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1 A bill to be entitled
2 An act relating to consumer protection; creating parts I,
3 II, III, IV, V, VI, VII, and VIII of chapter 52, F.S.;
4 providing general provisions for an alternative method of
5 foreclosures; providing a short title; providing for scope
6 of applicability; providing definitions; providing
7 application; providing for variation by agreement;
8 providing for application of supplemental principles of
9 law and equity; providing criteria for notice and
10 knowledge; providing for transactions creating a security
11 interest; providing for time of foreclosure; providing
12 procedures, requirements, and limitations before
13 foreclosure; specifying a right to foreclose; requiring a
14 notice of default; providing a right to cure; providing
15 requirements for a notice of foreclosure; providing for a
16 meeting and meeting requirements to object to foreclosure;
17 providing a period of limitation for foreclosure;
18 providing for judicial supervision of foreclosure;
19 providing for a right to redeem collateral; providing
20 authority, requirements, procedures, and limitations on
21 foreclosures by auction, foreclosures by negotiated sale,
22 and foreclosures by appraisal; providing for rights after
23 foreclosure; providing for application of proceeds,
24 transfer of title, actions for damages or to set aside a
25 foreclosure, possession after foreclosure, judgments for
26 deficiencies, and determinations of amounts of a
27 deficiency; providing effect of good faith by debtor;

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28 providing authority, requirements, procedures, and
 29 limitations on discontinuation of a foreclosure; providing
 30 for uniformity of application and construction; specifying
 31 a relation to the Electronic Signatures in Global and
 32 National Commerce Act; providing an effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

36 Section 1. Part I of chapter 52, Florida Statutes,
 37 consisting of sections 52.101, 52.102, 52.103, 52.104, 52.105,
 38 52.106, 52.107, and 52.108, is created to read:

39 PART I

40 GENERAL PROVISIONS

41 52.101 Short title; scope of applicability.-

42 (1) This chapter may be cited as the "Florida Consumer
 43 Protection and Homeowner Credit Rehabilitation Act."

44 (2) In lieu of any other foreclosure remedy which may be
 45 available under the laws of this state, this chapter may, at the
 46 option of the foreclosing creditor, be used to effect a
 47 foreclosure of a security instrument. However, if the
 48 foreclosing creditor does not elect to use this chapter to
 49 effect a foreclosure, nothing in this chapter is intended to
 50 modify any other foreclosure remedy available under the laws of
 51 this state.

52 52.102 Definitions.-For purposes of this chapter:

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

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55 (2) "Common interest community" means real property for
 56 which a person is obligated to pay real property taxes,
 57 insurance premiums, maintenance, or improvement of other real
 58 property described in a declaration or other governing
 59 documents, however denominated, by virtue of the community's or
 60 association's ownership thereof or the holding of a leasehold
 61 interest of at least 20 years, including renewal options
 62 therein. The term "common interest community" includes a
 63 community governed by a homeowners' association as defined in s.
 64 720.301 and a condominium community governed by one or more
 65 condominium associations as defined in s. 718.103.

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

67 (4) "Debtor" means a person that owes payment or other
 68 performance of an obligation, whether absolute or conditional,
 69 primary or secondary, secured under a security instrument,
 70 whether or not the security instrument imposes personal
 71 liability on the debtor. The term does not include a person
 72 whose sole interest in the property is a security interest.

73 (5) "Evidence of title" means a title insurance policy, a
 74 preliminary title report or binder, a title insurance
 75 commitment, an attorney's opinion of title based on an
 76 examination of the public records or an abstract, or any other
 77 means of reporting the state of title to real estate that is
 78 customary in the locality.

79 (6) "Expenses of foreclosure" means the lesser of the
 80 reasonable costs incurred by a secured creditor or the maximum
 81 amounts permitted by any other laws of this state in connection

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82 with a foreclosure for transmission of notices, advertising,
 83 evidence of title, inspections and examinations of the
 84 collateral, management and securing of the collateral, liability
 85 insurance, filing and recording fees, attorneys' fees and
 86 litigation expenses incurred pursuant to ss. 52.207 and 52.601
 87 to the extent provided in the security instrument or authorized
 88 by law, appraisal fees, the fee of the person conducting the
 89 sale in the case of a foreclosure by auction, fees of court-
 90 appointed receivers, and other expenses reasonably necessary to
 91 the foreclosure.

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

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

96 (9) "Interest holder" means a person who owns a legally
 97 recognized interest in real or personal property that is
 98 subordinate in priority to a security interest foreclosed under
 99 this chapter.

