

1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 95.11, F.S.; revising the limitations period for
4 commencing an action to enforce a claim of a
5 deficiency judgment after a foreclosure action;
6 providing for applicability to actions commenced on or
7 after a specified date; providing a time limitation
8 for commencing certain actions; creating s. 702.015,
9 F.S.; providing legislative intent; specifying
10 required contents of a complaint seeking to foreclose
11 on certain types of residential properties with
12 respect to the authority of the plaintiff to foreclose
13 on the note and the location of the note; authorizing
14 sanctions against plaintiffs who fail to comply with
15 complaint requirements; providing for nonapplicability
16 to proceedings involving timeshare interests; creating
17 s. 702.036, F.S.; requiring a court to treat a
18 collateral attack on a final judgment of foreclosure
19 on a mortgage as a claim for monetary damages under
20 certain circumstances; prohibiting such court from
21 granting certain relief affecting title to the
22 foreclosed property; providing for construction
23 relating to the rights of certain persons to seek
24 specified types of relief or pursue claims against the
25 foreclosed property under certain circumstances;
26 amending s. 702.06, F.S.; limiting the amount of a
27 deficiency judgment; amending s. 702.10, F.S.;
28 revising the class of persons authorized to move for

29 expedited foreclosure to include lienholders; defining
30 the term "lienholder"; providing requirements and
31 procedures with respect to an order directed to
32 defendants to show cause why a final judgment of
33 foreclosure should not be entered; providing that
34 certain failures by a defendant to make certain
35 filings or to make certain appearances may have
36 specified legal consequences; requiring the court to
37 enter a final judgment of foreclosure and order a
38 foreclosure sale under certain circumstances; revising
39 a restriction on a mortgagee to request a court to
40 order a mortgagor defendant to make payments or to
41 vacate the premises during an action to foreclose on
42 residential real estate to provide that the
43 restriction applies to all but owner-occupied
44 residential property; providing a presumption
45 regarding owner-occupied residential property;
46 creating s. 702.11, F.S.; providing requirements for
47 reasonable means of providing adequate protection
48 under s. 673.3091, F.S., in mortgage foreclosures of
49 certain residential properties; providing for
50 liability of persons who wrongly claim to be holders
51 of or entitled to enforce a lost, stolen, or destroyed
52 note and cause the mortgage secured thereby to be
53 foreclosed in certain circumstances; providing
54 legislative findings; providing for applicability;
55 requesting the Florida Supreme Court to adopt rules
56 and forms to expedite foreclosure proceedings;

57 | providing an effective date.

58 |

59 | Be It Enacted by the Legislature of the State of Florida:

60 |

61 | Section 1. Paragraph (b) of subsection (2) of section
 62 | 95.11, Florida Statutes, is amended, and paragraph (h) is added
 63 | to subsection (5) of that section, to read:

64 | 95.11 Limitations other than for the recovery of real
 65 | property.—Actions other than for recovery of real property shall
 66 | be commenced as follows:

67 | (2) WITHIN FIVE YEARS.—

68 | (b) A legal or equitable action on a contract, obligation,
 69 | or liability founded on a written instrument, except for an
 70 | action to enforce a claim against a payment bond, which shall be
 71 | governed by the applicable provisions of paragraph (5)(e), s.
 72 | 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an
 73 | action for a deficiency judgment governed by paragraph (5)(h).

74 | (5) WITHIN ONE YEAR.—

75 | (h) An action to enforce a claim of a deficiency related
 76 | to a note secured by a mortgage against a residential property
 77 | that is a one-family to four-family dwelling unit. The
 78 | limitations period shall commence on the day after the
 79 | certificate is issued by the clerk of court or the day after the
 80 | mortgagee accepts a deed in lieu of foreclosure.

81 | Section 2. The amendments made by this act to s. 95.11,
 82 | Florida Statutes, apply to any action commenced on or after July
 83 | 1, 2013, regardless of when the cause of action accrued.

84 | However, any action that would not have been barred under s.

85 95.11(2)(b), Florida Statutes 2012, before the effective date of
 86 this act must be commenced within 5 years after the action
 87 accrued or by July 1, 2014, whichever occurs first.

88 Section 3. Section 702.015, Florida Statutes, is created
 89 to read:

90 702.015 Elements of complaint; lost, destroyed, or stolen
 91 note affidavit.—

92 (1) The Legislature intends that this section expedite the
 93 foreclosure process by ensuring initial disclosure of a
 94 plaintiff's status and the facts supporting that status, thereby
 95 ensuring the availability of documents necessary to the
 96 prosecution of the case.

