

Florida Foreclosure is Judicial.  
Notice of Foreclosure

**Florida foreclosure begins when the lender files a lawsuit (Lis Pendens) against the homeowner. The homeowners must be notified of the legal action pending and must file an answer within a specified period of time. If the homeowner does not respond, the court will make a judgment against the homeowner and set an auction date.**

## **CHAPTER 702**

### **FORECLOSURE OF MORTGAGES, AGREEMENTS FOR DEEDS, AND STATUTORY LIENS**

**702.01 Equity.**

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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.**

**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of the mortgage attached to such complaint, to the same extent and effect as if section 3117, RGS, had been expressly repealed by chapter 12095, 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages."**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.**

**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.

**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 judicial discretion of the court, but the complainant shall also have the right to sue at common law to recover such deficiency, provided no suit at law to recover such deficiency shall be maintained against the original mortgagor in cases where the mortgage is for the purchase price of the property involved and where the original mortgagee becomes the purchaser thereof at foreclosure sale and also is granted a deficiency decree against the original mortgagor.**

History.--s. 1, ch. 11993, 1927; CGL 5751; s. 1, ch. 13625, 1929.

**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.**

**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 not be set sooner than 20 days after the service of the order. When service is obtained by publication, the date for the hearing may 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 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 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. 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. 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 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 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) If the court finds that the defendant has waived the right to be heard as provided in paragraph (b), the court shall 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 promptly enter a judgment of foreclosure.**

**(2) In an action for foreclosure, other than residential real estate, the mortgagee 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 shall not be set sooner than 20 days after the service of the order. Where service is obtained by publication, the date for the hearing shall 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 the defendant.**

**3. 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.**

**4. State that, if the 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 may be 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 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.**

**(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.**

**(c) If the court finds that the 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 mortgagee 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 mortgagee 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 mortgage on the property, including all principal, interest, unpaid taxes, and insurance premiums paid by the mortgagee.**

**(e) In the event the court enters an order requiring the mortgagor to make payments to the mortgagee, 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 hereunder. 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 shall not require the mortgagee to take all appropriate steps to secure the premises during the pendency of the foreclosure action.**

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

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

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

**Notice of Florida Foreclosure Sale**



The notice of sale shall include at least the following information,:

The name, address and telephone number of the person to contact for information regarding the real estate, the address of the property, a legal description of the property, a description of the improvements, the time and place of sale, the times specified in the judgment, the case title, number, and court which the foreclosure was filed, and terms of the sale

Florida foreclosure law states that the notice of sale shall be published at least 3 consecutive weeks, the last such notice not less than 5 days prior to the sale.  
Florida Foreclosure Auction

**Foreclosure auctions** in Florida typically take place **30 days after judgment is filed**, at 11:00 am on the county courthouse steps. Winning bidder is required to have 5% down and the balance is due by the end of the day. Upon payment in full of the amount bid, the person conducting the sale shall issue a Certificate of Sale and give to the purchaser.

### **Redemption Period**

Florida foreclosure law states that the homeowner has the right to redeem the property **anytime before the day of the sale. After the Certificate of Sale has been issued, there is no right of redemption.**

### **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.**

### **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. Florida foreclosure law states that 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.

### **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) Florida foreclosure law states that 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. When service is obtained by publication, the date for the hearing may 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 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 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. 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.

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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 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 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) If the court finds that the defendant has waived the right to be heard as provided in paragraph (b), the court shall 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 promptly enter a judgment of foreclosure.

\* (2) In an action for foreclosure, other than residential real estate, the mortgagee 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) Florida foreclosure law states that the order shall:

1. Set the date and time for hearing on the order to show cause. However, the date for the hearing shall not be set sooner than 20 days after the service of the order. Where service is obtained by publication, the date for the hearing shall 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 the defendant.

3. 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.

4. State that, if the 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 may be 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 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.

(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.

(c) If the court finds that the defendant has waived the right to be heard, 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 mortgagee 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 mortgagee 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 mortgage on the property, including all principal, interest, unpaid taxes, and insurance premiums paid by the mortgagee.

(e) In the event the court enters an order requiring the mortgagor to make payments to the mortgagee, 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 hereunder. 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 shall not require the mortgagee to take all appropriate steps to secure the premises during the pendency of the foreclosure action.

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

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

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