100 (10) "Original notice of foreclosure" means the first
 101 notice of foreclosure sent pursuant to s. 52.204 instituting a
 102 foreclosure under this chapter.

103 (11) "Person" means an individual, corporation, business
 104 trust, estate, trust, partnership, limited liability company,
 105 association, joint venture, government, governmental
 106 subdivision, governmental agency, or governmental
 107 instrumentality, public corporation, or any other legal or
 108 commercial entity.

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109 (12) "Purchase-money obligation" means an obligation
 110 incurred in order to pay part or all of the purchase price of
 111 residential real property collateral. An obligation is not a
 112 purchase-money obligation if any part of the real property
 113 securing it is not residential real property. A purchase-money
 114 obligation includes an obligation:

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

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

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

120 or

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

124 (13) "Real property" means any estate or interest in,
 125 over, or under land, including minerals, structures, fixtures,
 126 and other things that by custom, usage, or law pass with a
 127 conveyance of land though not described or mentioned in the
 128 contract of sale or instrument of conveyance. The term includes
 129 the interest of a landlord or tenant and, unless under the law
 130 of the state in which the property is located that interest is
 131 personal property, an interest in a common interest community.

132 (14) "Record" when used as a verb, means to take the
 133 actions necessary to perfect an interest in real property under
 134 the laws of this state.

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135 (15) "Record" used as a noun, means information that is
 136 inscribed on a tangible medium or that is stored in an
 137 electronic or other medium and is retrievable in perceivable
 138 form.

139 (16) "Residential" means:

140 (a) As applied to an interest holder, an individual who
 141 holds a possessory interest, other than a leasehold interest
 142 with a duration of 1 year or less, in residential real property
 143 in which a security interest exists, and any person that is
 144 wholly owned and controlled by such an individual or
 145 individuals.

146 (b) As applied to a debtor, an individual who is
 147 obligated, primarily or secondarily, on an obligation secured in
 148 whole or in part by residential real property, and any person
 149 that is wholly owned and controlled by such an individual or
 150 individuals.

151 (17) "Residential real property" means real property that,
 152 when a security instrument is entered into, is used or is
 153 intended by its owner to be used primarily for the personal,
 154 family, or household purposes of its owner and is improved, or
 155 is intended by its owner to be improved, by one to four dwelling
 156 units.

157 (18) "Secured creditor" means a creditor that has the
 158 right to foreclose a security interest in real property under
 159 this chapter.

160 (19) "Security instrument" means a mortgage, deed of
 161 trust, security deed, contract for deed, agreement for deed,

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162 land sale contract, lease creating a security interest, or other
 163 contract or conveyance that creates or provides for an interest
 164 in real property to secure payment or performance of an
 165 obligation, whether by acquisition or retention of a lien, a
 166 lessor's interest under a lease, or title to the real property.
 167 A security instrument may also create a security interest in
 168 personal property. If a security instrument makes a default
 169 under any other agreement a default under the security
 170 instrument, the security instrument includes the other
 171 agreement. The term includes any modification or amendment of a
 172 security instrument, and includes a lien on real property
 173 created by a record to secure an obligation owed by an owner of
 174 the real property to an association in a common interest
 175 community or under covenants running with the real property.
 176 (20) "Security interest" means an interest in real or
 177 personal property that secures payment or performance of an
 178 obligation.
 179 (21) "Sign" means:
 180 (a) Execute or adopt a tangible symbol with the present
 181 intent to authenticate a record; or
 182 (b) Attach or logically associate an electronic symbol,
 183 sound, or process to or with a record with the present intent to
 184 authenticate a record.
 185 (22) "State" means a state of the United States, the
 186 District of Columbia, Puerto Rico, the United States Virgin
 187 Islands, or any territory or insular possession subject to the
 188 jurisdiction of the United States.

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189 (23) "Time of foreclosure" means the time that title to
 190 real property collateral passes to the person acquiring it by
 191 virtue of foreclosure under this chapter.

192 52.103 Application.—

193 (1) Except as otherwise provided in subsection (2), this
 194 chapter applies to, and authorizes the nonjudicial foreclosure
 195 of, every form of security interest in real property located in
 196 this state, whether entered into before, on, or after July 1,
 197 2010, if the original notice of foreclosure is given after July
 198 1, 2010, and if the debtor has agreed in substance in the
 199 security instrument that:

200 (a) The security interest may be foreclosed pursuant to
 201 this chapter; or

202 (b) The security interest may be foreclosed by nonjudicial
 203 process.

