

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

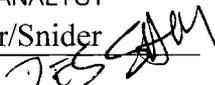
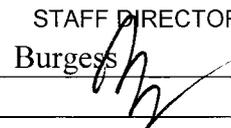
BILL: SB 2270

INTRODUCER: Senator Bennett

SUBJECT: Foreclosure Proceedings for Nonhomestead Property

DATE: April 9, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer/Snider 	Burgess 	BI	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	CM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates ch. 702, F.S., entitled the “Nonjudicial Foreclosure Act for Nonhomestead Properties” (the “Act”). The Act may be used, at the option of a foreclosing creditor, to effect a nonjudicial foreclosure of a security instrument, such as a mortgage, in any real or personal property other than a homestead.¹ Generally, the Act authorizes the nonjudicial foreclosure of every form of security interest in non-homestead real property located in the state, whether entered into before, on, or after July 1, 2010, if the notice of foreclosure is given on or after July 1, 2010. In order to effect a foreclosure authorized by the Act the debtor must agree that the security interest may be foreclosed by the terms of the Act, as opposed to a standard judicial foreclosure proceeding. This agreement may be incorporated in the contract that created the original security interest or the parties may create a novation to the contract in which the debtor agrees to the Act’s provisions in the event of a foreclosure. Three methods for which a foreclosing creditor may pursue nonjudicial foreclosure are specified, they are: 1) auction, 2) negotiated sale and 3) appraisal. Foreclosing creditors under the Act are prohibited from seeking deficiency judgments against residential debtors who are foreclosed upon pursuant to the Act. The bill provides that the proposed nonjudicial remedies do not preclude foreclosure of security interests in real property by judicial means, and that the nonjudicial remedies may not be used, with state exceptions, if a judicial proceeding to foreclosure a security interest is pending.

Other key provisions of the bill include:

- Specified notice of foreclosure and notice of right to cure during nonjudicial foreclosure.

¹ The definition of homestead property in s. 4, Art. X of the Florida Constitution applies to this bill, see lines 167-168 and 216-218 of the bill.

- Monetary penalties in specified circumstances against a creditor who fails to give timely notice of foreclosure to a person who has recorded a request for such notice.
- Procedures that allow a person with an interest in the property that is the subject of the foreclosure to object to the foreclosure.
- Procedures for transferring title of the foreclosed property to the person who has become the owner through either auction or negotiated sale; additionally, the bill provides procedures for transferring title to the foreclosing creditor in the case of a foreclosure by appraisal.
- Judicial supervision of a nonjudicial foreclosure, allowing an aggrieved person to assert a violation of the nonjudicial process, applicable laws, or principles of equity.
- A method for procuring a judicial determination as to whether property claimed to be homestead has been abandoned.

This bill creates part II of ch. 702, F.S.

II. Present Situation:

Foreclosures

A foreclosure is a lawsuit filed by a lender when the borrower has failed to make the payments. The lender asks the court to sell the property so that the lender can recover the missed payments or the whole balance due on the loan. Once the foreclosure action is filed, parties to the action must be served. When a property subject to foreclosure is being rented, service of the proceedings is often made on a “Jane or John Doe” at the address of the property in addition to the borrower.²

Once the foreclosure lawsuit is filed, a tenant’s rights are limited. If the property is sold at auction, a writ of possession is entered, which requires the tenants to vacate the premises.³ A tenant’s options before a writ of possession is entered include moving out before an eviction or delaying the foreclosure process by filing a motion to delay the auction.

Current Rate of Foreclosures in Florida

The Office of the State Courts Administrator (OSCA) reports that foreclosure filings doubled from FY 2005-2006 to FY 2006-2007 and nearly tripled from FY 2006-2007 to FY 2007-2008.⁴ As of January 2009, the counties with the highest number of filings included Dade, Broward, Palm Beach, Orange, Lee, and Duval counties. Some courts have addressed the crisis with detailed administrative orders outlining the foreclosure process.⁵

In response to the number of administrative orders being issued by the different circuits, concerned attorneys from the private bar and legal service organizations filed a petition with the

² See e.g., *Burns v. Bankamerica National Trust Co.*, 719 So. 2d 999 (Fla. 5th DCA 1998).

³ Fla. R. Civ. P. 1.580

⁴ Foreclosures have increased by 549% since December 2006 and 1 in every 163 units is now in foreclosure. This makes Florida third in the nation in foreclosures. BALANCING ECONOMIC INTERESTS AND FAIRNESS IN FLORIDA’S RESIDENTIAL MORTGAGE FORECLOSURE SYSTEM, Collins Center for Public Policy, April 2010. On file with the Committee on Banking and Insurance.

⁵ *Foreclosure Mediation is Gaining Momentum*, The Florida Bar News (March 15, 2009).

Florida Supreme Court requesting an emergency rule to require mediation in all new and pending cases involving mortgage foreclosure of owner-occupied residential properties.⁶ The Florida Supreme Court responded on March 12, 2009, stating that the Court had decided not to make the emergency petition into a case. Instead, the court issued an administrative order establishing a statewide task force on residential mortgage foreclosure cases “to recommend to the Supreme Court policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties.”

Judicial Sales Procedure

Currently, a mortgage company must serve a complaint, a notice of *lis pendens*,⁷ and a summons on the borrower in order to initiate foreclosure proceedings.

The procedure for the sale of real or personal property, otherwise known as a judicial sale, is provided for in s. 45.031, F.S. This section provides that a final judgment from a foreclosure proceeding must include a statement notifying the property owner and subordinate lienholders, if any, that there may be additional money from the foreclosure sale and notifying the property owner that he or she may claim such additional funds without representation by a lawyer or other person, if the subject property qualified for a homestead exemption in the most recent tax year.⁸ The sale must be conducted at public auction at the time and place set forth in the final judgment.⁹

After the sale, the certificate of sale, which is filed and served on all parties by the clerk of court, must include the amount the property was sold for and to whom it was sold.¹⁰ The clerk is also required to serve all parties with a copy of the certificate of disbursement detailing the amount of payments made to the parties pursuant to the sale and any remaining surplus.¹¹ The certificate of disbursement must notify persons claiming a right to any excess funds that they must make a claim to the clerk within 60 days, or forfeit the right to make a claim to the owner of record at the *lis pendens* date.¹² Essentially, the surplus will be paid to the owner at the *lis pendens* date, unless another person (such as a subordinate lienholder or assignee of the right to collect the funds) claims an interest in the proceeds during the 60-day period. If such a claim is made, the court shall set an evidentiary hearing to determine entitlement to the surplus.

⁶ *In Re: Emergency Amendment to the Florida Rules of Civil Procedure to Require Pre-Judgment Mediation in Residential Mortgage Foreclosures*, February 6, 2009 (on file with the Committee on Banking & Insurance).

⁷ The definition of “*lis pendens*,” as appropriate for this analysis, is “[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.” BLACK’S LAW DICTIONARY (8th ed. 2004). Essentially, “[t]he purpose of a notice of *lis pendens* is to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of property is involved in litigation.” 35 FLA. JUR. 2D *Lis Pendens* s. 3 (2008).

⁸ Section 45.031(1)(a) and (b), F.S.

⁹ Section 45.031(3), F.S.

¹⁰ Section 45.031(4), F.S.

¹¹ Section 45.031(7), F.S.

¹² *Id.* The *lis pendens* date is the date the lienholder records the notice of *lis pendens* in the public land records of the county clerk’s office in which the property is located. E-mail correspondence from U.S. Bankruptcy Judge Catherine Peek McEwen to the Senate Committee on Judiciary, Feb. 4, 2008 (on file with the Senate Committee on Judiciary).

Expedited Show-Cause Foreclosure Procedure

The Legislature created an optional “speedy” foreclosure procedure for residential foreclosures in 1993, codified at s. 702.10, F.S.¹³ This section provides a fast track foreclosure process through an order to show cause, whereby a lender can obtain an *in rem* judgment. Upon filing a foreclosure complaint, the mortgagee can request an order to show cause for the entry of a final judgment. The judge must then read the complaint and verify that it states a cause of action.¹⁴ If the complaint is verified, the judge will issue an order to the defendant to show cause why a final judgment should not be entered.¹⁵ If a defendant waives the right to be heard, the judge shall promptly enter a final judgment of foreclosure.¹⁶ Upon receipt of a final judgment, the procedures set out in s. 45.031, F.S., for a judicial sale should be followed.

Sheriff’s Sale

Chapter 56, F.S., governs sheriff’s sales, which occur when a lienholder obtains a money judgment on a formerly unsecured debt. Upon entry of a money judgment, the court issues a writ of execution that is effective during the life of the judgment.¹⁷ An execution is a “court order directing a sheriff or other officer to enforce a judgment, [usually] by seizing and selling the judgment debtor’s property.”¹⁸ Upon receipt of the writ of execution, the sheriff must publicize the upcoming sale, and then an auction is held on a specified date.

Task Force on Residential Mortgage Foreclosure Cases

This tremendous increase in mortgage foreclosure filings caused and continues to cause a strain on the courts. The Florida Supreme Court Task Force on Residential Mortgage Foreclosure Cases was formed in March 2009 to recommend to the Supreme Court “policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties.”¹⁹ The Florida Supreme Court charged the task force with including in its recommendations to the Court alternative dispute resolution strategies, case management techniques, and approaches to providing pro bono or low-cost legal assistance to homeowners. The Court also directed the task force to examine existing court rules and propose any changes to the rules that would “facilitate early, equitable resolution of residential mortgage foreclosure cases.”²⁰

The recommendations were released on August 17, 2009. Noting the limited resources available, the task force recommended a uniform, statewide managed mediation program that is implemented through a model administrative order issued by the chief judge of each circuit. It will require that every foreclosure case that involves residential homestead property be referred

¹³ Facsimile from U.S. Bankruptcy Judge Catherine Peek McEwen to the Senate Committee on Judiciary, March 12, 2007 (on file with the Senate Committee on Judiciary).

¹⁴ Section 702.10(1), F.S.

¹⁵ *Id.*

¹⁶ Section 702.10(1)(d), F.S.

¹⁷ Section 56.021, F.S.

¹⁸ BLACK’S LAW DICTIONARY (8th ed. 2004).

¹⁹ FLORIDA SUPREME COURT TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES, INTERIM REPORT, May 8, 2009, 3.

²⁰ *Id.*

to mediation unless the plaintiff and borrower agree otherwise or unless a pre-suit mediation was conducted. Some of the features of the administrative order include referral of the borrower to foreclosure counseling prior to mediation, early exchange of borrower and lender information, and the ability of the plaintiff's representative to appear by telephone and borrowers will not be charged a fee. The task force also recommended processing the foreclosure cases by three distinct categories:

- Homestead properties that are referred to mediation and are likely to resolve through the managed mediation program;
- Vacant and abandoned properties that can move through the courts quickly through expedited foreclosure processes; and
- Other foreclosure cases, which may include tenant-occupied or non-borrower-occupied properties, in which the borrower has been unable to communicate with the plaintiff to resolve the case, and which may be referred to the managed mediation program at equal cost to both parties.²¹

The task force also recommended changes to the Rules of Civil Procedure along with the forms to use with the rules for those cases that will not be resolved through the mediation program.

Uniform Nonjudicial Foreclosure Act

In 2002, the National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Nonjudicial Foreclosure Act. According to the NCCUSL, there are approximately 20 states that have no practical form of nonjudicial foreclosure. The writers of the Uniform Nonjudicial Foreclosure Act believe that:

In the great majority of foreclosures, judicial involvement is unnecessary because there is no dispute between the debtor and creditor. Using the time of judges and the machinery of the courts to conduct routine foreclosures is often a misallocation of public funds as well as a waste of the secured creditor's resources. The delays and inefficiency associated with foreclosure by judicial action are costly. They increase the risk of vandalism, fire loss, depreciation, damage, and waste. The resulting costs raise the price of private mortgages and erode the economic value of government subsidy program involving mortgages. The availability of a uniform, less expensive, and more expeditious foreclosure procedure will ameliorate these conditions, and will facilitate the secondary market sale and resale of real estate loans.

III. Effect of Proposed Changes:

General Provisions

This bill creates a new section of the Florida Statutes entitled the "Nonjudicial Foreclosure Act for Nonhomestead Properties" (the "Act"). The Act may be used, at the option of a foreclosing

²¹ FLORIDA SUPREME COURT TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES, FINAL REPORT AND RECOMMENDATIONS, August 17, 2009, 8.

creditor, to effect a foreclosure of a security instrument, such as a mortgage, in any real or personal property other than a homestead.²² A foreclosure that is effected pursuant to the Act may be completed outside of the typical judicial arena. Generally, the Act authorizes the nonjudicial foreclosure of every form of security interest in nonhomestead real property located in the state, whether entered into before, on, or after July 1, 2010 if the notice of foreclosure is given on or after July 1, 2010. In order to effect a foreclosure of a security authorized by the Act the debtor must agree that the security interest may be foreclosed by the terms of the Act, as opposed to a standard judicial foreclosure proceeding. This agreement may be incorporated in the contract that created the original security interest or the parties may create a novation to the contract in which the debtor agrees to the Act's provisions in the event of a foreclosure.

Nonjudicial Foreclosure

The bill allows creditors a right to foreclose nonjudicially, this right manifests once all notices have been given and any applicable opportunity to cure has expired.²³ The time of foreclosure must be at least 90 days, but not more than one year after an original notice of foreclosure is recorded and at least 30 days after any subsequent notice of foreclosure. At this point, the secured creditor may proceed with the nonjudicial foreclosure process as outlined in the Act; the Act provides three methods for effecting a nonjudicial foreclosure: 1) by auction, 2) by negotiated sale, or 3) by appraisal.

Nonjudicial Foreclosure by Auction

Foreclosure by auction is a process by which the foreclosing creditor arranges a meeting of potential buyers who bid on the property being foreclosed on; the property is then sold to the highest bidder. Sections 702.2201-2213 of the Act provide the guidelines that a secured creditor must follow to effect a foreclosure by auction. After compliance with the notice requirements for nonjudicial foreclosure, a foreclosing creditor may begin a foreclosure by auction by advertising the auction through the specified publication procedures in the Act.²⁴ At least 21 days prior to the auction the foreclosing creditor must provide the debtor with a copy of the advertisement.