97 (2) A complaint that seeks to foreclose a mortgage or
 98 other lien on residential real property, including individual
 99 units of condominiums and cooperatives, designed principally for
 100 occupation by from one to four families which secures a
 101 promissory note must:

102 (a) Contain affirmative allegations expressly made by the
 103 plaintiff at the time the proceeding is commenced that the
 104 plaintiff is the holder of the original note secured by the
 105 mortgage; or

106 (b) Allege with specificity the factual basis by which the
 107 plaintiff is a person entitled to enforce the note under s.
 108 673.3011.

109 (3) If a plaintiff has been delegated the authority to
 110 institute a mortgage foreclosure action on behalf of the person
 111 entitled to enforce the note, the complaint shall describe the
 112 authority of the plaintiff and identify, with specificity, the

113 document that grants the plaintiff the authority to act on
114 behalf of the person entitled to enforce the note. This
115 subsection is intended to require initial disclosure of status
116 and pertinent facts and not to modify law regarding standing or
117 real parties in interest. The term "original note" or "original
118 promissory note" means the signed or executed promissory note
119 rather than a copy thereof. The term includes any renewal,
120 replacement, consolidation, or amended and restated note or
121 instrument given in renewal, replacement, or substitution for a
122 previous promissory note. The term also includes a transferrable
123 record, as defined by the Uniform Electronic Transaction Act in
124 s. 668.50(16).

125 (4) If the plaintiff is in possession of the original
126 promissory note, the plaintiff must file under penalty of
127 perjury a certification with the court, contemporaneously with
128 the filing of the complaint for foreclosure, that the plaintiff
129 is in possession of the original promissory note. The
130 certification must set forth the location of the note, the name
131 and title of the individual giving the certification, the name
132 of the person who personally verified such possession, and the
133 time and date on which the possession was verified. Correct
134 copies of the note and all allonges to the note must be attached
135 to the certification. The original note and the allonges must be
136 filed with the court before the entry of any judgment of
137 foreclosure or judgment on the note.

138 (5) If the plaintiff seeks to enforce a lost, destroyed,
139 or stolen instrument, an affidavit executed under penalty of
140 perjury must be attached to the complaint. The affidavit must:

141 (a) Detail a clear chain of all endorsements, transfers,
 142 or assignments of the promissory note that is the subject of the
 143 action.

144 (b) Set forth facts showing that the plaintiff is entitled
 145 to enforce a lost, destroyed, or stolen instrument pursuant to
 146 s. 673.3091. Adequate protection as required under s.
 147 673.3091(2) shall be provided before the entry of final
 148 judgment.

149 (c) Include as exhibits to the affidavit such copies of
 150 the note and the allonges to the note, audit reports showing
 151 receipt of the original note, or other evidence of the
 152 acquisition, ownership, and possession of the note as may be
 153 available to the plaintiff.

154 (6) The court may sanction the plaintiff for failure to
 155 comply with this section.

156 (7) This section does not apply to any foreclosure
 157 proceeding involving timeshare interests under part III of
 158 chapter 721.

159 Section 4. Section 702.036, Florida Statutes, is created
 160 to read:

161 702.036 Finality of mortgage foreclosure judgment.—

162 (1) (a) In any action or proceeding in which a party seeks
 163 to set aside, invalidate, or challenge the validity of a final
 164 judgment of foreclosure of a mortgage or to establish or
 165 reestablish a lien or encumbrance on the property in abrogation
 166 of the final judgment of foreclosure of a mortgage, the court
 167 shall treat such request solely as a claim for monetary damages
 168 and may not grant relief that adversely affects the quality or

169 character of the title to the property, if:

170 1. The party seeking relief from the final judgment of
171 foreclosure of the mortgage was properly served in the
172 foreclosure lawsuit as provided in chapter 48 or chapter 49.

173 2. The final judgment of foreclosure of the mortgage was
174 entered as to the property.

175 3. All applicable appeals periods have run as to the final
176 judgment of foreclosure of the mortgage with no appeals having
177 been taken or any appeals having been finally resolved.

178 4. The property has been acquired for value, by a person
179 not affiliated with the foreclosing lender or the foreclosed
180 owner, at a time in which no lis pendens regarding the suit to
181 set aside, invalidate, or challenge the foreclosure appears in
182 the official records of the county where the property was
183 located.