204 (2) This chapter may not be used to foreclose or enforce:

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

208 (b) A security interest in property in a common interest
 209 community if under the law of this state that interest is
 210 personal property; or

211 (c) A security interest in rents or proceeds of real
 212 property.

213 (3) This chapter does not preclude or govern foreclosure
 214 or other enforcement of security interests in real property by

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215 judicial or other action permitted by any other laws of this
 216 state.

217 (a) A secured creditor may not take action in pursuance of
 218 foreclosure under this chapter if a judicial proceeding is
 219 pending in this state to foreclose the security interest or to
 220 enforce the secured obligation against a person primarily liable
 221 for the obligation.

222 (b) A secured creditor may not take action in pursuance of
 223 foreclosure under this chapter if prior to commencing
 224 foreclosure under this chapter a judicial proceeding is pending
 225 in this state to challenge the existence, validity, or
 226 enforceability of the security interest to be foreclosed.

227 (c) Foreclosure under this chapter may proceed even if a
 228 judicial proceeding is pending or a judicial order has been
 229 obtained for appointment or supervision of a receiver of the
 230 collateral, possession of the collateral, enforcement of an
 231 assignment of rents or other proceeds of the collateral, or
 232 collection or sequestration of rents or other proceeds of the
 233 collateral or to enforce the secured obligation against a
 234 guarantor.

235 (4) If a security instrument covers both real property and
 236 personal property, the secured creditor may proceed under this
 237 chapter as to both the real property and personal property to
 238 the extent permitted by chapter 679.

239 52.104 Variation by agreement.-

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

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

245 (3) The parties to a security instrument may vary the
 246 effect of a provision that by its terms permits the parties to
 247 do so.

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

251 (5) If every debtor under a security instrument is not a
 252 residential debtor, an agreement by a guarantor waiving the
 253 right to receive notices under this chapter with respect to the
 254 foreclosure of the property of a debtor who is not a guarantor
 255 is enforceable unless a waiver is unenforceable under other
 256 applicable law.

257 52.105 Supplemental principles of law and equity
 258 applicable.—Unless displaced by a particular provision of this
 259 chapter, the principles of law and equity affecting security
 260 interests in real property supplement this chapter.

261 52.106 Notice and knowledge.—For purposes of this section:

262 (1) The following definitions apply:

263 (a) "Address" means a physical or an electronic address,
 264 or both, as the contract requires.

265 (b) "Address for notice" means:

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

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267 a. For a recipient that has given to the secured creditor
 268 a security instrument or other document in connection with a
 269 security instrument, the address, if any, specified in the
 270 security instrument or document.

271 b. For a recipient not described in sub-subparagraph a.
 272 that is identifiable from examination of the public records of
 273 the county or counties in which the collateral is located, or,
 274 if personal property is being foreclosed together with real
 275 property, the UCC financing statement filings, the address, if
 276 any, specified in the recorded or filed document.

277 c. For a recipient not described in sub-subparagraph a. or
 278 sub-subparagraph b. that the secured creditor knows is a tenant,
 279 subtenant, or leasehold assignee of all or part of the real
 280 property collateral, the most recent address made known to the
 281 security creditor by that person or, if none, the address of the
 282 real property collateral, including the designation of any
 283 office, apartment, or other unit that the secured creditor knows
 284 is possessed by the recipient, with the notice directed to the
 285 recipient's name, if known, or otherwise "To Tenant occupying
 286 property at" the physical address or description of the real
 287 property collateral.

288 d. If the sources described in sub-subparagraphs a.-c. do
 289 not disclose an address, the physical address of the real
 290 property collateral, if known to the secured creditor.

291 2. With respect to notices given by persons other than a
 292 secured creditor, the address given in a document provided by
 293 the recipient to the person giving notice.

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294 (c) "Electronic" means relating to technology having
 295 electrical, digital, magnetic, wireless, optical,
 296 electromagnetic, or similar capabilities.

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

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

301 (f) "Electronic signature" means an electronic sound,
 302 symbol, or process attached to or logically associated with a
 303 record and executed or adopted by a person with intent to
 304 authenticate the record.

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

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

308 (2) A person knows a fact if:

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

310 (b) The person has received a notice or notification of
 311 the fact; or

312 (c) From all the facts and circumstances known to the
 313 person at the time in question the person has reason to know the
 314 fact exists.

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

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

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321 (b) By depositing written notice, properly addressed to
 322 the recipient's address for notice, with cost of delivery paid;

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

325 2. With the United States Postal Service by regular mail;
 326 or

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

329 (c) Subject to subsection (7), by initiating operations
 330 that in the ordinary course will cause the notice to come into
 331 existence at the recipient's address for notice in the
 332 recipient's information processing system in a form capable of
 333 being processed by the recipient.