The auction must be conducted by a person designated by the foreclosing creditor in a county in which some or all of the real property collateral is located. At the auction the foreclosing creditor must make a copy of the evidence of title available upon request to any prospective bidders. Any person, including the debtor and the foreclosing creditor, may bid at the auction. Additionally, a fixed bid of a person who is not attending the auction may be submitted in writing but must be received at least 24 hours before the time of the auction.²⁵ After all bids are made the sale must be made to the person bidding the highest amount and who complies with all the requirements of

²² The definition of homestead property in s. 4, Art. X of the Florida Constitution applies to this bill, see lines 167-168 and 216-218 of the bill.

²³ See s. 702.211 of the Act and the "Notice of Nonjudicial Foreclosure" section below.

²⁴ Section 702.2203 specifies detailed criteria that must be met for the different manners of publication; for example, one method requires placing an advertisement in a newspaper of general circulation in each county in which any part of the real property collateral is located and running the advertisement at least once per week for three consecutive weeks.

²⁵ Any such bid must be accompanied by funds sufficient to cover the deposit on the property in the event that the bid is the winning bid.

the Act. Up until the announcement that the property is “sold” to the highest bidder the foreclosing creditor may elect to discontinue with the foreclosure.

Immediately after the close of the auction the winning bidder must pay a deposit to the person conducting the sale. The deposit must be equal to the required deposit amount that was advertised. Within seven days of the close of the auction the winning bidder must pay the remainder of the purchase price. If the remainder is not paid within seven days the foreclosing creditor may reschedule the auction and retain the deposit amount. If the full purchase price is paid within the seven day period the foreclosing creditor must record and deliver the deed to the winning bidder. Additionally, the foreclosing creditor must execute and record an affidavit that identifies the security instrument being foreclosed, identifies the debtor, describes the collateral property, identifies the persons who were notified of the foreclosure, states any persons who received special notice, and identifies the person acquiring title to the collateral property.

Nonjudicial Foreclosure by Negotiated Sale

Nonjudicial foreclosure by negotiated sale is a process by which the foreclosing creditor arranges for a prospective purchaser to contract and purchase the collateral property in foreclosure. Sections 702.231-236 of the Act provide the guidelines that a secured creditor must follow to effect a foreclosure by negotiated sale.

The foreclosing creditor may advertise the collateral property for sale to perspective purchasers by whatever methods the foreclosing creditors regard as appropriate. Once a prospective buyer is found, the foreclosing creditor may enter into a conditional contract of sale, however, the date of sale must be at least 30 days after the parties specified in s. 702.213 of the Act are given a notice of proposed sale. If any person who holds an interest in the collateral property objects, prior to seven days before the date of proposed sale, the foreclosing creditor must either: discontinue the foreclosure, give notice to objector that the objector’s interest in the collateral will be preserved from termination by the foreclosure, or discharge the interest in exchange for a sum that is acceptable to the objecting interest holder. Once the foreclosing creditor takes one of these prescribed actions, or once the time for objections has expired without objections being filed, the foreclosure by negotiated sale may be completed. Upon compliance by the purchaser with the contract for negotiated sale, the foreclosing creditor must execute and record an affidavit that identifies the security instrument being foreclosed, identifies the debtor, describes the collateral property, identifies the persons who were notified of the foreclosure, states any persons who received special notice, and identifies the person acquiring title to the collateral property. Upon completion of the recording the foreclosure by negotiated sale is complete and the buyer holds title to the collateral property.

Nonjudicial Foreclosure by Appraisal

Nonjudicial foreclosure by appraisal is a foreclosure process by which title to the foreclosed property passes from the debtor directly to the foreclosing creditor. Sections 702.242-245 of the Act provide the guidelines that a secured creditor must follow to effect a foreclosure by appraisal. The first step in this process is for the foreclosing creditor to obtain a written appraisal of the collateral real estate by an independent appraiser certified by the American Institute of Real Estate Appraisers. Once the value of the collateral real estate is established by the appraisal,

and once 30 days have passed after compliance with the notice requirements for nonjudicial foreclosure, a foreclosing creditor may begin a foreclosure by appraisal. The notice requirements in a foreclosure by appraisal must contain an explanation of the foreclosure amount, which is the amount that the foreclosing creditor intends to apply towards the secured obligation.²⁶

Once the appraisal and notice requirements have been completed, the foreclosing creditor must allow seven days to pass in which no objections to the foreclosure are filed by other interest holders. If an objection is filed by another interest holder in the collateral property within the seven day period, then the foreclosing creditor must either: discontinue the foreclosure, give notice to objector that the objector's interest in the collateral will be preserved from termination by the foreclosure, or discharge the interest in exchange for a sum that is acceptable to the objecting interest holder. However, if no objections are filed by other interest holders during this time, the foreclosing creditor must execute and record an affidavit that identifies the security instrument being foreclosed, identifies the debtor, describes the collateral property, identifies the persons who were notified of the foreclosure, states any persons who received special notice, and identifies the person acquiring title to the collateral property. Upon this recording the foreclosing creditor becomes the title holder to the collateral and the foreclosure by appraisal is complete.

Notice of Nonjudicial Foreclosure

Section 702.211(b) of the Act requires that in order to effect a nonjudicial foreclosure by any of the three previously mentioned methods the creditor must provide certain notices to the debtor. The required notice includes 1) a notice of default and right to cure, and 2) a notice of foreclosure.

A notice of default and right to cure must be given to each debtor and interest holder whose interest gives a right of possession on the real property collateral before a right to foreclose under the Act will manifest. Unless agreed to otherwise by the parties, a right to cure must provide the debtor with 30 days to cure the default by paying the amount in default to the creditor.²⁷

Once the period to cure has expired a creditor may issue a notice of foreclosure. A notice of foreclosure must be recorded in the public records of each county in which the real property collateral is located. Within five days after such recording the secured creditor must give a notice of foreclosure to the following persons:

- A person that the secured creditor knows to be a debtor,
- A person specified by the debtor in the security instrument to receive notice on the debtor's behalf,
- A person that is shown by the public records of a county in which any part of the real property collateral is located to be an interest holder in the collateral,
- A person who is entitled to notice with respect to the disposition of the personal property collateral under the secured transactions section of the Florida Uniform Commercial Code

²⁶ The foreclosure amount is calculated as the net value of the collateral after taking into account the appraised value of the collateral minus the expenses of foreclosure.

²⁷ Section 702.212(6)(b) of the Act on lines 613-615 provides that the parties may agree to shorten this 30 day period, however, the parties may not agree to any period less than 10 days.

section of the Florida Statutes,²⁸ if the secured creditor holds and intends to foreclose on a security interest in personal property,

- A person who the foreclosing creditor knows is an interest holder in the real property collateral,
- A person that has recorded in the public records, of a county in which any part of the real property collateral is located, a request for notice of foreclosure.²⁹

A notice of foreclosure must provide the debtor with the contact information of an individual who is either the foreclosing creditor or a representative of the foreclosing creditor. The notice must also contain a statement of the procedures of foreclosure and the rights of the debtor. In some circumstances the notice must also include instructions on the process of objecting to the foreclosure; such an objection requires a meeting between the debtor and the secured creditor.³⁰

Homestead Property

The Act provides that nonjudicial foreclosure may not be used when the property being foreclosed is homestead property. In the definitions section of the Act “Homestead Property” is defined as property that is exempted from forced sale under process of court pursuant to the State Constitution.³¹ However, s. 702.209 of the Act extends the application to abandoned mortgaged homestead property. Abandoned homestead property includes property that the homeowner:

- Affirmatively represents in writing that the homeowner’s intent is to abandon,
- Affirmatively acts in a manner that manifests the intent to surrender the property owner’s interest in the property to the secured creditor,
- Establishes a homestead in a property other than the property subject to the secured creditor’s security interest,
- Enters into a contract to lease the secured property for a period of more than one year,
- Leaves the secured property vacant for a period of more than three months and does not provide for the maintenance or physical security of the property during that time, and
- Fails to pay ad valorem taxes and maintain property insurance on the property for a period of 1 year.

The Act provides that a determination of whether a homestead property has been abandoned may be made by a judicial determination pursuant to the provisions in s. 702.218 of the Act on lines 863-872.³²

Meeting to Object to Foreclosure

Section 702.216 of the Act provides that a residential debtor may request a meeting to object to a foreclosure. The Act is unclear as to whether such meetings must be requested within 15 or 30

²⁸ Florida has adopted a version of the Uniform Commercial Code; the secured transactions portion of that statute is found in ch. 679, F.S.

²⁹ The guidelines for recording such a request are found in s. 702.215 of the Act on lines 759-799.

³⁰ See “Meeting to Object to Foreclosure” below.

³¹ See s. 702.201(9) of the Act on lines 216-218.

³² See “Judicial Supervision of Foreclosure” section below.

days after a notice of foreclosure has been delivered to the debtor.³³ If a debtor or interest holder requests a meeting within the prescribed time period, the secured creditor or a representative of the secured creditor must attend a meeting with the person making the request; however, if there are more than one such requests then the secured creditor may consolidate to one meeting with all of the requestors. All parties to such meetings may be represented by counsel, however, the meetings are informal and the rules of evidence do not apply. Additionally, any statement made at such meetings may not be introduced as evidence in a later judicial proceeding. Once a meeting to object to foreclosure has concluded the secured creditor must notify all persons who requested the meeting as to the secured creditor's decision to continue with or forgo the foreclosure.

Judicial Supervision of Foreclosure

This bill creates s. 702.218, F.S., which provides that an aggrieved person may, prior to the time of foreclosure, commence a court proceeding for any violation of the Act or of any other law or principle of equity related to the conduct of the foreclosure. Such actions may also be commenced in order to procure a judicial determination as to whether any property claimed by the debtor as homestead property has been abandoned.

Application of Proceeds of Foreclosure

This bill creates s. 702.251, F.S., which specifies the order in which the proceeds from a foreclosure under the Act, and any investment earnings on the proceeds, shall be applied. Such proceeds are applied under the Act in the following order: 1) to pay or reimburse the expenses of foreclosure in the case of a foreclosure by auction; 2) to pay the obligation secured by the foreclosed security instrument; 3) to pay, in the order of priority, the amounts of all liens and other interests of record terminated by the foreclosure; and 4) to the interest holder who owned the collateral at the time of foreclosure.

Deficiency Judgments

This bill creates s. 702.255 F.S., which provides that, generally, a foreclosure under the Act would not leave a residential debtor liable to the foreclosing creditor for any deficiency that results from the sale of the collateral for an amount less than the value of the debt. The bill specifies that the residential debtor may still be liable for such deficiency amounts if the debtor has not acted in good faith. For the purposes of this section, the bill provides that a residential debtor has acted in good faith if the debtor:

- Peaceably vacated the collateral in a timely manner,
- Did not commit significant affirmative waste to the collateral,
- Did not significantly contaminate the collateral with hazardous materials,
- Did not commit fraud against the foreclosing creditor,
- Did not engage in criminal activity on the secured collateral,
- Did not permit significant uncured damage to be done to the collateral by another party, and
- Did not prevent reasonable access to the collateral for inspection by the foreclosing creditor and perspective purchasers.

³³ See Technical Deficiencies section below.

This bill has an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The State Constitution provides that the circuit courts shall have jurisdiction over matters of equity.³⁴ Present statutory law, which is not amended by this legislation, provides that all mortgages shall be foreclosed in equity.³⁵ Thus, without amending existing statute, this bill would likely violate the State Constitution by permitting mortgages to be foreclosed outside of a circuit court.

The notice provisions of this legislation may be insufficient. The bill appears to allow a nonjudicial foreclosure to proceed even if the mortgagor (homeowner) has not received proper notice. The notice required by due process of law is reasonable notice under that is reasonably calculated to apprise the interested parties of the pendency of the action and to afford them an opportunity to present their objections.³⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could have a positive fiscal impact on the private sector. Foreclosure is expensive to creditors. A foreclosing creditor will save court filing fees of as much as \$1,900 a case, plus court costs of several hundred dollars a case. Foreclosing creditors

³⁴ Art. V, s. 20(3), State Const.

³⁵ Section 702.01, F.S.

³⁶ See, e.g., *Vosilla v. Rosado*, 944 So.2d 289 (Fla. 2006) (holding that reasonableness depends on the “practicalities and peculiarities” of each case). This case appears to impose a higher standard for reasonable calculation based on the uniqueness of each case – in many cases merely mailing a letter to the address, as this bill seems to permit, is unlikely to satisfy the notice requirements.

under this bill will realize smaller losses from uncollected interest as this process could be quicker than judicial foreclosure.

Auction sales of real property commonly have a sale price less than fair market value.³⁷ The options created by this bill (foreclosure by negotiated sale, foreclosure by appraisal) are expected to lead to higher sale prices. Higher foreclosure returns to creditors do not benefit only the foreclosing creditor; they may benefit the real estate market (higher comparable sales prices), second mortgage holders (higher chance of payment of some or all of the debt), and in some cases debtors (where there are funds remaining at the conclusion of the process).

There may be considerable litigation costs to effect the process as envisioned by this bill because of numerous existing questions regarding various provisions. Opponents of this legislation have stated it may take two to three years for courts to decide on these questions. During this time, the litigation would paralyze the residential real estate market, title to all of the properties would be in doubt, and property would uninsurable until the ownership is resolved.

This bill may have a negative fiscal impact on some vendors of foreclosure-related services whose services would not be required in nonjudicial foreclosure actions, such as private process servers.

C. Government Sector Impact:

This bill is likely to have significant negative fiscal impact on the state government.³⁸ For FY 2009-2010, the entire judicial budget was \$451 million. Based on this budget, the negative impact appears to represent approximately 25% of the judicial budget.³⁹

Article V (Judiciary)	FY 2010-11 (Cash)	FY 2010-11 (Annualized)	FY 2011-12 (Cash)	FY 2012-13 (Cash)	FY 2013-14 (Cash)
General Revenue	(8.0)	(8.7)	(6.0)	(4.1)	(3.0)
Gen. Rev. Service Charge	(8.4)	(9.2)	(6.4)	(4.5)	(3.3)
State Courts Trust Fund	(97.1)	(105.9)	(73.9)	(51.3)	(37.5)
Documentary Stamp Tax	indeterminate	indeterminate	indeterminate	indeterminate	indeterminate
Total	(113.5)	(123.8)	(86.3)	(59.9)	(43.8)

³⁷ One estimate indicates that foreclosed houses sell at a discount of 32%. John Y. Campbell, et. al., FORCED SALES AND HOUSE PRICES, Nov. 2008. Available at:

http://www.richmondfed.org/conferences_and_events/research/2008/pdf/forced_sales_and_house_prices.pdf

³⁸ Revenue Estimating Conference, April 5, 2010.