184 (b) This subsection does not limit the right to pursue any
185 other relief to which a person may be entitled, including, but
186 not limited to, compensatory damages, punitive damages,
187 statutory damages, consequential damages, injunctive relief, or
188 fees and costs, which does not adversely affect the ownership of
189 the title to the property as vested in the unaffiliated
190 purchaser for value.

191 (2) For purposes of this section, the following, without
192 limitation, shall be considered persons affiliated with the
193 foreclosing lender:

194 (a) The foreclosing lender or any loan servicer for the
195 loan being foreclosed;

196 (b) Any past or present owner or holder of the loan being

197 foreclosed;

198 (c) Any maintenance company, holding company, foreclosure
 199 services company, or law firm under contract to any entity
 200 listed in paragraph (a), paragraph (b), or this paragraph, with
 201 regard to the loan being foreclosed; or

202 (d) Any parent entity, subsidiary, or other person who
 203 directly, or indirectly through one or more intermediaries,
 204 controls or is controlled by, or is under common control with,
 205 any entity listed in paragraph (a), paragraph (b), or paragraph
 206 (c).

207 (3) After foreclosure of a mortgage based upon the
 208 enforcement of a lost, destroyed, or stolen note, a person who
 209 is not a party to the underlying foreclosure action but who
 210 claims to be the person entitled to enforce the promissory note
 211 secured by the foreclosed mortgage has no claim against the
 212 foreclosed property after it is conveyed for valuable
 213 consideration to a person not affiliated with the foreclosing
 214 lender or the foreclosed owner. This section does not preclude
 215 the person entitled to enforce the promissory note from pursuing
 216 recovery from any adequate protection given pursuant to s.
 217 673.3091 or from the party who wrongfully claimed to be the
 218 person entitled to enforce the promissory note under s.
 219 702.11(2) or otherwise, from the maker of the note, or from any
 220 other person against whom it may have a claim relating to the
 221 note.

222 Section 5. Section 702.06, Florida Statutes, is amended to
 223 read:

224 702.06 Deficiency decree; common-law suit to recover

225 | deficiency.—In all suits for the foreclosure of mortgages
 226 | heretofore or hereafter executed the entry of a deficiency
 227 | decree for any portion of a deficiency, should one exist, shall
 228 | be within the sound discretion of the court; however, in the
 229 | case of an owner-occupied residential property, the amount of
 230 | the deficiency may not exceed the difference between the
 231 | judgment amount, or in the case of a short sale, the outstanding
 232 | debt, and the fair market value of the property on the date of
 233 | sale. For purposes of this section, there is a rebuttable
 234 | presumption that a residential property for which a homestead
 235 | exemption for taxation was granted according to the certified
 236 | rolls of the latest assessment by the county property appraiser,
 237 | before the filing of the foreclosure action, is an owner-
 238 | occupied residential property. ~~shall be within the sound~~
 239 | ~~judicial discretion of the court, but~~ The complainant shall also
 240 | have the right to sue at common law to recover such deficiency,
 241 | unless the court in the foreclosure action has granted or denied
 242 | a claim for a deficiency judgment ~~provided no suit at law to~~
 243 | ~~recover such deficiency shall be maintained against the original~~
 244 | ~~mortgagor in cases where the mortgage is for the purchase price~~
 245 | ~~of the property involved and where the original mortgagee~~
 246 | ~~becomes the purchaser thereof at foreclosure sale and also is~~
 247 | ~~granted a deficiency decree against the original mortgagor.~~

248 | Section 6. Section 702.10, Florida Statutes, is amended to
 249 | read:

250 | 702.10 Order to show cause; entry of final judgment of
 251 | foreclosure; payment during foreclosure.—

252 | (1) A lienholder ~~After a complaint in a foreclosure~~

253 ~~proceeding has been filed, the mortgagee~~ may request an order to
 254 show cause for the entry of final judgment in a foreclosure
 255 action. For purposes of this section, the term "lienholder"
 256 includes the plaintiff and a defendant to the action who holds a
 257 lien encumbering the property or a defendant who, by virtue of
 258 its status as a condominium association, cooperative
 259 association, or homeowners' association, may file a lien against
 260 the real property subject to foreclosure. Upon filing, and the
 261 court shall immediately review the request and the court file in
 262 chambers and without a hearing ~~complaint.~~ If, upon examination
 263 of the court file ~~complaint,~~ the court finds that the complaint
 264 is verified, complies with s. 702.015, and alleges a cause of
 265 action to foreclose on real property, the court shall promptly
 266 issue an order directed to the other parties named in the action
 267 ~~defendant~~ to show cause why a final judgment of foreclosure
 268 should not be entered.