334 (4) If the recipient is an individual and the security
 335 interest covers the recipient's primary residence, use of the
 336 methods of notice specified in subsection (3) is limited as
 337 follows:

338 (a) If the notice is a notice of default pursuant to s.
 339 52.202 or a notice of foreclosure pursuant to s. 52.203, both of
 340 the methods of giving notice specified in subparagraphs (3)(b)2.
 341 and 3. must be used.

342 (b) If the notice is not a notice of default pursuant to
 343 s. 52.202 or a notice of foreclosure pursuant to s. 52.203, a
 344 method of giving notice specified in paragraph (3)(a) or
 345 paragraph (3)(b) must be used.

346 (5) If a person giving a notice pursuant to this chapter
 347 and the recipient have agreed to limit the methods of

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348 transmission of the notice otherwise permitted by subsections
 349 (3) and (4), that limitation is enforceable to the extent that
 350 it is consistent with subsection (4) and is otherwise permitted
 351 by law.

352 (6) A person may not give an electronic notice unless the
 353 recipient uses, designates by agreement, or otherwise has
 354 designated or holds out an information processing system or
 355 address within that system as a place for the receipt of
 356 communications of that kind. An electronic notice is not sent if
 357 the sender or its information processing system inhibits the
 358 ability of the recipient to print or store the record.

359 (7) If, at the time of giving a required notice, a person
 360 knows that the recipient's address for notice is incorrect or
 361 that notices cannot be delivered to the recipient at that
 362 address, the person that sent the notice shall make a reasonable
 363 effort to determine a correct address for the recipient and send
 364 the notice to the address so determined. Compliance with the
 365 provisions of chapter 49 satisfies the requirement to make
 366 reasonable effort to locate the party entitled to notice.

367 (8) If, after giving a notice, a person acquires knowledge
 368 that the address of the recipient to which the notice was
 369 directed is incorrect or that notices cannot be delivered to the
 370 recipient at that address, the person that sent the notice shall
 371 promptly make a reasonable effort to determine a correct address
 372 for the recipient and send another copy of the notice to the
 373 address so determined, if any. The first notice, if timely sent

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374 and properly directed to the recipient's address for notice,
 375 complies with the time requirements of this chapter.

376 (9) A person may use methods of giving notice in addition
 377 to the methods required by subsections (3) and (4).

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

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

384 (12) If the recipient is an individual, a notice is
 385 received when it comes to the recipient's attention or is
 386 delivered to and available at the recipient's address for
 387 notice. If the recipient is not an individual, a notice is
 388 received when it is brought to the attention of the individual
 389 conducting the transaction, or in any event when it would have
 390 been brought to that individual's attention if the recipient had
 391 exercised due diligence. An organization exercises due diligence
 392 if it maintains reasonable routines for communicating
 393 significant information with the person conducting the
 394 transaction and there is reasonable compliance with the
 395 routines. Due diligence does not require an individual acting
 396 for the organization to communicate information unless such
 397 communication is part of the individual's regular duties or
 398 unless the individual has reason to know of the transaction and
 399 that the transaction would be materially affected by the
 400 information.

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428 52.201 Right to foreclose.-
 429 (1) A secured creditor has a right to foreclose under this
 430 chapter if:
 431 (a) All conditions that, by law and the terms of the
 432 security instrument, are prerequisites to foreclosure have been
 433 satisfied.
 434 (b) All notices to the debtor required by the security
 435 instrument and by this chapter as prerequisites to foreclosure
 436 have been given.
 437 (c) All periods for cure available to the debtor by the
 438 terms of the security instrument and law as prerequisites to
 439 foreclosure have elapsed and no cure has been made.
 440 (2) A foreclosing creditor may pursue foreclosure
 441 exclusively by auction, by negotiated sale, or by appraisal, or
 442 may simultaneously pursue, together with foreclosure by auction,
 443 either foreclosure by negotiated sale or by appraisal, but not
 444 both. If the creditor pursues two methods of foreclosure
 445 simultaneously, the notice of foreclosure must state both
 446 methods.
 447 52.202 Notice of default and right to cure.-
 448 (1) Subject to subsection (2) and paragraph (6)(a), a
 449 notice of default must be given to each debtor and each interest
 450 holder whose interest gives right of possession of the real
 451 property collateral, and the cure period provided by this
 452 section must expire without cure being made, before notice of
 453 foreclosure is given.

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

457 (3) A notice of default must contain:

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

459 (b) The amount to be paid or other performance required to
 460 cure the default, including the daily rate of accrual for
 461 amounts accruing over time, and the time within which cure must
 462 be made.