³⁹ In the event of a budget shortfall for the judicial branch, the Chief Justice is charged with “implement[ing] all necessary reductions.” Art. IV, Sec. 13, State. Const.

VI. Technical Deficiencies:

Lines 749-750 provide that a notice of foreclosure must include a provision that informs debtors and interest holders that any request for a meeting to object to foreclosure must be made within 15 days of the delivery of a notice of foreclosure. This is inconsistent with the provision on line 803 which requires such requests to be filed within 30 days of delivery of a notice of foreclosure.

Lines 1328-1392 provide that “A foreclosing creditor may complete the foreclosure as provided in subsection (2) and ss. 702.244 and 702.245...” this provision is redundant since this provision is found in subsection (1) of s. 702.244. The language would be more clearly stated as: “A foreclosing creditor may complete the foreclosure as provided in subsection (2) and s. 702.245...” or “A foreclosing creditor may complete the foreclosure as provided in subsection (2) of s. 702.244 and s. 702.245[.]”

Line 1331 in s. 702.224 of the Act is entitled “Completion of foreclosure by appraisal” however, line 1331 relates to “foreclosure by negotiated sale.” It is unclear as to whether this was intended to be included in the negotiated sale provisions found in ss. 702.231-236 of the Act, or if this was intended to read “foreclosure by appraisal.” In either scenario, the language in this section of the bill contains an error.

VII. Related Issues:

Many existing mortgage documents specify that mortgages in Florida will be judicially foreclosed or do not provide for nonjudicial foreclosure as an option. Thus, unless the parties agree to a novation,⁴⁰ the nonjudicial foreclosure process envisioned by this bill may be unavailable on many properties in the state. Any legislation that impairs the existing contracts to provide for a nonjudicial foreclosure option without a novation would likely run afoul of the Contracts Clauses of both the State and Federal Constitutions.⁴¹ Therefore, the nonjudicial foreclosure process may not be able to be used on many existing mortgages.

This bill provides that a residential debtor may request a meeting to object to a foreclosure. The bill provides that a statement made at this meeting may not be introduced as evidence in a judicial proceeding. This appears to be an amendment by implication of the Florida Rules of Evidence, which would generally permit the admittance of hearsay evidence as admissions by party opponents. However, there is a strong public policy interest in increasing the number of parties that are able to reach an agreement outside of the judicial arena; one way to encourage this is to promote open and honest dialog between the parties in meetings between the parties. This interest may serve as justification to prohibiting the introduction into evidence of statements made during the meetings discussed in lines 823-846. Additionally, because the bill states that the rules of evidence do not apply during these meetings it would be improper for certain statements to be lifted from these meetings and introduced in a court, where the rules of evidence do apply.

⁴⁰ The act of substituting for an old obligation a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party. BLACK’S LAW DICTIONARY (8th ed. 2004).

⁴¹ See Art. I., s. 10, State Const.; Art. I, sec. 10, U.S. Const.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

DATE: 4-12-10
TIME: 10:08 AM



LEGISLATIVE ACTION

Senate	.	House
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The Committee on Banking and Insurance (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Part I of chapter 52, Florida Statutes, consisting of sections 52.101, 52.102, 52.103, 52.104, 52.105, 52.106, 52.107, and 52.108, is created to read:

PART I

GENERAL PROVISIONS

52.101 Short title; scope of applicability.-

(1) This chapter may be cited as the "Homeowner Relief and Housing Recovery Act."



13 (2) In lieu of any other foreclosure remedy that may be
14 available under the laws of this state under the judicial
15 system, this chapter may, at the option of the foreclosing
16 creditor, be used to effect a foreclosure of a security
17 instrument. However, if the foreclosing creditor does not elect
18 to use this chapter to effect a foreclosure, nothing in this
19 chapter is intended to modify any other foreclosure remedy
20 available under the laws of this state.

21 52.102 Definitions.—For purposes of this chapter:

22 (1) "Collateral" means property, real or personal, subject
23 to a security interest.

24 (2) "Common interest community" means real property for
25 which a person is obligated to pay real property taxes,
26 insurance premiums, maintenance, or improvement of other real
27 property described in a declaration or other governing
28 documents, however denominated, by virtue of the community's or
29 association's ownership thereof or the holding of a leasehold
30 interest of at least 20 years, including renewal options
31 therein. The term "common interest community" includes a
32 community governed by one or more condominium associations as
33 defined in s. 718.103, by a cooperative association as defined
34 in s. 719.103, or by a homeowners' association as defined in s.
35 720.301.

36 (3) "Day" means a calendar day.

37 (4) "Debtor" means a person that owes payment or other
38 performance of an obligation, whether absolute or conditional,
39 primary or secondary, secured under a security instrument,
40 whether or not the security instrument imposes personal
41 liability on the debtor. The term does not include a person



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42 whose sole interest in the property is a security interest.

43 (5) "Evidence of title" means a title insurance policy, a
44 preliminary title report or binder, a title insurance
45 commitment, an attorney's opinion of title based on an
46 examination of the public records or an abstract, or any other
47 means of reporting the state of title to real estate which is
48 customary in the locality.

49 (6) "Expenses of foreclosure" means the lesser of the
50 reasonable costs incurred by a secured creditor or the maximum
51 amounts permitted by any other laws of this state in connection
52 with a foreclosure for transmission of notices, advertising,
53 evidence of title, inspections and examinations of the
54 collateral, management and securing of the collateral, liability
55 insurance, filing and recording fees, attorney's fees and
56 litigation expenses incurred pursuant to ss. 52.207 and 52.601
57 to the extent provided in the security instrument or authorized
58 by law, appraisal fees, the fee of the person conducting the
59 sale in the case of a foreclosure by auction, fees of court-
60 appointed receivers, and other expenses reasonably necessary to
61 the foreclosure.

62 (7) "Foreclosing creditor" means a secured creditor who is
63 engaged in a foreclosure under this chapter.

64 (8) "Guarantor" means a person liable for the debt of
65 another, and includes a surety and an accommodation party.

66 (9) "Interest holder" means a person who owns a legally
67 recognized interest in real or personal property which is
68 subordinate in priority to a security interest foreclosed under
69 this chapter.

70 (10) "Original notice of foreclosure" means the first



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71 notice of foreclosure sent pursuant to s. 52.204 instituting a
72 foreclosure under this chapter.

73 (11) "Purchase-money obligation" means an obligation
74 incurred in order to pay part or all of the purchase price of
75 residential real property collateral. An obligation is not a
76 purchase-money obligation if any part of the real property
77 securing it is not residential real property. A purchase-money
78 obligation includes an obligation:

79 (a) Incurred to the vendor of the real property;

80 (b) Owed to a third-party lender to pay a loan made to pay
81 part or all of the purchase price of the real property;

82 (c) Incurred to purchase labor and materials for the
83 construction of substantial improvements on the real property;

84 or

85 (d) To pay a loan all of the proceeds of which were used to
86 repay in full an obligation of the type described in paragraphs
87 (a)-(c).

88 (12) "Real property" means any estate or interest in, over,
89 or under land, including minerals, structures, fixtures, and
90 other things that by custom, usage, or law pass with a
91 conveyance of land though not described or mentioned in the
92 contract of sale or instrument of conveyance. The term includes
93 the interest of a landlord or tenant and, unless under the law
94 of the state in which the property is located that interest is
95 personal property, an interest in a common interest community.

96 (13) "Record" when used as a verb, means to take the
97 actions necessary to perfect an interest in real property under
98 the laws of this state.

99 (14) "Record" used as a noun, means information that is



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100 inscribed on a tangible medium or that is stored in an
101 electronic or other medium and is retrievable in perceivable
102 form.

103 (15) "Residential" means:

104 (a) As applied to an interest holder, an individual who
105 holds a possessory interest, other than a leasehold interest
106 with a duration of 1 year or less, in residential real property
107 in which a security interest exists, and any person that is
108 wholly owned and controlled by such an individual or
109 individuals.

110 (b) As applied to a debtor, an individual who is obligated,
111 primarily or secondarily, on an obligation secured in whole or
112 in part by residential real property, and any person that is
113 wholly owned and controlled by such an individual or
114 individuals.

115 (16) "Residential real property" means real property that,
116 when a security instrument is entered into, is used or is
117 intended by its owner to be used primarily for the personal,
118 family, or household purposes of its owner and is improved, or
119 is intended by its owner to be improved, by one to four dwelling
120 units.

121 (17) "Secured creditor" means a creditor that has the right
122 to foreclose a security interest in real property under this
123 chapter.

124 (18) "Security instrument" means a mortgage, deed of trust,
125 security deed, contract for deed, agreement for deed, land sale
126 contract, lease creating a security interest, or other contract
127 or conveyance that creates or provides for an interest in real
128 property to secure payment or performance of an obligation,



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129 whether by acquisition or retention of a lien, a lessor's
130 interest under a lease, or title to the real property. A
131 security instrument may also create a security interest in
132 personal property. If a security instrument makes a default
133 under any other agreement a default under the security
134 instrument, the security instrument includes the other
135 agreement. The term includes any modification or amendment of a
136 security instrument, and includes a lien on real property
137 created by a record to secure an obligation owed by an owner of
138 the real property to an association in a common interest
139 community or under covenants running with the real property.

140 (19) "Security interest" means an interest in real or
141 personal property which secures payment or performance of an
142 obligation.

143 (20) "Sign" means:

144 (a) Execute or adopt a tangible symbol with the present
145 intent to authenticate a record; or

146 (b) Attach or logically associate an electronic symbol,
147 sound, or process to or with a record with the present intent to
148 authenticate a record.

149 (21) "State" means a state of the United States, the
150 District of Columbia, Puerto Rico, the United States Virgin
151 Islands, or any territory or insular possession subject to the
152 jurisdiction of the United States.

153 (22) "Time of foreclosure" means the time that title to
154 real property collateral passes to the person acquiring it by
155 virtue of foreclosure under this chapter.

156 52.103 Application.-

157 (1) Except as otherwise provided in subsection (2), this



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158 chapter authorizes the nonjudicial foreclosure of every form of
159 security interest in real property located in this state and
160 related personal property, regardless of when the security
161 interest was entered into, if the original notice of foreclosure
162 is given on or after July 1, 2010, and if the debtor has agreed
163 in substance in the security instrument or in a separate written
164 document that the security interest may be foreclosed using a
165 nonjudicial process.

166 (2) This chapter may not be used to foreclose:

167 (a) A lien created by statute or operation of law, except a
168 lien of an owners' association on property in a common interest
169 community;

170 (b) A security interest in property in a common interest
171 community if under the law of this state that interest is
172 personal property; or

173 (c) A security interest in rents or proceeds of real
174 property.

175 (3) This chapter does not preclude or govern foreclosure or
176 other enforcement of security interests in real property by
177 judicial or other action permitted by any other laws of this
178 state.

179 (a) A secured creditor may not take action in pursuance of
180 foreclosure under this chapter if a judicial proceeding is
181 pending in this state to foreclose the security interest or to
182 enforce the secured obligation against a person primarily liable
183 for the obligation.

184 (b) A secured creditor may not commence or pursue
185 foreclosure under this chapter if a judicial proceeding is
186 pending in this state to challenge the existence, validity, or



187 enforceability of the security interest to be foreclosed.
188 (c) Except as provided in s. 52.208(2), foreclosure under
189 this chapter may proceed even if a judicial proceeding is
190 pending or a judicial order has been obtained for appointment or
191 supervision of a receiver of the collateral, possession of the
192 collateral, enforcement of an assignment of rents or other
193 proceeds of the collateral, or collection or sequestration of
194 rents or other proceeds of the collateral or to enforce the
195 secured obligation against a guarantor.

196 (4) If a security instrument covers both real property and
197 personal property, the secured creditor may proceed under this
198 chapter as to both the real property and personal property to
199 the extent permitted by chapter 679.

200 52.104 Variation by agreement.--

201 (1) Except as otherwise provided in subsections (2)-(4),
202 the parties to a security instrument may not vary by agreement
203 the effect of a provision of this chapter.

204 (2) The time within which a person must respond to a notice
205 sent by a secured creditor may be extended by agreement.

206 (3) The parties to a security instrument may vary the
207 effect of any provision of this chapter that by its terms
208 permits the parties to do so.

209 (4) The parties by agreement may determine the standards by
210 which performance of obligations under this chapter is to be
211 measured if those standards are not manifestly unreasonable.

212 (5) If every debtor under a security instrument is not a
213 residential debtor, an agreement by a guarantor waiving the
214 right to receive notices under this chapter with respect to the
215 foreclosure of the property of a debtor who is not a guarantor



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216 is enforceable unless a waiver is unenforceable under other
217 applicable law.

218 52.105 Supplemental principles of law and equity
219 applicable.—Unless displaced by a particular provision of this
220 chapter, the principles of law and equity affecting security
221 interests in real property supplement this chapter.

222 52.106 Notice and knowledge.—For purposes of this section:

223 (1) The following definitions apply:

224 (a) "Address" means a physical or an electronic address, or
225 both, as the security instrument requires.

226 (b) "Address for notice" means:

227 1. With respect to a notice given by a secured creditor:

228 a. For a recipient that has given to the secured creditor a
229 security instrument or other document in connection with a
230 security instrument, the address, if any, specified in the
231 security instrument or document.

232 b. For a recipient that is not described in sub-
233 paragraph a. and that is identifiable from examination of the
234 public records of the county or counties in which the collateral
235 is located, or, if personal property is being foreclosed
236 together with real property, the Uniform Commercial Code
237 financing statement filings, the address, if any, specified in
238 the recorded or filed document.

