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### CHAPTER 702 FORECLOSURE OF MORTGAGES AND STATUTORY LIENS

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**702.01 Equity.**—All mortgages shall be foreclosed in equity. In a mortgage foreclosure action, the court shall sever for separate trial all counterclaims against the foreclosing mortgagee. The foreclosure claim shall, if tried, be tried to the court without a jury.

**History.**—RS 1987; GS 2501; RGS 3844; CGL 5747; s. 7, ch. 22858, 1945; s. 2, ch. 87-217.

**<sup>1</sup>702.015 Elements of complaint; lost, destroyed, or stolen note affidavit.**—

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

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

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

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

(3) If a plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the complaint shall describe the authority of the plaintiff and identify, with specificity, the document that grants the plaintiff the authority to act on behalf of the person entitled to enforce the note. This subsection is intended to require initial disclosure of status and pertinent facts and not to modify law regarding standing or real parties in interest. The term “original note” or “original promissory note” means the signed or executed promissory note rather than a copy thereof. The term includes any renewal, replacement, consolidation, or amended and restated note or instrument given in renewal, replacement, or substitution for a previous promissory note. The term also includes a transferable record, as defined by the Uniform Electronic Transaction Act in s. 668.50(16).

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

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

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

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

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

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

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

**History.**—s. 3, ch. 2013-137.

<sup>1</sup>**Note.**—

A. Section 8, ch. 2013-137, provides in part that “[t]he Legislature finds that this act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act. In addition, the Legislature finds that s. 702.015, Florida Statutes, as created by this act, applies to cases filed on or after July 1, 2013 . . . .”

B. Section 9, ch. 2013-137, provides that “[t]he Supreme Court is requested to amend the Florida Rules of Civil Procedures to provide expedited foreclosure proceedings in conformity with this act and is requested to develop and publish forms for use in such expedited proceedings.”

**702.03 Certain foreclosures validated.**—All mortgage foreclosures heretofore made, or now pending, wherein there has been annexed to the bill of complaint in such cause, an uncertified copy of the mortgage, as provided by chapter 12095, Acts of 1927, entitled: “An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages” are hereby validated and confirmed insofar as they relate to the copy of the mortgage attached to such complaint, to the same extent and effect as if section 3117, RGS, had been expressly repealed by chapter 12095, 1927, entitled: “An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages.”

**History.**—s. 1, ch. 13642, 1929; CGL 1936 Supp. 5748(1).

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

**History.**—s. 4, ch. 2001-215; s. 7, ch. 2006-175; s. 2, ch. 2007-185.

**<sup>1</sup>702.036 Finality of mortgage foreclosure judgment.**—

(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 to establish or reestablish a lien or encumbrance on the property in abrogation of the final judgment of foreclosure of a mortgage, 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 was properly served in the foreclosure lawsuit as provided in chapter 48 or chapter 49.
2. The final judgment of foreclosure of the mortgage was entered as to the property.
3. All applicable appeals periods have run as to the final judgment of foreclosure of the mortgage 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 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.

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

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

- (a) The foreclosing lender or any loan servicer for the loan being foreclosed;
- (b) Any past or present owner or holder of the 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 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).

(3) After foreclosure of a mortgage based upon the enforcement of a lost, destroyed, or stolen note, a person who is not a party to the underlying foreclosure action but who claims to be the person entitled to

enforce the promissory note secured by the foreclosed mortgage has no claim against the foreclosed property after it is conveyed for valuable consideration to a person not affiliated with the foreclosing lender or the foreclosed owner. This section does not preclude the person entitled to enforce the promissory note from pursuing recovery from any adequate protection given pursuant to s. 673.3091 or from the party who wrongfully claimed to be the person entitled to enforce the promissory note under s. 702.11(2) or otherwise, from the maker of the note, or from any other person against whom it may have a claim relating to the note.

**History.**—s. 4, ch. 2013-137.

<sup>1</sup>**Note.**—

A. Section 8, ch. 2013-137, provides in part that “[t]he Legislature finds that this act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act.”

B. Section 9, ch. 2013-137, provides that “[t]he Supreme Court is requested to amend the Florida Rules of Civil Procedures to provide expedited foreclosure proceedings in conformity with this act and is requested to develop and publish forms for use in such expedited proceedings.”

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

**History.**—RS 1989; s. 1, ch. 4420, 1895; GS 2503; s. 1, ch. 7339, 1917; RGS 3846; CGL 5749.

**702.05 Mortgaged lands sold for taxes.**—Any person who has a lien by mortgage or otherwise upon lands sold for taxes may, within the time allowed by law for redemption, redeem such lands, and the receipt of the officer authorized to receive the amount paid for redemption money shall entitle the lienholder to collect the said amount, with interest at the rate of 10 percent per annum, as a part of and in the same manner as the amount secured by her or his original lien.

**History.**—s. 1, ch. 3903, 1889; RS 1990; GS 2504; RGS 3847; CGL 5750; s. 783, ch. 97-102.

<sup>1</sup>**702.06 Deficiency decree; common-law suit to recover deficiency.**—In all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of a deficiency, should one exist, shall be within the sound discretion of the court; however, in the case of an owner-occupied residential property, the amount of the deficiency may not exceed the difference between the judgment amount, or in the case of a short sale, the outstanding debt, and the fair market value of the property on the date of sale. For purposes of this section, 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. The complainant shall also have the right to sue at common law to recover such deficiency, unless the court in the foreclosure action has granted or denied a claim for a deficiency judgment.