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

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

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

470 (a) Cure the default if the default is curable by the
 471 payment of money; or

472 (b) Commence to cure the default if the default cannot be
 473 cured by the payment of money, diligently proceed to cure the
 474 default, and complete the cure of the default within 90 days
 475 after the notice of default was given.

476 (5) If no person is proceeding diligently to cure a
 477 default that cannot be cured by the payment of money after 30
 478 days from the date the notice of default was sent to the last
 479 person entitled to such notice, the secured creditor may
 480 immediately terminate the period allowed for cure by

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481 accelerating payment of the principal amount owing on the
 482 secured obligation or giving an original notice of foreclosure.

483 (6) If none of the real property to be foreclosed is
 484 residential real property:

485 (a) If a default cannot be cured by the payment of money
 486 and a notice of default was given by the secured creditor within
 487 1 year before the date of the present default on account of a
 488 default of the same kind, a notice of default is not required
 489 and a right to cure does not exist except as agreed by the
 490 parties.

491 (b) The periods specified in subsection (4) to cure a
 492 default may be reduced as the parties agree in the security
 493 instrument, but may not be less than 10 days.

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

497 (8) The right to cure a default provided in this section
 498 does not impair or limit any other right to notice of default or
 499 to cure a default provided to any person by the security
 500 instrument. The period to cure provided in this section and any
 501 period to cure provided in the security instrument run
 502 concurrently unless the security instrument provides otherwise.

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

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508 (10) If a default is cured within a period allowed by this
 509 section, or after the expiration of that period but before
 510 acceleration of the principal amount owing on the secured
 511 obligation or the giving of an original notice of foreclosure,
 512 an acceleration by the secured creditor of the principal amount
 513 owing on the secured obligation on account of that default is
 514 ineffective.

515 (11) During a period allowed for cure of a default under
 516 this section, a secured creditor may enforce any remedy other
 517 than foreclosure provided for by the security instrument and
 518 enforceable under the laws of this state other than this chapter
 519 if enforcement does not unreasonably interfere with the ability
 520 of a debtor to cure a default under this section.

521 52.203 Notice of foreclosure; manner of giving.-

522 (1) If a secured creditor has a right to foreclose under
 523 s. 52.201, the secured creditor may commence foreclosure by
 524 giving notice of foreclosure. The notice must comply with
 525 subsections (2) and (3) and s. 52.204 and is a prerequisite to
 526 foreclosure. (2) A foreclosing creditor shall record a copy
 527 of the notice of foreclosure in the public records of each
 528 county in which the real property collateral is located. A
 529 recorded notice of foreclosure is notice of its existence and
 530 contents to any person acquiring an interest in the real
 531 property collateral after the notice of foreclosure is recorded.
 532 In the absence of recording of the notice of foreclosure, any
 533 purported foreclosure under this chapter is voidable.

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534 (3) Except as otherwise provided in subsection (4), a
 535 foreclosing creditor shall give a notice of foreclosure to the
 536 following persons no later than 5 days after recording the
 537 notice of foreclosure pursuant to subsection (2) if such persons
 538 can be identified as of the time of recording of the notice of
 539 foreclosure:

540 (a) A person that the foreclosing creditor knows to be a
 541 debtor.

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

544 (c) A person that is shown by the public records of each
 545 county in which any part of the real property collateral is
 546 located to be an interest holder in the real property
 547 collateral.

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

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

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

558 (4) After the time of recording of the notice of
 559 foreclosure, if the foreclosing creditor obtains actual
 560 knowledge that a person holds an interest in the collateral that

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561 is subordinate in priority to the security instrument, the
 562 foreclosing creditor must give a notice of foreclosure to that
 563 person no later than 5 days after obtaining such knowledge.

564 (5) A foreclosing creditor may give a special notice of
 565 foreclosure to any person described in subsection (3) or
 566 subsection (4) to avoid the termination of that person's
 567 interest in the collateral by the foreclosure. The special
 568 notice shall give the information required by s. 52.204, but
 569 state that the recipient's interest in the collateral will not
 570 be terminated by the foreclosure.

571 (6) A foreclosing creditor, within 10 days before or after
 572 recording a notice of foreclosure, shall affix a copy of the
 573 notice of foreclosure at a conspicuous place on the real
 574 property collateral.

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

578 52.204 Notice of foreclosure: content.—

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

581 "NOTICE OF FORECLOSURE. YOU ARE HEREBY NOTIFIED THAT YOU
 582 MAY LOSE YOUR RIGHTS TO CERTAIN PROPERTY. READ THIS
 583 NOTICE IMMEDIATELY AND CAREFULLY."