239 c. For a recipient that is not described in sub-
240 paragraph a. or sub-paragraph b. and that the secured
241 creditor knows is a tenant, subtenant, or leasehold assignee of
242 all or part of the real property collateral, the most recent
243 address made known to the secured creditor by that person or, if
244 none, the address of the real property collateral, including the



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245 designation of any office, apartment, or other unit that the
246 secured creditor knows is possessed by the recipient, with the
247 notice directed to the recipient's name, if known, or otherwise
248 "To Tenant occupying property at" the physical address or
249 description of the real property collateral.

250 d. For a recipient that is not described in sub-
251 subparagraphs a.-c., the physical address of the real property
252 collateral.

253 2. With respect to notices given by persons other than a
254 secured creditor, the most recent address given in a document
255 provided by the recipient to the person giving notice.

256 (c) "Electronic" means relating to technology having
257 electrical, digital, magnetic, wireless, optical,
258 electromagnetic, or similar capabilities.

259 (d) "Electronic notice" means an electronic record signed
260 by the person sending the notice.

261 (e) "Electronic record" means a record created, generated,
262 sent, communicated, received, or stored by electronic means.

263 (f) "Electronic signature" means an electronic sound,
264 symbol, or process attached to or logically associated with a
265 record and executed or adopted by a person with intent to
266 authenticate the record.

267 (g) "Recipient" means a person to whom a notice is sent.

268 (h) "Written notice" means a written record signed by the
269 person giving the notice.

270 (2) A person knows a fact if:

271 (a) The person has actual knowledge of the fact;

272 (b) The person has received a notice or notification of the
273 fact; or



274 (c) From all the facts and circumstances known to the
275 person at the time in question the person has reason to know the
276 fact.

277 (3) Notice is sent or given, or a recipient is notified,
278 subject to the limitations of subsection (4):

279 (a) By hand delivering a written notice to the recipient or
280 to an individual authorized to receive service of civil process
281 under applicable Florida law who is found at the recipient's
282 address for notice;

283 (b) By depositing written notice, properly addressed to the
284 recipient's address for notice, with cost of delivery paid:

285 1. With the United States Postal Service, registered or
286 certified mail, return receipt requested;

287 2. With the United States Postal Service by regular mail;
288 or

289 3. With a commercially reasonable carrier other than the
290 United States Postal Service; or

291 (c) Subject to subsection (7), by initiating operations
292 that in the ordinary course will cause the notice to come into
293 existence at the recipient's address for notice in the
294 recipient's information processing system in a form capable of
295 being processed by the recipient.

296 (4) (a) If the recipient is an individual and the security
297 interest covers a property for which the recipient has been
298 granted a homestead exemption pursuant to s. 196.031, use of the
299 methods of notice specified in subsection (3) is limited as
300 follows:

301 1. If the notice is a notice of foreclosure pursuant to s.
302 52.203, both of the methods of giving notice specified in



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303 subparagraphs (3)(b)2. and 3. must be used.

304 2. If the notice is not a notice of foreclosure pursuant to
305 s. 52.203, a method of giving notice specified in paragraph
306 (3)(a) or paragraph (3)(b) must be used.

307 (b) If the notice is a notice of default pursuant to s.
308 52.202 and the recipient is the debtor whose property is being
309 foreclosed under this chapter, service of process must be
310 completed pursuant to chapter 48 or, if applicable, chapter 49.

311 (5) If a person giving a notice pursuant to this chapter
312 and the recipient have agreed to limit the methods of giving
313 notice otherwise permitted by subsections (3) and (4), that
314 limitation is enforceable to the extent that it is consistent
315 with subsection (4) and is otherwise permitted by law.

316 (6) A person may not give an electronic notice unless the
317 recipient uses, designates by agreement, or otherwise has
318 designated or holds out an information processing system or
319 address within that system as a place for the receipt of
320 communications of that kind. An electronic notice is not sent if
321 the sender or its information processing system inhibits the
322 ability of the recipient to print or store the record.

323 (7) If, at the time of giving a required notice, a person
324 knows that the recipient's address for notice is incorrect or
325 that notices cannot be delivered to the recipient at that
326 address, the person that sent the notice shall make a reasonable
327 effort to determine a correct address for the recipient and send
328 the notice to the address so determined. Compliance with the
329 provisions of chapter 49 satisfies the requirement to make
330 reasonable effort to locate the party entitled to notice.

331 (8) If, after giving a notice, a person acquires knowledge



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332 that the address of the recipient to which the notice was
333 directed is incorrect or that notices cannot be delivered to the
334 recipient at that address, the person that sent the notice shall
335 promptly make a reasonable effort to determine a correct address
336 for the recipient and send another copy of the notice to the
337 address so determined, if any. The first notice, if timely sent
338 and properly directed to the recipient's address for notice,
339 complies with the time requirements of this chapter.

340 (9) A person may use methods of giving notice in addition
341 to, but not in place of, the methods required by subsections (3)
342 and (4).

343 (10) A notice is sufficient even if it includes information
344 not required by law or contains minor errors that are not
345 seriously misleading.

346 (11) Receipt of a notice within the time in which it would
347 have been received if properly sent has the effect of a proper
348 giving of notice.

349 (12) If the recipient is an individual, a notice is
350 received when it comes to the recipient's attention or is
351 delivered to and available at the recipient's address for
352 notice. If the recipient is not an individual, a notice is
353 received when it is brought to the attention of the individual
354 conducting the transaction, or in any event when it would have
355 been brought to that individual's attention if the recipient had
356 exercised due diligence. An organization exercises due diligence
357 if it maintains reasonable routines for communicating
358 significant information with the person conducting the
359 transaction and there is reasonable compliance with the
360 routines. Due diligence does not require an individual acting



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361 for the organization to communicate information unless such
362 communication is part of the individual's regular duties or
363 unless the individual has reason to know of the transaction and
364 know that the transaction would be materially affected by the
365 information.

366 (13) Subject to subsection (12), a person that has sent a
367 notice may revoke it by a subsequent notice unless the recipient
368 has materially changed its position in reliance on the notice
369 before receiving the revocation.

370 52.107 Transaction creating security interest.—A
371 transaction that is intended to create a security interest does
372 so irrespective of the caption of the documents.

373 52.108 Time of foreclosure.—The time of foreclosure is the
374 time the affidavit required by:

375 (1) Section 52.312 is recorded, in the case of a
376 foreclosure by auction.

377 (2) Section 52.405 is recorded, in the case of a
378 foreclosure by negotiated sale.

379 (3) Section 52.505 is recorded, in the case of a
380 foreclosure by appraisal.

381 Section 2. Part II of chapter 52, Florida Statutes,
382 consisting of sections 52.201, 52.202, 52.203, 52.204, 52.205,
383 52.206, 52.207, 52.208, and 52.209, is created to read:

384 PART II

385 PROCEDURES BEFORE FORECLOSURE

386 52.201 Right to foreclose.—

387 (1) A secured creditor has a right to foreclose under this
388 chapter if:

389 (a) All conditions that, by law and the terms of the



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390 security instrument, are prerequisites to foreclosure have been
391 satisfied.

392 (b) All notices to the debtor required by the security
393 instrument and by this chapter as prerequisites to foreclosure
394 have been given.

395 (c) All periods for cure available to the debtor by the
396 terms of the security instrument and law as prerequisites to
397 foreclosure have elapsed and no cure has been made.

398 (2) A foreclosing creditor may pursue foreclosure
399 exclusively by auction, by negotiated sale, or by appraisal, or
400 may simultaneously pursue, together with foreclosure by auction,
401 either foreclosure by negotiated sale or by appraisal, but not
402 both. If the creditor pursues two methods of foreclosure
403 simultaneously, the notice of foreclosure must state both
404 methods.

405 52.202 Notice of default and right to cure.-

406 (1) Subject to subsection (2) and paragraph (6)(a), a
407 notice of default must be given to each debtor and each interest
408 holder whose interest gives right of possession of the real
409 property collateral, and the cure period provided by this
410 section must expire without cure being made, before the original
411 notice of foreclosure may be given.

412 (2) Except as provided in the security instrument, notice
413 of default need not be given and no cure period is applicable if
414 the default cannot be cured.

415 (3) A notice of default must contain:

416 (a) The facts establishing that a default has occurred.

417 (b) The amount to be paid or other performance required to
418 cure the default, including the daily rate of accrual for



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419 amounts accruing over time, and the time within which cure must
420 be made.

421 (c) The name, address, and telephone number of an
422 individual who is or represents the secured creditor and who can
423 be contacted for further information concerning the default.

424 (d) A statement that foreclosure may be initiated if the
425 default is not cured in a timely manner.

426 (4) Within 30 days after notice of default is given to the
427 last person entitled to such notice, any person may:

428 (a) Cure the default if the default is curable by the
429 payment of money; or

430 (b) Commence to cure the default if the default cannot be
431 cured by the payment of money, diligently proceed to cure the
432 default, and complete the cure of the default within 90 days
433 after the notice of default was given.

434 (5) If no person is proceeding diligently to cure a default
435 that cannot be cured by the payment of money after 30 days from
436 the date the notice of default was sent to the last person
437 entitled to such notice, the secured creditor may immediately
438 terminate the period allowed for cure by accelerating payment of
439 the principal amount owing on the secured obligation or giving
440 an original notice of foreclosure.

441 (6) If none of the real property to be foreclosed is
442 residential real property:

443 (a) If a default cannot be cured by the payment of money
444 and a notice of default was given by the secured creditor within
445 1 year before the date of the present default on account of a
446 default of the same kind, a notice of default is not required
447 and a right to cure does not exist except as agreed by the



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448 parties.

449 (b) The periods specified in subsection (4) to cure a
450 default may be reduced as the parties agree in the security
451 instrument.

452 (7) A notice of default may be given notwithstanding that a
453 notice of default has previously been given on account of a
454 different default and is still pending.

455 (8) The right to cure a default provided in this section
456 does not impair or limit any other right to notice of default or
457 to cure a default provided to any person by the security
458 instrument. The period to cure provided in this section and any
459 period to cure provided in the security instrument run
460 concurrently unless the security instrument provides otherwise.

461 (9) Unless precluded from doing so by law other than this
462 chapter, a secured creditor shall cooperate with any debtor or
463 interest holder that attempts to cure a default by promptly
464 providing upon request reasonable information concerning the
465 amount or other performance due and expenses necessary for cure.

466 (10) If a default is cured within a period allowed by this
467 section, or after the expiration of that period but before
468 acceleration of the principal amount owing on the secured
469 obligation or the giving of an original notice of foreclosure,
470 an acceleration by the secured creditor of the principal amount
471 owing on the secured obligation on account of that default is
472 ineffective.

473 (11) During a period allowed for cure of a default under
474 this section, a secured creditor may enforce any remedy other
475 than foreclosure provided for by the security instrument and
476 enforceable under the laws of this state other than this chapter



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477 if enforcement does not unreasonably interfere with the ability
478 of a debtor to cure a default under this section.

479 52.203 Notice of foreclosure; manner of giving.-

480 (1) If a secured creditor has a right to foreclose under s.
481 52.201, the secured creditor may commence foreclosure by giving
482 notice of foreclosure. The notice must comply with subsections
483 (2) and (3) and s. 52.204 and is a prerequisite to foreclosure.

484 (2) A foreclosing creditor shall record a copy of the
485 notice of foreclosure in the public records of each county in
486 which the real property collateral is located. A recorded notice
487 of foreclosure is notice of its existence and contents to any
488 person acquiring an interest in the real property collateral
489 after the notice of foreclosure is recorded. In the absence of
490 recording of the notice of foreclosure, any purported
491 foreclosure under this chapter is void.

492 (3) Except as otherwise provided in subsection (4), a
493 foreclosing creditor shall give a notice of foreclosure to the
494 following persons no later than 5 days after recording the
495 original notice of foreclosure pursuant to subsection (2) if
496 such persons can be identified as of the time of recording of
497 the notice of foreclosure:

498 (a) A person that the foreclosing creditor knows to be a
499 debtor.

500 (b) A person specified by the debtor in the security
501 instrument to receive notice on the debtor's behalf.

502 (c) A person that is shown by the public records of each
503 county in which any part of the real property collateral is
504 located to be an interest holder in the real property
505 collateral.



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506 (d) If the foreclosing creditor holds and intends to
507 foreclose on a security interest in personal property, a person
508 who is entitled to notice with respect to the disposition of the
509 personal property collateral under chapter 679.

510 (e) A person who the foreclosing creditor knows is an
511 interest holder in the real property collateral.

512 (f) A person that has recorded in the public records of a
513 county in which any part of the real property collateral is
514 located a request for notice of foreclosure satisfying the
515 requirements of s. 52.205.

516 (g) If the public records of the county in which the real
517 property being foreclosed is located show that the real property
518 may be obligated to a common interest community, a person who is
519 an officer, director, or registered agent of such common
520 interest community.

521 (4) After the time of recording of the notice of
522 foreclosure, if the foreclosing creditor obtains actual
523 knowledge that a person holds an interest in the collateral that
524 is subordinate in priority to the security instrument, the
525 foreclosing creditor must give a notice of foreclosure to that
526 person no later than 5 days after obtaining such knowledge.

527 (5) A foreclosing creditor may give a special notice of
528 foreclosure to any person described in subsection (3) or
529 subsection (4) to avoid the termination of that person's
530 interest in the collateral by the foreclosure. The special
531 notice shall give the information required by s. 52.204, but
532 state that the recipient's interest in the collateral will not
533 be terminated by the foreclosure.

534 (6) A foreclosing creditor, within 10 days before or after



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535 recording a notice of foreclosure, shall affix a copy of the
536 notice of foreclosure at a conspicuous place on the real
537 property collateral.

538 (7) An original notice of foreclosure is ineffective if
539 given after the limitation period for foreclosure of a security
540 interest in real property by judicial proceeding has expired.

541 52.204 Notice of foreclosure; content.—

542 (1) The heading of a notice of foreclosure must be
543 conspicuous and must read as follows:

544 “NOTICE OF FORECLOSURE. YOU ARE HEREBY NOTIFIED THAT
545 YOU MAY LOSE YOUR RIGHTS TO CERTAIN PROPERTY. READ
546 THIS NOTICE IMMEDIATELY AND CAREFULLY.”

