written indemnification agreement by a person
 798 reasonably believed sufficiently solvent honor such an
 799 obligation;

800 (b) A surety bond;

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

802 (d) A deposit of cash collateral with the clerk of the
 803 court; or

804 (e) Such other security as the court may deem appropriate
 805 under the circumstances.

806
 807 Any security given shall be on terms and in amounts set by the
 808 court, for a time period through the running of the statute of
 809 limitations for enforcement of the underlying note, and
 810 conditioned to indemnify and hold harmless the maker of the note
 811 against any loss or damage, including principal, interest,
 812 attorneys' fees and costs, that might occur by reason of a claim

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813 by another person to enforce the note.

814 (2) Any person who wrongly claimed to be the holder of or
 815 pursuant to s. 673.3011 to be entitled to enforce, a lost,
 816 stolen or destroyed note and caused the mortgage secured thereby
 817 to be foreclosed shall be liable to the actual holder of the
 818 note, without limitation to any adequate protections given, for
 819 actual damages suffered together with attorneys' fees and costs
 820 of the actual holder of the note in enforcing rights under this
 821 subsection.

822 (a) The actual holder of the note is not required to
 823 pursue recovery against the maker of the note or any guarantor
 824 thereof as a condition precedent to pursuing remedies under this
 825 subsection.

826 (b) This subsection does not limit or restrict the ability
 827 of the actual holder of the note to pursue any other claims or
 828 remedies it may have against the maker, the person who wrongly
 829 claimed to be the holder, or any persons who facilitated or
 830 participated in the claim to the note or enforcement thereof.

831 Section 16. Section 702.12, Florida Statutes, is created
 832 to read:

833 702.12 Attorney's fee; sanctions for raising unsupported
 834 claims or defenses; exceptions; service of motions; damages for
 835 delay of litigation.—

836 (1) In any mortgage foreclosure action, upon the court's
 837 initiative or motion of any party, the court shall award a
 838 reasonable attorney's fee, including prejudgment interest, to be
 839 paid to the prevailing party in equal amounts by the losing
 840 party and the losing party's attorney on any claim or defense at

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841 any time during a civil proceeding or action in which the court
 842 finds that the losing party or the losing party's attorney knew
 843 or should have known that a claim or defense when initially
 844 presented to the court or at any time before trial:

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

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

849 (2) At any time in any civil proceeding or action in which
 850 the moving party proves by a preponderance of the evidence that
 851 any action taken by the opposing party, including, but not
 852 limited to, the filing of any pleading or part thereof, the
 853 assertion of or response to any discovery demand, the assertion
 854 of any claim or defense, or the response to any request by any
 855 other party, was taken primarily for the purpose of unreasonable
 856 delay, the court shall award damages to the moving party for its
 857 reasonable expenses incurred in obtaining the order, which may
 858 include attorney's fees, and other loss resulting from the
 859 improper delay.

860 (3) Notwithstanding subsections (1) and (2), monetary
 861 sanctions may not be awarded:

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

867 (b) Under paragraph (1)(a) or paragraph (1)(b) against the
 868 losing party's attorney if he or she has acted in good faith,

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869 based on the representations of his or her client as to the
 870 existence of those material facts.

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

872 (3) A motion by a party seeking sanctions under this
 873 section must be served but may not be filed with or presented to
 874 the court unless, within 21 days after service of the motion,
 875 the challenged paper, claim, defense, contention, allegation, or
 876 denial is not withdrawn or appropriately corrected.

877 (4) The provisions of this section are supplemental to
 878 other sanctions or remedies available under law or under court
 879 rules.

880 Section 17. This act is intended to be remedial in nature
 881 and shall apply to any action filed after the effective date.

882 Section 18. This act shall take effect October 1, 2012.