269 (a) The order shall:

270 1. Set the date and time for a hearing ~~on the order~~ to
 271 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~
 272 ~~set~~ sooner than the later of 20 days after the service of the
 273 order to show cause or 45 days after service of the initial
 274 complaint. When service is obtained by publication, the date for
 275 the hearing may not be set sooner than 30 days after the first
 276 publication. ~~The hearing must be held within 60 days after the~~
 277 ~~date of service. Failure to hold the hearing within such time~~
 278 ~~does not affect the validity of the order to show cause or the~~
 279 ~~jurisdiction of the court to issue subsequent orders.~~

280 2. Direct the time within which service of the order to

281 show cause and the complaint must be made upon the defendant.

282 3. State that the filing of defenses by a motion, a
 283 responsive pleading, an affidavit, or other papers ~~or by a~~
 284 ~~verified or sworn answer at or~~ before the hearing to show cause
 285 that raise a genuine issue of material fact which would preclude
 286 the entry of summary judgment or otherwise constitute a legal
 287 defense to foreclosure shall constitute ~~constitutes~~ cause for
 288 the court not to enter ~~the attached~~ final judgment.

289 4. State that a ~~the~~ defendant has the right to file
 290 affidavits or other papers before ~~at~~ the time of the hearing to
 291 show cause and may appear personally or by way of an attorney at
 292 the hearing.

293 5. State that, if a ~~the~~ defendant files defenses by a
 294 motion, a verified or sworn answer, affidavits, or other papers
 295 or appears personally or by way of an attorney at the time of
 296 the hearing, the hearing time will ~~may~~ be used to hear and
 297 consider whether the defendant's motion, answer, affidavits,
 298 other papers, and other evidence and argument as may be
 299 presented by the defendant or the defendant's attorney raise a
 300 genuine issue of material fact which would preclude the entry of
 301 summary judgment or otherwise constitute a legal defense to
 302 foreclosure. The order shall also state that the court may enter
 303 an order of final judgment of foreclosure at the hearing and
 304 order the clerk of the court to conduct a foreclosure sale.

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

309 waived the right to a hearing, and in such case, the court may
310 enter a default against such defendant and, if appropriate, a
311 final judgment of foreclosure ordering the clerk of the court to
312 conduct a foreclosure sale.

313 7. State that if the mortgage provides for reasonable
314 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
315 fees do not exceed 3 percent of the principal amount owed at the
316 time of filing the complaint, it is unnecessary for the court to
317 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
318 to be reasonable.

319 8. Attach the form of the proposed final judgment of
320 foreclosure which the movant requests the court to will enter,
321 ~~if the defendant waives the right to be heard~~ at the hearing on
322 the order to show cause.

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

326 a. If a party the mortgagor has been served pursuant to
327 chapter 48 with the complaint and original process, or the other
328 party is the plaintiff in the action, service of the order to
329 show cause on that party order may be made in the manner
330 provided in the Florida Rules of Civil Procedure.

331 b. If a defendant the mortgagor has not been served
332 pursuant to chapter 48 with the complaint and original process,
333 the order to show cause, together with the summons and a copy of
334 the complaint, shall be served on the party mortgagor in the
335 same manner as provided by law for original process.

336

337 Any final judgment of foreclosure entered under this subsection
338 is for in rem relief only. ~~Nothing in~~ This subsection does not
339 ~~shall~~ preclude the entry of a deficiency judgment where
340 otherwise allowed by law. The Legislature intends that this
341 alternative procedure may run simultaneously with other court
342 procedures.

343 (b) The right to be heard at the hearing to show cause is
344 waived if a ~~the~~ defendant, after being served as provided by law
345 with an order to show cause, engages in conduct that clearly
346 shows that the defendant has relinquished the right to be heard
347 on that order. The defendant's failure to file defenses by a
348 motion or by a sworn or verified answer, affidavits, or other
349 papers or to appear personally or by way of an attorney at the
350 hearing duly scheduled on the order to show cause presumptively
351 constitutes conduct that clearly shows that the defendant has
352 relinquished the right to be heard. If a defendant files
353 defenses by a motion, ~~or by a verified or sworn answer,~~
354 affidavits, or other papers or presents evidence at or before
355 the hearing which raise a genuine issue of material fact which
356 would preclude entry of summary judgment or otherwise constitute
357 a legal defense to foreclosure, such action constitutes cause
358 and precludes the entry of a final judgment at the hearing to
359 show cause.