547 (2) A notice of foreclosure must contain:

548 (a) The date of the notice, the name of the owner of the
549 collateral as identified in the security instrument, a legally
550 sufficient description and, at the secured creditor’s option,
551 the street address, if any, stated in the security instrument of
552 the real property collateral or portion thereof being
553 foreclosed, and a description of any personal property
554 collateral to be included in the foreclosure.

555 (b) Information concerning the recording of the security
556 instrument, including the recording date and the official
557 records book and page number, or the official recording number,
558 for the security instrument.

559 (c) A statement that a default exists under the security
560 instrument, and the facts establishing the default.

561 (d) A statement that the foreclosing creditor is initiating
562 foreclosure.

563 (e) A statement that the foreclosing creditor has



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564 accelerated or, by virtue of the notice, is accelerating the due
565 date of the principal amount owing on the secured obligation or
566 a statement that the foreclosing creditor elects not to
567 accelerate the due date.

568 (f) A statement that the collateral may be redeemed from
569 the security interest by payment in full or performance of the
570 secured obligation in full before foreclosure and the amount to
571 be paid or other action necessary to redeem, including a per
572 diem amount that will allow calculation of the total balance
573 owed as of future dates and any further amount the foreclosing
574 creditor anticipates expending to protect the collateral.

575 (g) A statement of the method or methods of foreclosure the
576 foreclosing creditor elects to use and the earliest date on
577 which foreclosure will occur if no redemption is made.

578 (h) A statement that the foreclosure will terminate the
579 rights in the collateral of the person receiving the notice of
580 foreclosure.

581 (i) If applicable, an explanation of a debtor's right to
582 avoid a deficiency claim by compliance with s. 52.605.

583 (j) If the foreclosure is by negotiated sale or by
584 appraisal, an explanation of the right of the debtor and holders
585 of subordinate interests to object to the foreclosure as
586 provided by s. 52.206.

587 (k) If applicable, a statement that, within 15 days after
588 the date the notice of foreclosure is given, a debtor or an
589 interest holder having a possessory interest in the real
590 property collateral may request a meeting with a representative
591 of the foreclosing creditor to object to the foreclosure as
592 provided by s. 52.206.



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593 (l) The name, address, and telephone number of an
594 individual who is the foreclosing creditor or a representative
595 of the foreclosing creditor and who can be contacted for further
596 information concerning the foreclosure.

597 (m) A statement that any person receiving a notice of
598 foreclosure may file an action in court objecting to the
599 foreclosure, which action must be filed within 20 days after
600 receipt of the original notice of foreclosure unless the debtor
601 has been granted a homestead exemption pursuant to s. 196.031
602 for the property being foreclosed, in which case the complaint
603 must be filed no later than 45 days after receipt of the
604 original notice of foreclosure.

605 52.205 Request for notice of foreclosure.—

606 (1) Any person may record in the public records of any
607 county or counties a request for notice of foreclosure of a
608 security instrument that has been recorded in such county or
609 counties. The request must state:

610 (a) The date of the security interest, the date of its
611 recording, and the official records book and page, or official
612 recording number, of the security instrument's recording.

613 (b) The names of the parties to the security instrument.

614 (c) A legally sufficient description of the real property
615 collateral affected by the security instrument.

616 (d) The name and address of the person requesting notice of
617 foreclosure.

618 (e) The legal interest, if any, held by the person
619 recording the request for notice.

620 (2) A person that records a request under subsection (1)
621 prior to the secured party's commencing foreclosure as provided



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622 in s. 52.203(1) is entitled to be given notice of foreclosure
623 under s. 52.203(1). Recording a request does not affect the
624 title to the real property collateral and does not constitute
625 constructive notice to any person having an interest in the real
626 property collateral held or claimed by the person requesting
627 notice. A person that records a request for notice under this
628 section may subsequently record an amendment supplementing or
629 correcting information in the request or record a withdrawing of
630 the request.

631 (3) A foreclosing creditor is liable for a penalty of \$500
632 to a person that is not given timely notice of foreclosure if
633 that person has recorded a request for notice of foreclosure
634 meeting the standards of this section. If a recorded request for
635 notice states that the person recording the request has an
636 interest in the real property collateral and the person is not
637 given timely notice of foreclosure, the person's interest in the
638 collateral, if any, is preserved from termination by the
639 foreclosure.

640 52.206 Meeting to object to foreclosure.-

641 (1) A debtor may request a meeting to object to a
642 foreclosure. The request must be made by a notice received by
643 the foreclosing creditor within 30 days after the notice of
644 foreclosure is given to that debtor. If the foreclosing creditor
645 receives a request for a meeting, the foreclosing creditor or a
646 responsible representative of the foreclosing creditor shall
647 schedule and attend a meeting with the person requesting it at a
648 mutually agreeable time. The representative may be an employee,
649 agent, servicer, or attorney of the foreclosing creditor and
650 must have authority to terminate the foreclosure if the



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651 representative determines that there is no legal basis for
652 foreclosure. The meeting may be held in person or by telephone,
653 video conferencing, or other reasonable means, at the election
654 of the foreclosing creditor. If the meeting is held in person,
655 it must be held at a location reasonably convenient to a parcel
656 of the real property collateral unless the person requesting the
657 meeting and the representative mutually agree on a different
658 location. If the foreclosing creditor receives requests from
659 more than one person, the creditor or representative may attempt
660 to arrange a consolidated meeting, and the persons requesting
661 meetings must cooperate reasonably with the foreclosing
662 creditor's effort to do so.

663 (2) A meeting conducted pursuant to this section is
664 informal and the rules of evidence do not apply. The parties may
665 be represented by legal counsel. The foreclosing creditor or
666 representative must have access to records that provide evidence
667 of the grounds for foreclosure and must provide copies of such
668 records to the debtor or the debtor's attorney upon request. The
669 foreclosing creditor must record in the public records a sworn
670 affidavit stating that the creditor owns the mortgage note on
671 the property being foreclosed, has a right to foreclose on the
672 property, and has made every reasonable effort to notify the
673 debtor of the foreclosure, and must provide a copy of the
674 affidavit to the debtor or the debtor's attorney upon request.
675 If the debtor desires to negotiate a forbearance or modification
676 on the underlying obligation, the debtor must provide financial
677 statements and other documents sufficient to permit the
678 foreclosing creditor to determine the existence, if any, for
679 grounds to negotiate alternate terms or obligations. The



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680 creditor or representative shall consider the objections to
681 foreclosure stated by the person requesting the meeting. Within
682 10 days after the meeting, the creditor or representative
683 attending the meeting shall give to each person who requested
684 the meeting a written statement indicating whether the
685 foreclosure will be discontinued or will proceed and the reasons
686 for the determination. The objections to foreclosure stated by
687 the person requesting the meeting and the reasons stated by the
688 creditor or representative do not preclude any person from
689 raising those or other grounds for objecting to or supporting
690 foreclosure in any subsequent judicial proceeding. A statement
691 or representation made by a person at the meeting may not be
692 introduced as evidence in any judicial proceeding. Each party
693 must bear its own expenses in connection with the meeting.

694 (3) The foreclosing creditor and the representative do not
695 incur any liability for making a determination that is adverse
696 to the person who requested the meeting.

697 52.207 Period of limitation for foreclosure.—The time of
698 foreclosure may not be less than 90 days nor more than 1 year
699 after an original notice of foreclosure is recorded under s.
700 52.203 and not less than 30 days after any subsequent notice of
701 foreclosure. The 1-year period of limitation may be extended by
702 agreement of the foreclosing creditor and all persons to whom
703 notice of foreclosure was required to be given pursuant to s.
704 52.203(3), other than persons excluded from foreclosure by
705 notice issued under s. 52.203(5), s. 52.406(1)(b), or s.
706 52.506(1)(b). The 1-year and 30-day periods of limitation are
707 tolled during the period that any court order temporarily
708 enjoining or staying the foreclosure is in effect and during any



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709 stay under the United States Bankruptcy Code, 11 U.S.C. ss. 101
710 et seq.

711 52.208 Judicial supervision of foreclosure.-

712 (1) Before the time of foreclosure, any person required to
713 be notified of the foreclosure pursuant to s. 52.203(3) may
714 commence a proceeding in a court of competent jurisdiction for
715 any violation of this chapter or of other law or principle of
716 equity in the conduct of the foreclosure. The court may issue
717 any order within the authority of the court in a foreclosure of
718 a mortgage by judicial action, including injunction and
719 postponement of the foreclosure.

720 (2) Any person required to be notified of the foreclosure
721 pursuant to s. 52.203(3) may file an action in the circuit court
722 demanding that the foreclosure proceed through the court
723 process. The complaint must include a notice of demand of
724 judicial foreclosure and must be filed no later than 20 days
725 after receipt of the original notice of foreclosure unless filed
726 by a debtor who has been granted and has continuously maintained
727 a homestead exemption pursuant to s. 196.031 for the property
728 being foreclosed, in which case the complaint must be filed by
729 such debtor no later than 45 days after receipt of the original
730 notice of foreclosure. The complaint must state a bona fide
731 defense to the foreclosure and must include a certification by
732 all plaintiffs under oath that the complaint is not being filed
733 principally for the purpose of delay. Unless waived pursuant to
734 s. 57.082 or as permitted under subsection (3), the complaint
735 must be accompanied by the appropriate filing fee and any other
736 required fees. Service of process on the foreclosing creditor
737 may be perfected by serving the foreclosing creditor at the



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738 address listed on the notice of foreclosure sent to the debtor
739 as required by s. 52.203(3). Unless dismissed by the court, the
740 civil action takes precedence over foreclosure under this
741 chapter and the creditor must cease further action under this
742 chapter.

743 (3) (a) A debtor who has been granted and has continuously
744 maintained a homestead exemption pursuant to s. 196.031 for the
745 property being foreclosed may, in lieu of paying the filing and
746 other fees associated with commencing a civil action, file a
747 complaint pursuant to this chapter without paying filing fees if
748 such debtor is the only plaintiff in the lawsuit and if the
749 complaint is accompanied by a sworn affidavit confirming that:

750 1. Payment of the required fees would place an undue
751 hardship on the debtor receiving and maintaining a homestead
752 exemption.

753 2. The debtor receiving and maintaining a homestead
754 exemption has a bona fide defense to the foreclosure proceeding.

755 3. The filing is not principally for the purpose of delay.

756 (b) If the debtor filing the complaint under paragraph (a)
757 is represented by an attorney, the attorney shall also verify
758 under oath, to the best of his or her knowledge, that the
759 affidavit required of the debtor receiving and maintaining a
760 homestead exemption under paragraph (a) is true and correct. The
761 affidavit must be filed in the action. The debtor's attorney
762 shall provide to the debtor a written statement that electing to
763 proceed in court rather than under this chapter could result in
764 a deficiency judgment, a more negative impact upon credit
765 ratings, and eviction immediately upon entry of a judgment of
766 foreclosure. This statement must be acknowledged by the debtor



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767 in writing. Failure by the debtor's attorney to comply with this
768 paragraph is negligence per se.

769 (c) Within 45 days after a debtor files an action in
770 circuit court under this subsection, the foreclosing creditor
771 shall file a foreclosure complaint with the clerk of the court,
772 pay the required filing fees to the clerk of the circuit court,
773 and take all other steps to initiate a judicial foreclosure as
774 required by local rule. If the foreclosing creditor fails to
775 timely file the action, the court shall sua sponte dismiss the
776 action without prejudice. If the foreclosing creditor thereafter
777 files a judicial foreclosure action, the foreclosing creditor
778 shall pay to the clerk the appropriate filing fee for the
779 dismissed case in addition to paying the filing fee for the
780 instant case.

781 (d) Once a debtor has made the election to require a
782 judicial foreclosure, as evidenced by the filing of an action
783 under subsection (2), the foreclosing creditor is thereafter
784 barred from using this chapter for foreclosure of that debt
785 unless the debtor, by separate written agreement executed after
786 the filing of the action under subsection (2), agrees that
787 foreclosure may proceed pursuant to this chapter.

788 (4) The court may, at any time, examine the pleadings,
789 affidavits, and the parties and shall dismiss the case upon a
790 finding that the case was filed principally for the purpose of
791 delay. If the court dismisses the action, the foreclosure under
792 this chapter shall resume from the point at which it previously
793 stopped, treating the case filing as an abatement of the
794 foreclosure under this chapter, and all costs shall be awarded
795 in favor of the foreclosing creditor. In addition, if the court



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796 finds that the affidavits required under paragraphs (3)(a) and
797 (b) are false or were filed without reasonable basis, the debtor
798 and his attorney shall be jointly and severally liable for the
799 foreclosing creditor's reasonable costs and attorney's fees.

800 52.209 Redemption.—A person who has the right to redeem
801 collateral from a security interest under principles of law and
802 equity may not redeem after the time of foreclosure. Unless
803 precluded from doing so by law other than this chapter, a
804 foreclosing creditor shall cooperate with any person who
805 attempts to redeem the collateral from the security interest
806 before the time of foreclosure by promptly providing upon
807 request reasonable information concerning the amount due or
808 performance required to redeem.

809 Section 3. Part III of chapter 52, Florida Statutes,
810 consisting of sections 52.301, 52.302, 52.303, 52.304, 52.305,
811 52.306, 52.307, 52.308, 52.309, 52.310, 52.311, and 52.312, is
812 created to read:

813 PART III

814 FORECLOSURE BY AUCTION

815 52.301 Foreclosure by auction.—A secured creditor may elect
816 to foreclose by auction. A secured creditor that elects to
817 foreclose by auction shall comply with the requirements of this
818 part and parts I, II, and VI.

819 52.302 Evidence of title; other information.—

820 (1) If a secured creditor elects to foreclose by auction,
821 the foreclosing creditor shall obtain evidence of title and make
822 a copy thereof available upon request to any prospective bidder
823 at the foreclosure. The evidence of title must have an effective
824 date no earlier than the time of recording of the original



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825 notice of foreclosure and must be issued no later than 30 days
826 after the time of such recording. Unless the evidence of title
827 is an attorney's opinion, the evidence of title must state that
828 the issuer is willing to provide evidence of title to the real
829 property collateral to a person who acquires title by virtue of
830 the foreclosure, and the exceptions and exclusions from coverage
831 to which the evidence of title issued to that person will be
832 subject.

