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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 Section 57.105, Florida Statutes, is repealed.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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However, the amount of the tax shall be computed based solely on the amount of the highest and best bid received for the property at the foreclosure sale. This subsection is intended to clarify existing law and shall be applied retroactively. A final judgment of foreclosure vesting title in a lender under s. 702.068 is subject to the tax imposed by subsection (1) based upon a sale price of \$100.

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

701.04 Estoppel statement; cancellation of mortgages, liens, and judgments.—

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

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

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

(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:

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.

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.

196 SOURCES OF INFORMATION AND ASSISTANCE:

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

FORECLOSURE RESCUE SCAMS:

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

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

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

(b) Appear as follows:

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NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE

Florida law requires that we provide you this notice about the foreclosure process. Please read it carefully.

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

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

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

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

702.036 Finality of Foreclosure Judgment.—

(1) In any action or proceeding in which a party seeks to 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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mortgage includes lands, railroad track, right-of-way, or terminal facilities and station grounds, lying in two or more counties, it may be foreclosed in any one of said counties, and all proceedings shall be had in that county as if all the mortgaged land, railroad track, right-of-way, or terminal facilities and station grounds lay therein, except that any notice of the sale must be published in every county wherein any of the lands, railroad track, right-of-way, or terminal facilities and station grounds to be sold lie. After final disposition of the suit, the clerk of the circuit court shall prepare and forward a certified copy of the decree of foreclosure, and the certificates of title, if any, ~~and sale and of the decree of confirmation of sale~~ to the clerk of the circuit court of every county wherein any of the mortgaged lands, railroad tracks, right-of-way, or terminal facilities and station grounds lie, to be recorded in the ~~foreign judgment book~~ official records of each such county, and the costs of such copies and of the record thereof shall be taxed as costs in the cause.

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

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

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

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

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

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

(b) If a deficiency is not pursued within the times specified in this section, the vesting of the property pursuant to s. 702.068 or proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the mortgage debt 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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Florida Law requires that we provide you notice that this
foreclosure may proceed without a judicial sale. Please read it
carefully.

You have been identified as the owner of, the holder of a
mortgage or lien on, or otherwise having an interest in property
located at [PROPERTY ADDRESS] which is subject to foreclosure.
You are hereby notified that [NAME AND ADDRESS OF PLAINTIFF] has
filed a foreclosure lawsuit with regard to the property and has
elected to proceed without a judicial sale pursuant to s.
702.068, Florida Statutes. Under this provision, after the
entry of a final judgment of foreclosure the property will vest
automatically in the foreclosing lender. There will not be a
public sale of the property, and you may lose your equity in
this property or any equity which would be available to pay
subordinate liens you may hold.

At any time prior to the entry of a final judgment of
foreclosure, you may demand a traditional public judicial sale
in order to protect any equity in the property, but anyone
making such a demand will initially be responsible for paying
the costs of advertising, notice and other expenses relating to
that sale. Under certain circumstances those costs may be
repaid from the proceeds of the public sale.

NOTE: the right to demand a judicial sale at any time
prior to the entry of a final judgment does not extend the 20
days to initially respond to the complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 15. Section 702.11 is created to read:

702.11 Adequate Protections for Lost, Destroyed or Stolen Notes.—

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

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

(b) A surety bond;

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

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

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

Any security given shall be on terms and in amounts set by the court, for a time period through the running of the statute of limitations for enforcement of the underlying note, and conditioned to indemnify and hold harmless the maker of the note against any loss or damage, including principal, interest, 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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any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

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

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

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

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

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

(b) Under paragraph (1)(a) or paragraph (1)(b) against the 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.