360 (c) In a mortgage foreclosure proceeding, when a final
361 ~~default~~ judgment of foreclosure has been entered against the
362 mortgagor and the note or mortgage provides for the award of
363 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
364 court to hold a hearing or adjudge the requested attorney

365 | ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
366 | percent of the principal amount owed on the note or mortgage at
367 | the time of filing, even if the note or mortgage does not
368 | specify the percentage of the original amount that would be paid
369 | as liquidated damages.

370 | (d) If the court finds that all defendants have ~~the~~
371 | ~~defendant has~~ waived the right to be heard as provided in
372 | paragraph (b), the court shall promptly enter a final judgment
373 | of foreclosure without the need for further hearing if the
374 | plaintiff has shown entitlement to a final judgment and upon the
375 | filing with the court of the original note, satisfaction of the
376 | conditions for establishment of a lost note, or upon a showing
377 | to the court that the obligation to be foreclosed is not
378 | evidenced by a promissory note or other negotiable instrument.
379 | If the court finds that a ~~the~~ defendant has not waived the right
380 | to be heard on the order to show cause, the court shall ~~then~~
381 | determine whether there is cause not to enter a final judgment
382 | of foreclosure. If the court finds that the defendant has not
383 | shown cause, the court shall promptly enter a judgment of
384 | foreclosure. If the time allotted for the hearing is
385 | insufficient, the court may announce at the hearing a date and
386 | time for the continued hearing. Only the parties who appear,
387 | individually or through an attorney, at the initial hearing must
388 | be notified of the date and time of the continued hearing.

389 | (2) Except as provided in paragraph (i), in any an action
390 | for foreclosure, other than owner-occupied residential real
391 | estate, in addition to any other relief that the court may
392 | award, the plaintiff ~~the mortgagee~~ may request that the court

393 enter an order directing the mortgagor defendant to show cause
394 why an order to make payments during the pendency of the
395 foreclosure proceedings or an order to vacate the premises
396 should not be entered.

397 (a) The order shall:

398 1. Set the date and time for hearing on the order to show
399 cause. However, the date for the hearing may ~~shall~~ not be set
400 sooner than 20 days after the service of the order. If ~~Where~~
401 service is obtained by publication, the date for the hearing may
402 ~~shall~~ not be set sooner than 30 days after the first
403 publication.

404 2. Direct the time within which service of the order to
405 show cause and the complaint shall be made upon each ~~the~~
406 defendant.

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

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

415 5. Require the movant ~~mortgagee~~ to serve a copy of the
416 order to show cause on the defendant ~~mortgagor~~ in the following
417 manner:

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

421 b. If a defendant ~~the mortgagor~~ has not been served with
422 the complaint and original process, the order to show cause,
423 together with the summons and a copy of the complaint, shall be
424 served on the defendant ~~mortgagor~~ in the same manner as provided
425 by law for original process.

426 (b) The right of a defendant to be heard at the hearing to
427 show cause is waived if the defendant, after being served as
428 provided by law with an order to show cause, engages in conduct
429 that clearly shows that the defendant has relinquished the right
430 to be heard on that order. A ~~The~~ defendant's failure to file
431 defenses by a motion or by a sworn or verified answer or to
432 appear at the hearing duly scheduled on the order to show cause
433 presumptively constitutes conduct that clearly shows that the
434 defendant has relinquished the right to be heard.

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

439 (d) If the court finds that the mortgagor has not waived
440 the right to be heard on the order to show cause, the court
441 shall, at the hearing on the order to show cause, consider the
442 affidavits and other showings made by the parties appearing and
443 make a determination of the probable validity of the underlying
444 claim alleged against the mortgagor and the mortgagor's
445 defenses. If the court determines that the plaintiff ~~mortgagee~~
446 is likely to prevail in the foreclosure action, the court shall
447 enter an order requiring the mortgagor to make the payment
448 described in paragraph (e) to the plaintiff ~~mortgagee~~ and

449 provide for a remedy as described in paragraph (f). However, the
450 order shall be stayed pending final adjudication of the claims
451 of the parties if the mortgagor files with the court a written
452 undertaking executed by a surety approved by the court in an
453 amount equal to the unpaid balance of the lien being foreclosed
454 ~~the mortgage on the property~~, including all principal, interest,
455 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~
456 ~~mortgagee~~.