584 (2) A notice of foreclosure must contain:

585 (a) The date of the notice, the name of the owner of the
 586 collateral as identified in the security instrument, a legally
 587 sufficient description and, at the secured creditor's option,

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588 the street address, if any, stated in the security instrument of
 589 the real property collateral or portion thereof being
 590 foreclosed, and a description of any personal property
 591 collateral to be included in the foreclosure.

592 (b) Information concerning the recording of the security
 593 instrument, including the recording date, and the official
 594 records book and page number or the official recording number
 595 for the security instrument.

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

598 (d) A statement that the foreclosing creditor is
 599 initiating foreclosure.

600 (e) A statement that the foreclosing creditor has
 601 accelerated or, by virtue of the notice, is accelerating the due
 602 date of the principal amount owing on the secured obligation or
 603 a statement that the foreclosing creditor elects not to
 604 accelerate the due date.

605 (f) A statement that the collateral may be redeemed from
 606 the security interest by payment in full or performance of the
 607 secured obligation in full before foreclosure and the amount to
 608 be paid or other action necessary to redeem, including a per
 609 diem amount that will allow calculation of the total balance
 610 owed as of future dates and any further amount the foreclosing
 611 creditor anticipates expending to protect the collateral.

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

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615 (h) A statement that the foreclosure will terminate the
 616 rights in the collateral of the person receiving the notice of
 617 foreclosure.

618 (i) If applicable, an explanation of a residential
 619 debtor's right to avoid a deficiency claim by compliance with s.
 620 52.604.

621 (j) If the foreclosure is by negotiated sale or by
 622 appraisal, an explanation of the right of the debtor and holders
 623 of subordinate interests to object to the foreclosure as
 624 provided by s. 52.206.

625 (k) If applicable, a statement that, within 15 days after
 626 the date the notice of foreclosure is given, a debtor or an
 627 interest holder having a possessory interest in the real
 628 property collateral may request a meeting with a representative
 629 of the foreclosing creditor to object to the foreclosure as
 630 provided by s. 52.206.

631 (l) The name, address, and telephone number of an
 632 individual who is the foreclosing creditor or a representative
 633 of the foreclosing creditor and who can be contacted for further
 634 information concerning the foreclosure.

635 52.205 Request for notice of foreclosure.-

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

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640 (a) The date of the security interest, the date of its
 641 recording, and the official records book and page, or official
 642 recording number of the security instrument's recording.

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

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

646 (d) The name and address of the person requesting notice
 647 of foreclosure.

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

650 (2) A person that records a request under subsection (1)
 651 is entitled to be given notice of foreclosure under s.
 652 52.203(1). Recording a request does not affect the title to the
 653 real property collateral and does not constitute constructive
 654 notice to any person with an interest in the real property
 655 collateral held or claimed by the person requesting notice. A
 656 person that records a request for notice under this section may
 657 subsequently record an amendment supplementing or correcting the
 658 person's name, address, or other information in the request, or
 659 withdrawing the request.

660 (3) A foreclosing creditor is liable for a penalty of \$500
 661 to a person that is not given timely notice of foreclosure if
 662 that person has recorded a request for notice of foreclosure
 663 meeting the standards of this section. If a recorded request for
 664 notice states that the person recording the request has an
 665 interest in the real property collateral and the person is not
 666 given timely notice of foreclosure, the person's interest in the

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667 collateral, if any, is preserved from termination by the
 668 foreclosure. Any other remedy or sanction may not be imposed
 669 against the foreclosing creditor on behalf of such person.

670 52.206 Meeting to object to foreclosure.-

671 (1) A residential debtor may request a meeting to object
 672 to a foreclosure. The request must be made by a notice received
 673 by the foreclosing creditor within 30 days after the notice of
 674 foreclosure is given to that debtor. If the foreclosing creditor
 675 receives a request for a meeting, the foreclosing creditor or a
 676 responsible representative of the foreclosing creditor shall
 677 schedule and attend a meeting with the person requesting it at a
 678 mutually agreeable time. The representative may be an employee,
 679 agent, servicer, or attorney of the foreclosing creditor and
 680 must have authority to terminate the foreclosure if the
 681 representative determines that there is no legal basis for
 682 foreclosure. The meeting may be held in person or by telephone,
 683 video conferencing, or other reasonable means, at the election
 684 of the foreclosing creditor. If the meeting is held in person,
 685 it must be held at a location reasonably convenient to a parcel
 686 of the real property collateral unless the person requesting the
 687 meeting and the creditor or representative mutually agree on a
 688 different location. If the foreclosing creditor receives
 689 requests from more than one person, the creditor or
 690 representative may attempt to arrange a consolidated meeting,
 691 and the persons requesting meetings must cooperate reasonably
 692 with the foreclosing creditor's effort to do so.