**History.**—s. 1, ch. 11993, 1927; CGL 5751; s. 1, ch. 13625, 1929; s. 5, ch. 2013-137.

<sup>1</sup>**Note.**—

A. Section 8, ch. 2013-137, provides in part that “[t]he Legislature finds that this act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act.”

B. Section 9, ch. 2013-137, provides that “[t]he Supreme Court is requested to amend the Florida Rules of Civil Procedures to provide expedited foreclosure proceedings in conformity with this act and is requested to develop and publish forms for use in such expedited proceedings.”

**702.065 Final judgment in uncontested proceedings where deficiency judgment waived; attorney’s fees when default judgment entered.—**

(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.

History.—s. 2, ch. 2001-215.

**702.07 Power of courts and judges to set aside foreclosure decrees at any time before sale.—**The circuit courts of this state, and the judges thereof at chambers, shall have jurisdiction, power, and authority to rescind, vacate, and set aside a decree of foreclosure of a mortgage of property at any time before the sale thereof has been actually made pursuant to the terms of such decree, and to dismiss the foreclosure proceeding upon the payment of all court costs.

History.—s. 1, ch. 11881, 1927; CGL 5752.

**702.08 Effect of setting aside foreclosure decree.—**Whenever a decree of foreclosure has been so rescinded, vacated, and set aside and the foreclosure proceedings dismissed as provided in s. 702.07, the mortgage, together with its lien and the debt thereby secured, shall be, both in law and equity, completely relieved of all effects of any kind whatsoever resulting from or on account of the foreclosure proceedings and the decree of foreclosure and fully restored in all respects to the original status of the same as it existed prior to the foreclosure proceedings and the decree of foreclosure, and thereafter the same shall be for all purposes whatsoever legally of force and effect just as if foreclosure proceeding had never been instituted and a decree of foreclosure had never been made.

History.—s. 2, ch. 11881, 1927; CGL 5753.

**702.09 Definitions.—**For the purposes of ss. 702.07 and 702.08 the words “decree of foreclosure” shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word “mortgage” shall mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a homeowners’ association as defined in s. 712.01; the word “debt” shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words “foreclosure proceedings” shall embrace every action in the circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word “property” shall mean and include both real and personal property.

History.—s. 3, ch. 11881, 1927; CGL 5754; s. 4, ch. 2002-27; s. 13, ch. 2003-14.

**1702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.**

(1) A lienholder may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term “lienholder” includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or homeowners’ association, may file a lien against the real property subject to foreclosure. Upon filing, the court shall immediately review the request and the court file in chambers and without a hearing. If, upon examination of the court file, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing to show cause. The date for the hearing may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. When 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 must be made upon the defendant.

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute cause for the court not to enter final judgment.

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

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

6. State that, if a 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, such defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a default against such defendant and, if appropriate, 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 fees and the requested attorney 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 fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure which the movant requests the court to enter at the hearing on the order to show cause.

9. Require the party seeking final judgment to serve a copy of the order to show cause on the other parties in the following manner:

a. If a party has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the

manner provided in the Florida Rules of Civil Procedure.

b. If a defendant has not been served pursuant to chapter 48 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 party in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. This subsection does not preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a 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, affidavits, or other papers or to appear personally or by way of an attorney 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, a verified answer, affidavits, or other papers or presents evidence at or before the hearing which raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney 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) If the court finds that all defendants have waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need for further hearing if the plaintiff has shown entitlement to a final judgment and upon the filing with the court of the original note, satisfaction of the conditions for establishment of a lost note, or upon a showing to the court that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that a defendant has not waived the right to be heard on the order to show cause, the court shall 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 promptly enter a judgment of foreclosure. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through an attorney, at the initial hearing must be notified of the date and time of the continued hearing.

(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.

**History.**—s. 14, ch. 93-250; s. 3, ch. 2001-215; s. 6, ch. 2013-137.

<sup>1</sup>**Note.**—

A. Section 8, ch. 2013-137, provides in part that “[t]he Legislature finds that this act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act. In addition, the Legislature finds that . . . the amendments to s. 702.10, Florida Statutes, . . . by this act, apply to causes of action pending on the effective date of this act.”

B. Section 9, ch. 2013-137, provides that “[t]he Supreme Court is requested to amend the Florida Rules of Civil Procedures to provide expedited foreclosure proceedings in conformity with this act and is requested to develop and publish forms for use in such expedited proceedings.”

### ~~1~~**702.11 Adequate protections for lost, destroyed, or stolen notes in mortgage foreclosure.—**

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

- (a) A written indemnification agreement by a person reasonably believed sufficiently solvent to honor such an obligation;
- (b) A surety bond;
- (c) A letter of credit issued by a financial institution;
- (d) A deposit of cash collateral with the clerk of the court; or
- (e) Such other security as the court may deem appropriate under the circumstances.

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

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

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

(b) This section does not limit or restrict the ability of the actual holder of the note to pursue any other claims or remedies it may have against the maker, the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement thereof.

**History.**—s. 7, ch. 2013-137.

<sup>1</sup>**Note.**—

A. Section 8, ch. 2013-137, provides in part that “[t]he Legislature finds that this act is remedial in nature and applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act. In addition, the Legislature finds that . . . the creation of s. 702.11, Florida Statutes, by this act, [applies] to causes of action pending on the effective date of this act.”

B. Section 9, ch. 2013-137, provides that “[t]he Supreme Court is requested to amend the Florida Rules of Civil Procedures to provide expedited foreclosure proceedings in conformity with this act and is requested to develop and publish forms for use in such expedited proceedings.”