833 (2) The foreclosing creditor may, but is not required to,
834 make reports and information concerning the collateral other
835 than evidence of title available to prospective bidders at the
836 foreclosure.

837 (3) The foreclosing creditor is not liable to any person
838 because of error in any information disclosed to prospective
839 bidders unless the information was prepared by the foreclosing
840 creditor and the foreclosing creditor had actual knowledge of
841 the error at the time the information was disclosed.

842 52.303 Advertisement of sale.-

843 (1) After giving notice as required by ss. 52.203 and
844 52.204, a foreclosing creditor shall, at the foreclosing
845 creditor's option, advertise the foreclosure sale under this
846 part:

847 (a) In a manner that complies with the publication
848 requirements provided by s. 45.031; or

849 (b) By placing an advertisement in a newspaper having
850 general circulation in each county where any part of the real
851 property collateral is located. The advertisement must be
852 published at least once per week for 3 consecutive weeks, with
853 the last publication not less than 7 nor more than 30 days



854 before the advertised date of sale.

855 (2) No later than 21 days before the advertised date of
856 sale, the foreclosing creditor shall give a copy of the
857 advertisement required by subsection (1) to the persons to whom
858 notice of foreclosure was required to be given pursuant to s.
859 52.203. The advertisement may be sent with the notice of
860 foreclosure or may be sent separately in the manner prescribed
861 for notices under s. 52.106. The foreclosing creditor may, but
862 is not required to, enter the real property collateral and post
863 on it a copy of the advertisement or a sign containing
864 information about the sale.

865 (3) An advertisement required by subsection (1) must state:

866 (a) The date, time, and location by street address and, if
867 applicable, by floor and office number, of the foreclosure sale.

868 (b) That the sale will be made to the highest qualified
869 bidder.

870 (c) The amount or percentage of the bid that will be
871 required of the successful bidder at the completion of the sale
872 as a deposit, and the form in which the deposit may be made if
873 payment other than by cash or certified check will be accepted.

874 (d) A legally sufficient description of the real property
875 to be sold, and the street address, if any, or the location if
876 there is no street address, of the real property.

877 (e) A brief description of any improvements on the real
878 property and any personal property collateral to be sold.

879 (f) The name, address, and telephone number of an
880 individual who is the foreclosing creditor or a representative
881 of the foreclosing creditor, who can provide information
882 concerning the collateral and the foreclosure if the foreclosing



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883 creditor is not an individual.

884 (g) That a copy of the evidence of title, any available
885 reports concerning the collateral, which may be listed
886 specifically, and additional information are available from the
887 person identified pursuant to paragraph (f).

888 (h) Whether access to the collateral for the purpose of
889 inspection before foreclosure is available to prospective
890 bidders and, if so, how to obtain access.

891 (4) An advertisement required by subsection (1) may also
892 state any other information concerning the collateral or the
893 foreclosure which the foreclosing creditor elects to include.

894 52.304 Access to collateral.—If a foreclosing creditor has
895 authority to grant access to the real property collateral, the
896 creditor shall reasonably accommodate a person who contacts the
897 creditor, expresses an interest in bidding at the foreclosure
898 sale, and requests an opportunity to inspect the collateral.

899 52.305 Location and time of sale.—An auction sale under
900 this part must be conducted:

901 (1) At a date and time permitted for a sale under judicial
902 foreclosure of a security interest in real property in this
903 state.

904 (2) In a county where some of the real property collateral
905 is located.

906 (3) At any location where a sale under judicial foreclosure
907 of a security interest in real property may be held in this
908 state.

909 52.306 Foreclosure of two or more parcels.—

910 (1) Collateral consisting of two or more parcels of real
911 property may be foreclosed by auction separately or in



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912 combination. If the security instrument does not specify the
913 manner of sale of two or more parcels, the auction may be
914 conducted:

915 (a) By separate sale of each of the parcels; or

916 (b) At the time notice of foreclosure is recorded, if two
917 or more parcels are contiguous, are being used in a unitary
918 manner, are part of a unitary plan of development, or are
919 operated under integrated management:

920 1. By combining the parcels in a single auction; or

921 2. By conditionally offering the parcels both in
922 combination and separately, and accepting the higher of the two
923 aggregate bids.

924 (2) If the entire real property collateral is not made the
925 subject of a single auction, the foreclosing creditor shall
926 discontinue sales of parcels or combinations of parcels when the
927 total amount of bids received is sufficient to pay the secured
928 obligation and the expenses of foreclosure.

929 52.307 Postponement of sale.-

930 (1) An individual conducting an auction under this part may
931 postpone the auction for any cause the foreclosing creditor
932 considers appropriate. Announcement of the postponement, and the
933 time and location of the rescheduled sale, must be given orally
934 at the place previously scheduled for the sale and within a
935 reasonable time after the scheduled time for commencement of the
936 sale. No other advertisement or notice of the postponed time and
937 place of sale is required. A postponement may not be for a
938 period of more than 30 days. Subsequent postponements of the
939 sale may be made in the same manner.

940 (2) If an auction cannot be held at the time stated in the



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941 notice of sale by reason of stay under the United States
942 Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or a stay order
943 issued by any court of competent jurisdiction, the foreclosing
944 creditor may reschedule the auction to occur at a time when the
945 stay is no longer in effect. The rescheduled sale must be
946 advertised, and a copy of the advertisement must be sent to the
947 persons entitled thereto, as provided by s. 52.302.

948 52.308 Conduct of sale.-

949 (1) An auction sale under this part must be conducted by a
950 person designated by the foreclosing creditor.

951 (2) The person conducting an auction, before commencing the
952 auction:

953 (a) Must make available to prospective purchasers copies of
954 the evidence of title.

955 (b) May verify that persons intending to bid have money in
956 an amount and form necessary to make the deposit stated in the
957 advertisement, but may not disclose the amount that any bidder
958 is prepared to deposit.

959 (3) The auction must be conducted, at the foreclosing
960 creditor's option:

961 (a) By the creditor or the creditor's representative
962 following the procedures for sale prescribed by s. 45.031; or

963 (b) In the following manner:

964 1. Any person, including a debtor and the foreclosing
965 creditor, may bid at the auction. The individual conducting the
966 auction may bid on behalf of the foreclosing creditor or any
967 other person by whom he or she is authorized, but may not bid
968 for his or her own account. The foreclosing creditor may bid by
969 credit up to any amount up to the balance owing on the secured



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970 obligation, including the expenses of foreclosure.

971 2. A fixed bid of a person not attending the auction may be
972 submitted by a writing received at least 24 hours before the
973 scheduled time of the auction by the person designated in the
974 advertisement of sale to provide information about the property.
975 The bid must be accompanied by a deposit satisfying the
976 requirements of s. 52.310. The bid must be read aloud by the
977 person conducting the auction before the auction is opened to
978 oral bids.

979 3. Sale must be made to the person bidding the highest
980 amount who complies with this section.

981 4. The auction is completed by the announcement of the
982 person conducting the auction that the property is sold.

983 52.309 Deposit by successful bidder.—Immediately after the
984 sale is complete, the successful bidder, if other than the
985 foreclosing creditor, at an auction under this part must pay a
986 deposit to the person conducting the sale. The deposit must be
987 at least 10 percent of the amount of the bid or such lower
988 amount as the advertisement of sale stated would be accepted.
989 The deposit must be paid in cash, by certified check, or in such
990 other form of payment as was stated to be acceptable in the
991 advertisement of sale or is acceptable to the person conducting
992 the sale.

993 52.310 Payment of remainder of bid.—

994 (1) The successful bidder at an auction under this part
995 shall pay the remainder of the bid to the person conducting the
996 sale within 7 days after notice is given under s. 52.106(8) of
997 the date of the auction.

998 (2) If payment of the remainder of the bid is not timely



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999 made, the foreclosing creditor may cancel the sale and
1000 reschedule the auction as provided in s. 52.307(2) or may
1001 terminate the foreclosure under s. 52.701. In either event, the
1002 deposit of the successful bidder may be forfeited and
1003 distributed in the same manner as the proceeds of a sale, but no
1004 person has any other remedy against the defaulting bidder.

1005 52.311 Foreclosure amount; distribution of proceeds.—The
1006 highest amount bid at a sale is the foreclosure amount. The
1007 foreclosure must be applied by the foreclosing creditor as
1008 provided in s. 52.601 within 30 days after the time of the
1009 foreclosure. After receiving but before applying the proceeds of
1010 sale, the secured creditor may, but is not required to, invest
1011 them in a reasonable manner.

1012 52.312 Deed to successful bidder; affidavit.—

1013 (1) Upon payment by the successful bidder of the full
1014 balance of the bid, the foreclosing creditor shall:

1015 (a) Record and deliver a statutory warranty deed, a bill of
1016 sale with respect to personal property if applicable, and such
1017 other documents as may be necessary to record the deed,
1018 conveying the collateral to or as directed by the successful
1019 bidder.

1020 (b) Execute and record in the public records of each county
1021 in which the security instrument being foreclosed was recorded
1022 an affidavit containing the following:

1023 1. Identification of the security instrument foreclosed,
1024 including the official records book and page number, or official
1025 document number, at which it was recorded, if any.

1026 2. Identification the debtor.

1027 3. A sufficient description of the collateral and



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1028 identification of the official records book and page number, or
1029 official document number at, which the notice of foreclosure was
1030 recorded.

1031 4. Identification of persons to whom notice of foreclosure
1032 was given and the official records book and page number, or
1033 official document number, at which documents reflecting their
1034 interests in the collateral were recorded, if any.

1035 5. A statement as to which, if any, of the persons
1036 identified pursuant to subparagraph 4. were given special notice
1037 of foreclosure preserving their interests from termination by
1038 the foreclosure.

1039 6. A statement that the foreclosing creditor has complied
1040 with all provisions of this chapter for a foreclosure by
1041 auction.

1042 7. Identification of the person acquiring title to the
1043 collateral by virtue of the foreclosure, and a statement that
1044 title has passed to that person.

1045 (2) When recorded, the deed and bill of sale, if any,
1046 transfer title to the collateral to or as directed by the
1047 successful bidder as provided in s. 52.602.

1048 Section 4. Part IV of chapter 52, Florida Statutes,
1049 consisting of sections 52.401, 52.402, 52.403, 52.404, 52.405,
1050 and 52.406, is created to read:

1051 PART IV

1052 FORECLOSURE BY NEGOTIATED SALE

1053 52.401 Foreclosure by negotiated sale.—A secured creditor
1054 may elect to foreclose by negotiated sale. A secured creditor
1055 that elects to foreclose by negotiated sale shall comply with
1056 the requirements of this part and parts I, II, and VI.



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1057 52.402 Advertisement and contract of sale.-

1058 (1) The foreclosing creditor may advertise the collateral
1059 for sale to prospective purchasers by whatever methods the
1060 foreclosing creditor considers appropriate and may list the
1061 collateral for sale with brokers. The foreclosing creditor may,
1062 but is not required to, enter the real property collateral and
1063 post on it a sign containing information about the sale.

1064 (2) The foreclosing creditor may enter into a conditional
1065 contract of sale with a prospective purchaser or, if the
1066 collateral is sold in parcels, with more than one purchaser. The
1067 contract shall state the gross amount, before expenses of sale,
1068 which the purchaser will pay for the collateral. The foreclosing
1069 creditor's obligation to sell under the contract is subject to
1070 the following conditions:

1071 (a) That no objection to the foreclosure amount is made
1072 under s. 52.404.

1073 (b) That no redemption of the collateral from the security
1074 interest is made before the time of foreclosure.

1075 52.403 Notice of proposed negotiated sale.-If a foreclosing
1076 creditor enters into a conditional contract of sale as provided
1077 in s. 52.402, the foreclosing creditor shall give notice of the
1078 proposed sale at least 30 days before the date of the proposed
1079 sale to the persons specified in s. 52.203. The notice of
1080 proposed sale must state:

1081 (1) The date on or after which the foreclosing creditor
1082 proposes to sell the collateral.

1083 (2) The foreclosure amount, net of all expenses of
1084 foreclosure and sale, which the foreclosing creditor offers to
1085 credit against the secured debt and distribute to other persons



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1086 entitled thereto, which amount may be greater or less than the
1087 selling price stated in the contract.

1088 (3) That if the sale is completed, title to the collateral
1089 will be transferred to the purchaser under the contract as of
1090 the time of foreclosure and the stated foreclosure amount will
1091 be applied as provided in s. 52.601.

1092 (4) That the person receiving the notice may inspect a copy
1093 of the contract of sale by communicating with an individual who
1094 is or represents the foreclosing creditor and whose name,
1095 address, and telephone number are given in the notice.

1096 (5) That if a debtor or any other party whose interest in
1097 the collateral is subordinate in priority to the foreclosing
1098 creditor's security interest objects to the sale, the debtor or
1099 interest holder may give the foreclosing creditor a notice so
1100 stating, and if the notice is received by the foreclosing
1101 creditor no later than 7 days before the date of the proposed
1102 sale, the foreclosing creditor must discontinue the foreclosure
1103 by negotiated sale unless the foreclosing creditor elects to
1104 preserve that person's interest from termination by the
1105 foreclosure or discharges the person's interest.

1106 52.404 Completion of sale.-

1107 (1) A foreclosing creditor may complete the sale in
1108 accordance with the contract of sale, subsection (2), and ss.
1109 52.405 and 52.406 unless the creditor receives a notice
1110 objecting to the proposed foreclosure by negotiated sale 7 or
1111 more days before the proposed date of sale from a person who
1112 holds an interest in the real property collateral which is
1113 subordinate in priority to the foreclosing creditor's security
1114 interest.



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1115 (2) Upon compliance by the purchaser with a contract for
1116 sale under this part, on or after the proposed date of sale, the
1117 foreclosing creditor shall deliver to the purchaser or a nominee
1118 designated by the purchaser a statutory warranty deed, a bill of
1119 sale if applicable, and other documents that are necessary to
1120 consummate the sale or that the parties agreed the foreclosing
1121 creditor would supply. The foreclosing creditor shall also
1122 execute an affidavit containing the following:

1123 (a) Identification of the security instrument foreclosed,
1124 including the official records book and page number, or official
1125 document number, at which it was recorded, if any.

