

Committee Substitute for Senate Bill No. 890

An act relating to mortgages; amending s. 697.07, F.S.; providing that rents in the control of a mortgagor are subject to assignment of rents; correcting provisions relating to assignment of rents; providing for expedited procedure under certain conditions; providing that a hearing and an adjudication that requested attorney's fees are reasonable are not necessary under certain conditions; providing that attorney's fees when provided in a note or mortgage constitute liquidated damages; amending s. 702.10, F.S.; specifying information to be included in an order to show cause why a final judgment of foreclosure should not be entered; providing that a hearing on attorney's fees is unnecessary under certain circumstances; requiring the court to enter a final judgment of foreclosure under certain circumstances; providing that the petitioner or petitioner's attorney is responsible for placing the legal advertisement, publication, or notice of a foreclosure proceeding; providing an effective date.

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

Section 1. Section 697.07, Florida Statutes, is amended to read:

697.07 Assignment of rents.—

(1) A mortgage or separate instrument may provide for an assignment of rents of real property or any interest therein as security for repayment of an indebtedness.

(2) If such an assignment is made, the mortgagee shall hold a lien on the rents, and the lien created by the assignment shall be perfected and effective against third parties upon recordation of the mortgage or separate instrument in the public records of the county in which the real property is located, according to law.

(3) Unless otherwise agreed to in writing by the mortgagee and mortgagor, the assignment of rents shall be enforceable upon the mortgagor's default and written demand for the rents made by the mortgagee to the mortgagor, whereupon the mortgagor shall turn over all rents in the possession or control of the mortgagor at the time of the written demand or collected thereafter (the "collected rents") to the mortgagee less payment of any expenses authorized by the mortgagee in writing.

(4) Upon application by the mortgagee or mortgagor, in a foreclosure action, and notwithstanding any asserted defenses or counterclaims of the mortgagor, a court of competent jurisdiction, pending final adjudication of any action, may require the mortgagor to deposit the collected rents into the registry of the court, or in such other depository as the court may designate. However, the court may authorize the use of the collected rents, before deposit into the registry of the court or other depository, to:

(a) Pay the reasonable expenses solely to protect, preserve, and operate the real property, including, without limitation, real estate taxes and insurance;

(b) Escrow sums required by the ~~mortgagee~~ mortgagor or separate assignment of rents ~~assignment-of-rents~~ instrument; and

(c) Make payments to the mortgagee.

The court shall require the mortgagor to account to the court and the mortgagee for the receipt and use of the collected rents and may also impose other conditions on the mortgagor's use of the collected rents.

(5) Nothing herein shall preclude the court from granting any other appropriate relief regarding the collected rents pending final adjudication of the action. The undisbursed collected rents remaining in the possession of the mortgagor or in the registry of the court, or in such other depository as ordered by the court, shall be disbursed at the conclusion of the action in accordance with the court's final judgment or decree.

(6) The court shall expedite the hearing on the application by the mortgagee or mortgagor to enforce the ~~its~~ assignment of rents. The procedures authorized by this statute are in addition to any other rights or remedies of the mortgagee or mortgagor under the mortgage, separate assignment of rents ~~assignment-of-rents~~ instrument, promissory note, at law, or in equity.

(7) Nothing herein shall alter the lien priorities, rights, or interests among mortgagees or other lienholders or alter the rights of the mortgagee under the mortgage, separate assignment of rents ~~assignment-of-rents~~ instrument, at law or in equity, concerning rents collected before the written demand by the mortgagee. A mortgagee's enforcement of its assignment ~~assignments~~ of rents under this statute shall not operate to transfer title to any rents not received by the mortgagee.

(8) Any moneys received by the mortgagee pursuant to this statute shall be applied by the mortgagee in accordance with the mortgage, separate assignment of rents ~~assignment-of-rents~~ instrument, or promissory note, and the mortgagee shall account to the mortgagor for such application.

Section 2. (1) In uncontested mortgage-foreclosure proceedings in which the mortgagee waives the right to recoup any deficiency judgment, the court shall enter final judgment within 90 days from the date of the close of pleadings. For the purposes of this subsection a mortgage-foreclosure proceeding is uncontested if an answer not contesting the foreclosure has been filed or a default judgment has been entered by the court.

(2) In a mortgage foreclosure proceeding, when a default judgment has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney's fees, it is not necessary for the court to hold a hearing or adjudge the requested attorney's fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

Such fees constitute liquidated damages in any proceeding to enforce the note or mortgage. This section does not preclude a challenge to the reasonableness of the attorney's fees.

Section 3. Subsection (1) of section 702.10, Florida Statutes, is amended to read:

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

(1) After a complaint in a foreclosure proceeding has been filed, the mortgagee may request an order to show cause for the entry of final judgment and the court shall immediately review the complaint. If, upon examination of the complaint, the court finds that the complaint is verified and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the defendant to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for hearing on the order to show cause. However, the date for the hearing ~~may shall~~ not be set sooner than 20 days after the service of the order. ~~When~~ Where service is obtained by publication, the date for the hearing ~~may shall~~ not be set sooner than 30 days after the first publication. The hearing must be held within 60 days after the date of service. Failure to hold the hearing within such time does not affect the validity of the order to show cause or the jurisdiction of the court to issue subsequent orders.

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

3. State that the filing of defenses by a motion or by a verified or sworn answer at or before the hearing to show cause constitutes cause for the court not to enter the attached final judgment.

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

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

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

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

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

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

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

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

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

(b) The right to be heard at the hearing to show cause is waived if the defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. The defendant's failure to file defenses by a motion or by a sworn or verified answer or to appear at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard. If a defendant files defenses by a motion or by a verified or sworn answer at or before the hearing, such action constitutes cause and ~~precludes shall preclude~~ the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a default judgment has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney's fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney's fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

~~(d)~~(e) If the court finds that the defendant has waived the right to be heard as provided in paragraph (b), the court ~~shall~~ may promptly enter a final judgment of foreclosure. If the court finds that the defendant has not waived the right to be heard on the order to show cause, the court shall then determine whether there is cause not to enter a final judgment of foreclosure. If the court finds that the defendant has not shown cause, the court ~~shall~~ may promptly enter a judgment of foreclosure.

Section 4. Whenever a legal advertisement, publication, or notice relating to a foreclosure proceeding is required to be placed in a newspaper, it is the responsibility of the petitioner or petitioner's attorney to place such advertisement, publication, or notice. The advertisement, publication, or

notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by the clerk of the court.

Section 5. This act shall take effect July 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.