457 (e) ~~If In the event~~ the court enters an order requiring
458 the mortgagor to make payments to the plaintiff ~~mortgagee~~,
459 payments shall be payable at such intervals and in such amounts
460 provided for in the mortgage instrument before acceleration or
461 maturity. The obligation to make payments pursuant to any order
462 entered under this subsection shall commence from the date of
463 the motion filed under this section ~~hereunder~~. The order shall
464 be served upon the mortgagor no later than 20 days before the
465 date specified for the first payment. The order may permit, but
466 ~~may shall~~ not require, the plaintiff ~~mortgagee~~ to take all
467 appropriate steps to secure the premises during the pendency of
468 the foreclosure action.

469 (f) ~~If In the event~~ the court enters an order requiring
470 payments, the order shall also provide that the plaintiff is
471 ~~mortgagee shall be~~ entitled to possession of the premises upon
472 the failure of the mortgagor to make the payment required in the
473 order unless at the hearing on the order to show cause the court
474 finds good cause to order some other method of enforcement of
475 its order.

476 (g) All amounts paid pursuant to this section shall be

477 credited against the mortgage obligation in accordance with the
 478 terms of the loan documents; ~~provided, however, that any~~
 479 payments made under this section do ~~shall~~ not constitute a cure
 480 of any default or a waiver or any other defense to the mortgage
 481 foreclosure action.

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

486 (i) This subsection does not apply to foreclosure of an
 487 owner-occupied residence. For purposes of this paragraph, there
 488 is a rebuttable presumption that a residential property for
 489 which a homestead exemption for taxation was granted according
 490 to the certified rolls of the latest assessment by the county
 491 property appraiser, before the filing of the foreclosure action,
 492 is an owner-occupied residential property.

493 Section 7. Section 702.11, Florida Statutes, is created to
 494 read:

495 702.11 Adequate protections for lost, destroyed, or stolen
 496 notes in mortgage foreclosure.—

497 (1) In connection with a mortgage foreclosure, the
 498 following constitute reasonable means of providing adequate
 499 protection under s. 673.3091, if so found by the court:

500 (a) A written indemnification agreement by a person
 501 reasonably believed sufficiently solvent to honor such an
 502 obligation;

503 (b) A surety bond;

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

505 (d) A deposit of cash collateral with the clerk of the
 506 court; or

507 (e) Such other security as the court may deem appropriate
 508 under the circumstances.

509
 510 Any security given shall be on terms and in amounts set by the
 511 court, for a time period through the running of the statute of
 512 limitations for enforcement of the underlying note, and
 513 conditioned to indemnify and hold harmless the maker of the note
 514 against any loss or damage, including principal, interest, and
 515 attorney fees and costs, that might occur by reason of a claim
 516 by another person to enforce the note.

517 (2) Any person who wrongly claims to be the holder of or
 518 pursuant to s. 673.3011 to be entitled to enforce a lost,
 519 stolen, or destroyed note and causes the mortgage secured
 520 thereby to be foreclosed is liable to the actual holder of the
 521 note, without limitation to any adequate protections given, for
 522 actual damages suffered together with attorney fees and costs of
 523 the actual holder of the note in enforcing rights under this
 524 subsection. In addition, the actual holder of the note may
 525 pursue recovery directly against any adequate protections given.

526 (a) The actual holder of the note is not required to
 527 pursue recovery against the maker of the note or any guarantor
 528 thereof as a condition precedent to pursuing remedies under this
 529 section.

530 (b) This section does not limit or restrict the ability of
 531 the actual holder of the note to pursue any other claims or
 532 remedies it may have against the maker, the person who wrongly

533 claimed to be the holder, or any person who facilitated or
534 participated in the claim to the note or enforcement thereof.

535 Section 8. The Legislature finds that this act is remedial
536 in nature and applies to all mortgages encumbering real property
537 and all promissory notes secured by a mortgage, whether executed
538 before, on, or after the effective date of this act. In
539 addition, the Legislature finds that s. 702.015, Florida
540 Statutes, as created by this act, applies to cases filed on or
541 after July 1, 2013; however, the amendments to s. 702.10,
542 Florida Statutes, and the creation of s. 702.11, Florida
543 Statutes, by this act, apply to causes of action pending on the
544 effective date of this act.

545 Section 9. The Supreme Court is requested to amend the
546 Florida Rules of Civil Procedures to provide expedited
547 foreclosure proceedings in conformity with this act and is
548 requested to develop and publish forms for use in such expedited
549 proceedings.

550 Section 10. This act shall take effect upon becoming a
551 law.