1126 (b) Identification of the debtor.

1127 (c) A sufficient description of the collateral and
1128 identification of the official records book and page number, or
1129 official document number, at which the notice of foreclosure was
1130 recorded.

1131 (d) Identification of persons to whom notice of foreclosure
1132 was given and the official records book and page number, or
1133 official document number, at which documents reflecting their
1134 interests in the collateral are recorded, if any.

1135 (e) A statement as to which, if any, of the persons
1136 identified pursuant to paragraph (d) were given notice under s.
1137 52.203(5) or s. 52.406(1)(a) preserving their interests from
1138 termination by the foreclosure.

1139 (f) A statement that the foreclosing creditor has complied
1140 with all provisions of this chapter for a foreclosure by
1141 negotiated sale.

1142 (g) Identification of the person acquiring title to the
1143 collateral by virtue of the foreclosure, and a statement that



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1144 title has passed to that person.

1145 52.405 Recording of affidavit and deed; application of
1146 foreclosure amount.--On or after the date of delivery of the
1147 deed, the affidavit, deed, and bill of sale, if any, required
1148 under s. 52.404 must be recorded in the public records of the
1149 county or counties where the collateral is located. When the
1150 affidavit, deed, and bill of sale, if any, are recorded, the
1151 deed and bill of sale transfer title to the collateral to the
1152 contract purchaser or a nominee designated by the contract
1153 purchaser as provided in s. 52.602. The foreclosure amount
1154 stated in the notice of proposed negotiated sale pursuant to s.
1155 52.403(2) must be applied as provided in s. 52.601 within 30
1156 days after the time of foreclosure.

1157 52.406 Notice of objection to sale.--

1158 (1) If, 7 or more days before the proposed date of sale
1159 under this part, a foreclosing creditor receives notice of
1160 objection to the sale from any person who holds an interest in
1161 the real property collateral subordinate in priority to the
1162 foreclosing creditor's security interest, the foreclosing
1163 creditor must:

1164 (a) Discontinue the foreclosure pursuant to s. 52.701, in
1165 which case the notice of objection has no further effect;

1166 (b) Give notice, before the time of foreclosure, to the
1167 person who made the objection that the person's interest in the
1168 collateral will be preserved from termination by the
1169 foreclosure. If the foreclosing creditor gives such notice:

1170 1. The objection of the person to whom such notice is given
1171 may be disregarded by the foreclosing creditor;

1172 2. The foreclosure by negotiated sale may be completed;



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1202 (1) The foreclosing creditor shall obtain a written
1203 appraisal of the collateral. The debtor and other persons in
1204 possession of the real property collateral must provide
1205 reasonable access to the real property to the appraiser. The
1206 appraisal report shall state the appraiser's conclusion as to
1207 the fair market value of the collateral as of a date not more
1208 than 60 days before the date of foreclosure stated in the notice
1209 of foreclosure.

1210 (2) The appraisal must be made by an independent appraiser
1211 certified by the Appraisal Institute who is not an employee or
1212 affiliate of the foreclosing creditor.

1213 52.503 Notice of appraisal.—The foreclosing creditor shall
1214 give notice of the appraisal at least 30 days before the
1215 proposed date of the foreclosure to the persons specified in s.
1216 52.203. The notice of appraisal shall be accompanied by a copy
1217 of the appraisal report and shall state:

1218 (1) The date on or after which the foreclosing creditor
1219 proposes to foreclose by appraisal.

1220 (2) The foreclosure amount, net of all expenses of
1221 foreclosure, which the foreclosing creditor offers to credit
1222 against the secured obligation and to distribute to other
1223 persons entitled thereto, which amount may be greater or less
1224 than the appraised value of the collateral.

1225 (3) That if the foreclosure by appraisal is completed,
1226 title to the collateral will vest in the foreclosing creditor or
1227 its nominee as of the time of foreclosure, and that the stated
1228 foreclosure amount will be applied as provided in s. 52.601.

1229 (4) That the person receiving the notice may obtain further
1230 information concerning the foreclosure and the appraisal by



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1231 communicating with an individual who is or represents the
1232 foreclosing creditor and whose name, address, and telephone
1233 number are given in the notice.

1234 (5) That if a debtor or interest holder whose interest in
1235 the collateral is subordinate in priority to the foreclosing
1236 creditor's security interest objects to the foreclosure by
1237 appraisal, the debtor or interest holder may give the
1238 foreclosing creditor a notice so stating, and if the notice is
1239 received by the foreclosing creditor no later than 7 days before
1240 the date of the proposed sale, the foreclosing creditor must
1241 discontinue the foreclosure by appraisal unless the foreclosing
1242 creditor elects to preserve that person's interest from
1243 termination by the foreclosure or discharges the person's
1244 interest.

1245 52.504 Completion of foreclosure by appraisal.-

1246 (1) A foreclosing creditor may complete the foreclosure as
1247 provided in subsection (2) and ss. 52.505 and 52.506 unless the
1248 creditor receives a notice objecting to the proposed foreclosure
1249 by negotiated sale 7 or more days before the proposed date of
1250 sale from a person who holds an interest in the real property
1251 collateral which is subordinate in priority to the foreclosing
1252 creditor's security interest.

1253 (2) On or after the proposed date of sale, the foreclosing
1254 creditor shall record a statutory warranty deed in the public
1255 records and shall also execute an affidavit containing the
1256 following:

1257 (a) Identification of the security instrument foreclosed,
1258 including the official records book and page number, or official
1259 document number, at which it was recorded, if any.



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1260 (b) Identification of the debtor.
1261 (c) A sufficient description of the collateral and
1262 identification of the official records book and page number, or
1263 official document number, at which the notice of foreclosure was
1264 recorded.
1265 (d) Identification of persons to whom notice of foreclosure
1266 was given and the official records book and page number, or
1267 official document number, at which documents reflecting their
1268 interests in the collateral are recorded, if any.
1269 (e) A statement as to which, if any, of the persons
1270 identified pursuant to paragraph (d) were given notice under s.
1271 52.203(5) or s. 52.506(1)(a) preserving their interests from
1272 termination by the foreclosure.
1273 (f) A statement that the foreclosing creditor has complied
1274 with all provisions of this chapter for a foreclosure by
1275 appraisal.
1276 (g) Identification of the person acquiring title to the
1277 collateral by virtue of the foreclosure, and a statement that
1278 title has passed to that person.
1279 52.505 Recording of affidavit; application of foreclosure
1280 amount.—On or after the proposed date of foreclosure, the
1281 affidavit required by s. 52.504 must be recorded in the public
1282 records of the county or counties in which the collateral is
1283 located. When recorded, the affidavit transfers title to the
1284 collateral to the foreclosing creditor or its nominee as
1285 provided in s. 52.602. The foreclosure amount stated in the
1286 notice of appraisal pursuant to s. 52.503(2) must be applied as
1287 provided in s. 52.601 within 30 days after the time of
1288 foreclosure.



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1289 52.506 Notice of objection to foreclosure.-
1290 (1) If, 7 or more days before the proposed date of
1291 foreclosure under this part, a foreclosing creditor receives
1292 notice of objection to the foreclosure from any person who holds
1293 an interest in the real property collateral subordinate in
1294 priority to the foreclosing creditor's security interest, the
1295 foreclosing creditor must:
1296 (a) Discontinue the foreclosure pursuant to s. 52.701, in
1297 which case the notice of objection has no further effect;
1298 (b) Give notice, before the time of foreclosure, to the
1299 person who made the objection that the person's interest in the
1300 collateral will be preserved from termination by the
1301 foreclosure. If the foreclosing creditor gives such notice:
1302 1. The objection of the person to whom such notice is given
1303 may be disregarded by the foreclosing creditor;
1304 2. The foreclosure by appraisal may be completed;
1305 3. The affidavit recorded under s. 52.505 must identify
1306 that interest in the collateral of the person objecting as not
1307 being terminated by the foreclosure; and
1308 4. That person is entitled to none of the foreclosure
1309 amount; or
1310 (c) If the interest of the person who made the objection is
1311 capable of being discharged for a liquidated sum of money,
1312 tender that sum to the person and thereby discharge the
1313 interest.
1314 (2) If the foreclosing creditor makes a tender as provided
1315 in paragraph (1)(c) and keeps the tender in effect, the person
1316 to whom the tender is made must provide the foreclosing creditor
1317 with a suitable document in recordable form evidencing that the



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1318 person's interest has been discharged.

1319 (3) After expiration of the time for objection specified in
1320 s. 52.504(1), a person to whom notice of foreclosure under s.
1321 52.203 and notice of appraisal under s. 52.503 were sent may not
1322 assert that the foreclosure amount was inadequate.

1323 Section 6. Part VI of chapter 52, Florida Statutes,
1324 consisting of sections 52.601, 52.602, 52.603, 52.604, 52.605,
1325 52.606, and 52.607, is created to read:

1326 PART VI

1327 RIGHTS AFTER FORECLOSURE

1328 52.601 Application of proceeds of foreclosure.-

1329 (1) The foreclosing creditor shall apply the proceeds of
1330 foreclosure and any investment earnings thereon in the following
1331 order:

1332 (a) To pay or reimburse the expenses of foreclosure in the
1333 case of a foreclosure by auction.

1334 (b) To pay the obligation secured by the foreclosed
1335 security instrument.

1336 (c) To pay, in the order of their priority, the amounts of
1337 all liens and other interests of record terminated by the
1338 foreclosure.

1339 (d) To the interest holder who owned the collateral at the
1340 time of foreclosure.

1341 (2) If the foreclosing creditor, in applying the proceeds
1342 of the sale, acts in good faith and without actual knowledge of
1343 the invalidity or lack of priority of the claim of a person to
1344 whom distribution is made, the foreclosing creditor is not
1345 liable for an erroneous distribution. The foreclosing creditor
1346 may maintain an action in the nature of interpleader, in a court



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1347 of competent jurisdiction sitting in a county in which some part
1348 of the real estate collateral is located, for an order directing
1349 the order of distribution of the proceeds of the sale.

1350 52.602 Title transferred by foreclosure.—A foreclosure
1351 under this chapter transfers the debtor's title to the
1352 collateral to the successful bidder under part III, the contract
1353 purchaser under part IV, or the foreclosing creditor under part
1354 V, subject only to interests in the collateral having priority
1355 over the security interest foreclosed and the interests of
1356 persons entitled to notice under s. 52.202(3) who were not given
1357 notice of the foreclosure or whose interests were preserved from
1358 foreclosure by notice issued under s. 52.203(5), s.
1359 52.406(1)(b), or s. 52.506(1)(b). The interests of all of other
1360 persons in the collateral are terminated.

1361 52.603 Action for damages.—

1362 (1) Subject to subsection (3), after the time of
1363 foreclosure, an aggrieved person may commence a proceeding in a
1364 court of competent jurisdiction seeking damages against a
1365 foreclosing creditor for any violation of this chapter or an
1366 applicable law or principle of equity in the conduct of the
1367 foreclosure.

1368 (2) Recording of the deed and affidavit pursuant to s.
1369 52.312, the deed and affidavit pursuant to s. 52.405, or the
1370 deed and affidavit pursuant to s. 52.505 conclusively
1371 establishes compliance with all applicable notice and procedural
1372 requirements of this chapter in favor of good faith purchasers
1373 for value of the collateral. If the title derived from
1374 foreclosure is not held by a good faith purchaser for value, a
1375 person attacking the foreclosure on grounds of noncompliance



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1376 with the notice or procedural requirements of this chapter has
1377 the burden of production and persuasion.

1378 (3) An action may not be commenced for damages for
1379 violation of this chapter more than 3 years after the time of
1380 foreclosure.

1381 52.604 Possession after foreclosure.—A person that acquires
1382 an interest in real property by foreclosure under this chapter
1383 may obtain a writ of possession from the clerk of the court of
1384 the county in which any part of the collateral is located, or
1385 commence an action for ejectment under chapter 66 or for
1386 unlawful detainer under chapter 82 to gain possession of the
1387 real property against any person whose interest in the real
1388 property was terminated by the foreclosure.

1389 52.605 Judgment for deficiency.—

1390 (1) Except as provided in subsection (2), after the time of
1391 foreclosure, the foreclosing creditor and any other person whose
1392 security interest in the collateral was terminated by a
1393 foreclosure under this chapter is entitled to pursue in court a
1394 money judgment against any person liable for a deficiency.

1395 (2) A debtor is not liable to a foreclosing creditor for a
1396 deficiency after a foreclosure under this chapter unless the
1397 debtor is found by the court not to have acted in good faith.

1398 (3) For purposes of this section, the term "acted in good
1399 faith" means the debtor:

1400 (a) Peaceably vacated the real estate collateral and
1401 relinquished any personal property collateral within 10 days
1402 after the time of foreclosure and the giving of a notice
1403 demanding possession by the person entitled to possession by
1404 virtue of the foreclosure.



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1405 (b) Did not commit significant affirmative waste upon the
1406 collateral and leave such waste uncured at the time possession
1407 was relinquished to the person entitled to possession by virtue
1408 of the foreclosure.

1409 (c) Did not significantly contaminate the collateral with
1410 hazardous materials and leave the contamination uncured at the
1411 time possession was relinquished to the person entitled to
1412 possession by virtue of the foreclosure.

1413 (d) Did not commit fraud against the foreclosing creditor.

1414 (e) Did not engage in criminal activity on the secured real
1415 estate collateral which significantly reduced its value at the
1416 time possession was relinquished to the person entitled to
1417 possession by virtue of the foreclosure.

1418 (f) Did not permit significant uncured damage to be done to
1419 the collateral by other persons or natural causes as a result of
1420 the debtor's failure to take reasonable precautions against the
1421 damage.

1422 (g) Provided reasonable access to the collateral for
1423 inspection by the foreclosing creditor and prospective
1424 purchasers after the initial notice of foreclosure was sent.

1425 (4) The burden of proof as to the absence of good faith on
1426 the part of a debtor is on the person seeking a deficiency
1427 judgment against the debtor. The absence of good faith by one
1428 debtor does not make any other debtor liable for a deficiency.

1429 (5) If liability of a debtor for a deficiency is barred by
1430 paragraph (2), liability of a guarantor of the debtor's
1431 obligation is also barred.

