

CHAPTER 2023-215

Committee Substitute for Senate Bill No. 286

An act relating to legal instruments; amending s. 117.201, F.S.; defining the term “witness”; amending s. 697.07, F.S.; defining the terms “mortgagee” and “mortgagor”; requiring that a lien created by an assignment of rents be perfected against a mortgagor in addition to third parties under certain conditions; making technical changes; revising the types of expenses that may be paid by collected rents in foreclosure actions under certain circumstances; providing applicability; amending s. 702.036, F.S.; defining the term “property”; expanding the scope of a final judgment of foreclosure to include other liens; requiring the award of attorney fees in certain circumstances; providing applicability; amending s. 702.10, F.S.; defining the term “mortgagor”; providing for retroactive applicability of a specified provision; providing an effective date.

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

Section 1. Subsection (16) is added to section 117.201, Florida Statutes, to read:

117.201 Definitions.—As used in this part, the term:

(16) “Witness,” when used as a noun, means an individual whose electronic signature is affixed to an electronic record to attest or subscribe to a principal’s signature on such record.

Section 2. Present subsections (1) through (8) of section 697.07, Florida Statutes, are redesignated as subsections (2) through (9), respectively, present subsections (2), (3), and (4) of that section are amended, and a new subsection (1) and subsection (10) are added to that section, to read:

697.07 Assignment of rents.—

(1) For purposes of this section, the term:

(a) “Mortgagee” means a person entitled to enforce an obligation secured by a mortgage.

(b) “Mortgagor” means a person who grants a mortgage or a successor in ownership of the real property described in the mortgage.

~~(3)~~⁽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 the mortgagor and 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.

~~(4)(3)~~ Unless otherwise agreed to in writing by the mortgagee and mortgagor, the lien created by the assignment of rents is 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.

(5)(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, and assessments that become due after the entry of the court's order to a homeowners' association or an association, as those terms are defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719;~~

(b) Escrow sums required by the mortgagee or separate 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.

(10) This section does not apply to a corporation that is a homeowners' association or an association, as those terms are defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719, that:

(a) Acquires title to a parcel or unit through the foreclosure of its claim of lien, or a deed in lieu of foreclosure, provided that title remains vested in the association or corporation and any rents collected are applied to assessments that are then due; or

(b) Collects rents from tenants in a parcel or unit pursuant to s. 718.116(11), s. 719.108(10), or s. 720.3085(8).

Section 3. Present subsections (1), (2), and (3) of section 702.036, Florida Statutes, are redesignated as subsections (2), (3), and (4), respectively, a new subsection (1) and subsection (5) are added to that section, and paragraph (a) of present subsection (1) and present subsection (2) of that section are amended, to read:

702.036 Finality of mortgage foreclosure judgment.—

(1) As used in this section, the term “property” means real property.

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

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

2. The final judgment of foreclosure of the mortgage or lien was entered as to the property.

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

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

(3)(2) For purposes of this section, the following, without limitation, shall be considered persons affiliated with the foreclosing mortgageholder or foreclosing lienholder lender:

(a) The foreclosing mortgageholder, the foreclosing lienholder, lender or any loan servicer for the mortgage or lien loan being foreclosed;

(b) Any past or present owner or holder of the mortgage or lien loan being foreclosed;

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

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

(5) If a party seeks relief from a final judgment foreclosing a mortgage or lien, or files a separate action attacking such a final judgment, and the party claims that it holds or held a lien superior in right, priority, or dignity to the mortgage or lien foreclosed in the judgment, the court must award

reasonable attorney fees to the party prevailing on the claim. This subsection applies whether the litigation seeking relief from the final judgment occurs in the case in which the judgment was entered or in any separate case or proceeding.

Section 4. Subsection (2) 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.—

(2) Except as provided in paragraph (i), in any action for foreclosure, ~~other than owner-occupied residential real estate,~~ in addition to any other relief that the court may award, the plaintiff may request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises 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 not be set sooner than 20 days after the service of the order. If service is obtained by publication, the date for the hearing may not be set sooner than 30 days after the first publication.

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

3. State that a 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.

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

5. Require the movant to serve a copy of the order to show cause on the defendant in the following manner:

a. If a defendant 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 a defendant 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 defendant in the same manner as provided by law for original process.

(b) The right of a defendant 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. A 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.

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

(d) If the court finds that the mortgagor has not waived the right to be heard on the order to show cause, the court shall, at the hearing on the order to show cause, consider the affidavits and other showings made by the parties appearing and make a determination of the probable validity of the underlying claim alleged against the mortgagor and the mortgagor's defenses. If the court determines that the plaintiff is likely to prevail in the foreclosure action, the court shall enter an order requiring the mortgagor to make the payment described in paragraph (e) to the plaintiff and provide for a remedy as described in paragraph (f). However, the order shall be stayed pending final adjudication of the claims of the parties if the mortgagor files with the court a written undertaking executed by a surety approved by the court in an amount equal to the unpaid balance of the lien being foreclosed, including all principal, interest, unpaid taxes, and insurance premiums paid by the plaintiff.

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

(f) If the court enters an order requiring payments, the order shall also provide that the plaintiff is entitled to possession of the premises upon the failure of the mortgagor to make the payment required in the order unless at the hearing on the order to show cause the court finds good cause to order some other method of enforcement of its order.

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

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

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

(j) For purposes of this subsection, the term “mortgagor” means a person who grants a mortgage or a successor in ownership of the real property described in the mortgage. The term does not include a homeowners’ association or an association, as those terms are defined in s. 720.301, or a corporation regulated under chapter 718 or chapter 719, that:

1. Acquires title to a parcel or unit through the foreclosure of its claim of lien, or a deed in lieu of foreclosure, provided that title remains vested in the association or corporation and any rents collected are applied to assessments that are then due; or

2. Collects rents from the tenants in the parcel or unit pursuant to s. 718.116(11), s. 719.108(10), or s. 720.3085(8).

Section 5. The amendment to s. 117.201, Florida Statutes, made by this act is intended to clarify existing law and applies retroactively to January 1, 2020.

Section 6. This act shall take effect July 1, 2023.

Approved by the Governor June 12, 2023.

Filed in Office Secretary of State June 12, 2023.