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693 (2) A meeting conducted pursuant to this section is
 694 informal and the rules of evidence do not apply. The parties may
 695 be represented by legal counsel. The foreclosing creditor or
 696 representative must have access to records that provide evidence
 697 of the grounds for foreclosure. If the residential debtor
 698 desires to negotiate a forbearance or modification on the
 699 underlying obligation, the residential debtor must provide
 700 financial statements and other documents sufficient to permit
 701 the foreclosing creditor to determine the existence, if any, for
 702 grounds to negotiate alternate terms or obligations. The
 703 creditor or representative shall consider the objections to
 704 foreclosure stated by the person requesting the meeting. Within
 705 10 days after the meeting, the creditor or representative
 706 attending the meeting shall give to each person who requested
 707 the meeting a written statement indicating whether the
 708 foreclosure will be discontinued or will proceed and the reasons
 709 for the determination. The objections to foreclosure stated by
 710 the person requesting the meeting and the reasons stated by the
 711 creditor or representative do not preclude any person from
 712 raising those or other grounds for objecting to or supporting
 713 foreclosure in any subsequent judicial proceeding. A statement
 714 or representation made by a person at the meeting may not be
 715 introduced as evidence in any judicial proceeding. Each party
 716 must bear its own expenses in connection with the meeting.

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

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720 52.207 Period of limitation for foreclosure.—The time of
 721 foreclosure may not be less than 90 days nor more than 1 year
 722 after an original notice of foreclosure is recorded under s.
 723 52.203 and not less than 30 days after any subsequent notice of
 724 foreclosure. The 1-year period of limitation may be extended by
 725 agreement of the foreclosing creditor and all persons to whom
 726 notice of foreclosure was required to be given, other than
 727 persons excluded from foreclosure by notice issued under s.
 728 52.203(5), s. 52.406(1)(b), or s. 52.506(1)(b). The 1-year and
 729 30-day periods of limitation are tolled during the period that
 730 any court order temporarily enjoining or staying the foreclosure
 731 is in effect and during any stay under the United States
 732 Bankruptcy Code, 11 U.S.C. ss. 101 et seq.

733 52.208 Judicial supervision of foreclosure.—Before the
 734 time of foreclosure, an aggrieved person may commence a
 735 proceeding in a court of competent jurisdiction for any
 736 violation of this chapter or of other law or principle of equity
 737 in the conduct of the foreclosure. The court may issue any order
 738 within the authority of the court in a foreclosure of a mortgage
 739 by judicial action, including injunction and postponement of the
 740 foreclosure.

741 52.209 Redemption.—A person who has the right to redeem
 742 collateral from a security interest under principles of law and
 743 equity may not redeem after the time of foreclosure. Unless
 744 precluded from doing so by law other than this chapter, a
 745 foreclosing creditor shall cooperate with any person who
 746 attempts to redeem the collateral from the security interest

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747 before the time of foreclosure by promptly providing upon
 748 request reasonable information concerning the amount due or
 749 performance required to redeem.

750 Section 3. Part III of chapter 52, Florida Statutes,
 751 consisting of sections 52.301, 52.302, 52.303, 52.304, 52.305,
 752 52.306, 52.307, 52.308, 52.309, 52.310, 52.311, and 52.312, is
 753 created to read:

754 PART III

755 FORECLOSURE BY AUCTION

756 52.301 Foreclosure by auction.—A secured creditor may
 757 elect to foreclose by auction. A secured creditor that elects to
 758 foreclose by auction shall comply with the requirements of this
 759 part and parts I, II, and VI.

760 52.302 Evidence of title; other information.—

761 (1) If a secured creditor elects to foreclose by auction,
 762 the foreclosing creditor shall obtain evidence of title and make
 763 a copy thereof available upon request to any prospective bidder
 764 at the foreclosure. The evidence of title must have an effective
 765 date no earlier than the time of recording of the original
 766 notice of foreclosure and must be issued no later than 30 days
 767 after the time of such recording. Unless the evidence of title
 768 is an attorney's opinion, the evidence of title must state that
 769 the issuer is willing to provide evidence of title to the real
 770 property collateral to a person who acquires title by virtue of
 771 the foreclosure, and the exceptions and exclusions from coverage
 772 to which the evidence of title issued to that person will be
 773 subject.