1432 (6) This section does not prohibit recovery of a deficiency
1433 by a person other than the foreclosing creditor.



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52.606 Determining amount of deficiency.-

(1) Subject to subsection (2), the deficiency to which a foreclosing creditor is entitled after a foreclosure under this chapter is the balance remaining, if any, after subtracting the foreclosure amount as determined under s. 52.311, s. 52.403, or s. 52.503, as applicable, from the balance owing on the secured obligation, including principal, interest, legally recoverable fees and charges, and, in the case of a foreclosure by auction, the expenses of foreclosure.

(2) In an action for a deficiency brought by the foreclosing creditor following a foreclosure by auction, a person against whom the action is filed may petition a court of competent jurisdiction for a determination of the fair market value of the collateral at the time of foreclosure. After a hearing at which all interested parties may present evidence of fair market value, the court shall determine the fair market value of the collateral as of the time of foreclosure. The determination must be made by the court without a jury. If the court determines that 90 percent of the fair market value of the collateral was greater than the bid accepted at the foreclosure sale, 90 percent of the fair market value must be substituted for the foreclosure amount in making the calculations required by subsection (1) with respect to all parties against whom a judgment for a deficiency is entered.

52.607 Effect of good faith by debtor.-If a debtor acted in good faith in the foreclosure as provided in s. 52.605(3), the debtor shall not be considered to have been in default under the note or security instrument and the foreclosing creditor shall use its best efforts thereafter to report to credit bureaus the



1463 fact that the debtor, having acted in good faith, is deemed not
1464 to be in default under Florida law. This section does not
1465 invalidate any foreclosure pursuant to this chapter or any
1466 judgment in a case related to this chapter. This section does
1467 not affect the title or insurability of title to real property
1468 or personal property.

1469 Section 7. Part VII of chapter 52, Florida Statutes,
1470 consisting of section 52.701, is created to read:

1471 PART VII

1472 DISCONTINUATION OF FORECLOSURE

1473 52.701 Discontinuation of foreclosure.-

1474 (1) A foreclosing creditor may elect to discontinue
1475 foreclosure at any time before:

1476 (a) The completion of the auction in the case of a
1477 foreclosure by auction; or

1478 (b) The time of foreclosure, in the case of a foreclosure
1479 by negotiated sale or by appraisal.

1480 (2) To discontinue foreclosure, the foreclosing creditor
1481 shall give notice to the persons to whom notice of foreclosure
1482 was required to be given under s. 52.203(2), advising them that
1483 the foreclosure has been discontinued and whether the
1484 foreclosing creditor will:

1485 (a) Pursue another foreclosure by the same method;

1486 (b) Continue to foreclose by another method under this
1487 chapter pursuant to a notice of foreclosure previously given;

1488 (c) Commence foreclosure by a different method authorized
1489 by this chapter pursuant to a new notice of foreclosure;

1490 (d) Commence foreclosure by judicial proceeding; or

1491 (e) Abandon the foreclosure.



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1492 (3) If a foreclosing creditor chooses to discontinue
1493 foreclosure under this chapter and pursue foreclosure by
1494 judicial proceeding:

1495 (a) A deficiency judgment may not be obtained through such
1496 judicial proceeding against any debtor receiving an original
1497 notice of foreclosure pursuant to this chapter.

1498 (b) Upon commencing a judicial proceeding, the limitations
1499 on liability provided in ss. 718.116(1)(b) and 720.3085(2)(c) do
1500 not apply. In all other aspects of foreclosure pursuant to this
1501 chapter, such limitations on liability shall be applicable to
1502 the same extent as if the foreclosure had been filed pursuant to
1503 s. 45.031 or chapter 702.

1504 (4) If a notice sent by a foreclosing creditor under this
1505 section includes all elements required for a notice of
1506 foreclosure under ss. 52.203 and 52.204, no additional notice of
1507 foreclosure is necessary to pursue a further foreclosure under
1508 this chapter.

1509 Section 8. Part VIII of chapter 52, Florida Statutes,
1510 consisting of sections 52.801, 52.802, 52.803, 52.804, and
1511 52.805, is created to read:

1512 PART VIII

1513 MISCELLANEOUS

1514 52.801 Uniformity of application and construction.—In
1515 applying and construing this chapter, consideration must be
1516 given to the need to promote uniformity of the law with respect
1517 to its subject matter among states that enact its provisions.

1518 52.802 Relation to Electronic Signatures in Global and
1519 National Commerce Act.—This chapter modifies, limits, and
1520 supersedes the federal Electronic Signatures in Global and



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1521 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that
1522 nothing in this chapter modifies, limits, or supersedes 15
1523 U.S.C. s. 7001(c) or authorizes electronic delivery of any of
1524 the notices described in 15 U.S.C. s. 7003(b).

1525 52.803 Calculation of documentary stamp taxes.—For the
1526 purposes of this chapter, the documentary stamp taxes required
1527 under chapter 201 shall be assessed based on the following
1528 values:

1529 (1) For foreclosure by auction, the foreclosure amount
1530 defined in s. 52.311;

1531 (2) For foreclosure by negotiated sale, the gross amount of
1532 the sale described in s. 52.402(2); or

1533 (3) For foreclosure by appraisal, the fair market value
1534 determined by the appraisal as described in s. 52.502.

1535 52.804 Attorney's fees and court costs.—If a judicial
1536 action is filed pursuant to s. 52.208 or s. 52.603, court costs
1537 and attorney's fees shall be awarded to the prevailing party.

1538 52.805 Foreclosure fee.—

1539 (1) Between July 1, 2010, and June 30, 2011, upon the
1540 conclusion of a nonjudicial foreclosure under this chapter which
1541 results in a transfer of title, the foreclosing creditor shall
1542 pay to the clerk, upon filing of the deed, a graduated
1543 foreclosure fee based on the value of the property being
1544 foreclosed as determined by sale or appraisal under this
1545 chapter. The graduated foreclosure fee shall be:

1546 (a) Three hundred and ninety-five dollars in all
1547 foreclosures in which the value is \$50,000 or less. Of the first
1548 \$265 in foreclosure fees, \$80 must be remitted by the clerk to
1549 the Department of Revenue for deposit into the General Revenue



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1550 Fund, \$180 must be remitted to the Department of Revenue for
1551 deposit into the State Courts Revenue Trust Fund, \$3.50 must be
1552 remitted to the Department of Revenue for deposit into the
1553 Clerks of the Court Trust Fund within the Justice Administrative
1554 Commission and used to fund the Florida Clerks of Court
1555 Operations Corporation created in s. 28.35, and \$1.50 shall be
1556 remitted to the Department of Revenue for deposit into the
1557 Administrative Trust Fund within the Department of Financial
1558 Services to fund clerk budget reviews conducted by the
1559 Department of Financial Services. The next \$15 of the
1560 foreclosure fee collected shall be deposited in the state
1561 courts' Mediation and Arbitration Trust Fund.

1562 (b) Nine hundred dollars in all foreclosures in which the
1563 value is more than \$50,000 but less than \$250,000. Of the first
1564 \$770 in foreclosure fees, \$80 must be remitted by the clerk to
1565 the Department of Revenue for deposit into the General Revenue
1566 Fund, \$685 must be remitted to the Department of Revenue for
1567 deposit into the State Courts Revenue Trust Fund, \$3.50 must be
1568 remitted to the Department of Revenue for deposit into the
1569 Clerks of the Court Trust Fund within the Justice Administrative
1570 Commission and used to fund the Florida Clerks of Court
1571 Operations Corporation described in s. 28.35, and \$1.50 shall be
1572 remitted to the Department of Revenue for deposit into the
1573 Administrative Trust Fund within the Department of Financial
1574 Services to fund clerk budget reviews conducted by the
1575 Department of Financial Services. The next \$15 of the
1576 foreclosure fee collected shall be deposited in the state
1577 courts' Mediation and Arbitration Trust Fund.

1578 (c) One thousand nine hundred dollars in all foreclosures



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1579 in which the value is \$250,000 or more. Of the first \$1,770 in
1580 foreclosure fees, \$80 must be remitted by the clerk to the
1581 Department of Revenue for deposit into the General Revenue Fund,
1582 \$1,685 must be remitted to the Department of Revenue for deposit
1583 into the State Courts Revenue Trust Fund, \$3.50 must be remitted
1584 to the Department of Revenue for deposit into the Clerks of the
1585 Court Trust Fund within the Justice Administrative Commission to
1586 fund the Florida Clerks of Court Operations Corporation created
1587 in s. 28.35, and \$1.50 shall be remitted to the Department of
1588 Revenue for deposit into the Administrative Trust Fund within
1589 the Department of Financial Services to fund clerk budget
1590 reviews conducted by the Department of Financial Services. The
1591 next \$15 of the foreclosure fee collected shall be deposited in
1592 the state courts' Mediation and Arbitration Trust Fund.

1593 (2) Between July 1, 2011, and June 30, 2012, upon the
1594 conclusion of a nonjudicial foreclosure under this chapter which
1595 results in a transfer of title, the foreclosing creditor shall
1596 pay to the clerk, upon filing of the deed, a foreclosure fee of
1597 \$395. Of the first \$265 in foreclosure fees, \$80 must be
1598 remitted by the clerk to the Department of Revenue for deposit
1599 into the General Revenue Fund, \$180 must be remitted to the
1600 Department of Revenue for deposit into the State Courts Revenue
1601 Trust Fund, \$3.50 must be remitted to the Department of Revenue
1602 for deposit into the Clerks of the Court Trust Fund within the
1603 Justice Administrative Commission and used to fund the Florida
1604 Clerks of Court Operations Corporation created in s. 28.35, and
1605 \$1.50 shall be remitted to the Department of Revenue for deposit
1606 into the Administrative Trust Fund within the Department of
1607 Financial Services to fund clerk budget reviews conducted by the



1608 Department of Financial Services. The next \$15 of the
1609 foreclosure fee collected shall be deposited in the state
1610 courts' Mediation and Arbitration Trust Fund.

1611 (3) This section does not impose a foreclosure fee after
1612 June 30, 2012.

1613 Section 9. Section 702.01, Florida Statutes, is amended to
1614 read:

1615 702.01 Equity.—All mortgages foreclosed through judicial
1616 process shall be foreclosed in equity. In a judicial mortgage
1617 foreclosure action, the court shall sever for separate trial all
1618 counterclaims against the foreclosing mortgagee. The foreclosure
1619 claim shall, if tried, be tried to the court without a jury.
1620 This section does not require a foreclosure to be pursued
1621 through judicial process or prohibit a foreclosure through
1622 nonjudicial process.

1623 Section 10. This act shall take effect July 1, 2010.

1624
1625 ===== T I T L E A M E N D M E N T =====

1626 And the title is amended as follows:

1627 Delete everything before the enacting clause
1628 and insert:

1629 A bill to be entitled
1630 An act relating to homeowner relief; creating parts I,
1631 II, III, IV, V, VI, VII, and VIII of chapter 52, F.S.;
1632 providing general provisions for an alternative method
1633 of foreclosures other than under the judicial system;
1634 providing a short title; providing for the scope of
1635 applicability; providing definitions; providing for
1636 variation by agreement; providing for application of



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1637 supplemental principles of law and equity; providing
1638 criteria for notice and knowledge; providing for
1639 transactions creating a security interest; providing
1640 for time of foreclosure; providing procedures,
1641 requirements, and limitations before foreclosure;
1642 specifying a right to foreclose; requiring a notice of
1643 default; providing a right to cure; providing
1644 requirements for a notice of foreclosure; providing
1645 for a meeting and meeting requirements to object to
1646 foreclosure; providing a period of limitation for
1647 foreclosure; providing for judicial supervision of
1648 foreclosure; providing procedures and limitations for
1649 foreclosures brought under the judicial system;
1650 exempting homestead debtors from certain filing fees
1651 under certain circumstances; providing for a right to
1652 redeem collateral; providing authority, requirements,
1653 procedures, and limitations on foreclosures by
1654 auction, foreclosures by negotiated sale, and
1655 foreclosures by appraisal; providing for rights after
1656 foreclosure; providing for application of proceeds,
1657 transfer of title, actions for damages, possession
1658 after foreclosure, judgments for deficiencies, and
1659 determinations of amounts of a deficiency; providing
1660 for the effect of the exercise of good faith by a
1661 debtor; providing for application and construction;
1662 providing authority, requirements, procedures, and
1663 limitations on discontinuation of a foreclosure;
1664 providing for uniformity of application and
1665 construction; specifying a relation to the Electronic



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1666 Signatures in Global and National Commerce Act;
1667 providing criteria for calculating documentary stamp
1668 taxes for certain purposes; providing for the award of
1669 attorney's fees and costs to the prevailing party in
1670 certain judicial proceedings; requiring the payment of
1671 a foreclosure fee to the clerk of court upon the
1672 filing of a deed after foreclosure; amending s.
1673 702.01, F.S.; revising requirements for mortgage
1674 foreclosures in equity; providing for construction;
1675 providing an effective date.

1676
1677 WHEREAS, Florida is still recovering from the worst housing
1678 bubble in memory, and

1679 WHEREAS, many Floridians are left unable to pay their
1680 mortgage debt, taxes, or insurance and fees, and face the
1681 prospect of huge deficiency judgments, that is, they are liable
1682 for mortgage debt that exceeds the value of their homes, and

1683 WHEREAS, many homeowner and condominium associations are
1684 struggling to maintain common areas because owners are not
1685 paying dues and assessments, and

1686 WHEREAS, municipalities, counties, and school districts are
1687 struggling to pay for the valuable services they provide because
1688 so many homeowners are not paying real estate taxes owed, and

1689 WHEREAS, Florida's courts are overburdened with foreclosure
1690 cases, with nearly 500,000 backlogged cases as of December 31,
1691 2009, and expected delays of 18-24 month periods before
1692 foreclosure cases are resolved, and

1693 WHERE, local community banks are unable to make new loans
1694 to small businesses to create new jobs because their capital is



941508

1695 tied up in defaulted real estate mortgages that are bogged down
1696 in the courts, and

1697 WHEREAS, Florida's economy will not bottom out, and
1698 sustained recovery cannot begin, until real estate supply and
1699 demand balance and homeowner debt issues are resolved, NOW,
1700 THEREFORE,