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774 (2) The foreclosing creditor may, but is not required to,
 775 make reports and information concerning the collateral other
 776 than evidence of title available to prospective bidders at the
 777 foreclosure.

778 (3) The foreclosing creditor is not liable to any person
 779 because of error in any information disclosed to prospective
 780 bidders unless the information was prepared by the foreclosing
 781 creditor and the foreclosing creditor had actual knowledge of
 782 the error at the time the information was disclosed.

783 52.303 Advertisement of sale.—

784 (1) After giving notice as required by ss. 52.203 and
 785 52.204, a foreclosing creditor shall, at the foreclosing
 786 creditor's option, advertise foreclosure sale under this part
 787 either:

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

790 (b) By placing an advertisement in a newspaper having
 791 general circulation in each county where any part of the real
 792 property collateral is located. The advertisement must be
 793 published at least once per week for 3 consecutive weeks, with
 794 the last publication not less than 7 nor more than 30 days
 795 before the advertised date of sale.

796 (2) No later than 21 days before the advertised date of
 797 sale, the foreclosing creditor shall give a copy of the
 798 advertisement required by subsection (1) to the persons to whom
 799 notice of foreclosure was required to be given pursuant to s.
 800 52.203. The advertisement may be sent with the notice of

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801 foreclosure or may be sent separately in the manner prescribed
 802 for notices under s. 52.106. The foreclosing creditor may, but
 803 is not required to, enter the real property collateral and post
 804 on it a copy of the advertisement or a sign containing
 805 information about the sale.

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

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

810 (b) That the sale will be made to the highest qualified
 811 bidder.

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

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

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

821 (f) The name, address, and telephone number of an
 822 individual who is the foreclosing creditor or a representative
 823 of the foreclosing creditor, who can provide information
 824 concerning the collateral and the foreclosure if the foreclosing
 825 creditor is not an individual.

826 (g) That a copy of the evidence of title, any available
 827 reports concerning the collateral, which may be listed

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828 specifically, and additional information are available from the
 829 person identified pursuant to paragraph (f).

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

833 (4) An advertisement required by subsection (1) may also
 834 state any other information concerning the collateral or the
 835 foreclosure that the foreclosing creditor elects to include.

836 52.304 Access to collateral.—If a foreclosing creditor has
 837 authority to grant access to the real property collateral, the
 838 creditor shall reasonably accommodate a person who contacts the
 839 creditor, expresses an interest in bidding at the foreclosure
 840 sale, and requests an opportunity to inspect the collateral.

841 52.305 Location and time of sale.—An auction sale under
 842 this part must be conducted:

843 (1) At a date and time permitted for a sale under judicial
 844 foreclosure of a security interest in real property in this
 845 state.

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

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

851 52.306 Foreclosure of two or more parcels.—

852 (1) Collateral consisting of two or more parcels of real
 853 property may be foreclosed by auction separately or in
 854 combination as provided in the security instrument. If the

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855 security instrument does not specify the manner of sale of two
 856 or more parcels, the auction may be conducted:

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

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

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

863 2. By conditionally offering the parcels both in
 864 combination and separately, and accepting the higher of the two
 865 aggregate bids.

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

871 52.307 Postponement of sale.—

872 (1) An individual conducting an auction under this part
 873 may postpone the auction for any cause the foreclosing creditor
 874 considers appropriate. Announcement of the postponement, and the
 875 time and location of the rescheduled sale, must be given orally
 876 at the place previously scheduled for the sale and within a
 877 reasonable time after the scheduled time for commencement of the
 878 sale. No other advertisement or notice of the postponed time and
 879 place of sale is required. A postponement may not be for a
 880 period of more than 30 days. Subsequent postponements of the
 881 sale may be made in the same manner.

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882 (2) If an auction cannot be held at the time stated in the
 883 notice of sale by reason of stay under the United States
 884 Bankruptcy Code, 11 U.S.C. ss. 101 et seq., or a stay order
 885 issued by any court of competent jurisdiction, the foreclosing
 886 creditor may reschedule the auction to occur at a time when the
 887 stay is no longer in effect. The rescheduled sale must be
 888 advertised, and a copy of the advertisement must be sent to the
 889 persons entitled thereto, as provided by s. 52.302.

890 52.308 Conduct of sale.—

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

893 (2) The person conducting an auction, before commencing
 894 the auction:

895 (a) Must make available to prospective purchasers copies
 896 of the evidence of title.

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

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

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

905 (b) In the following manner:

906 1. Any person, including a debtor and the foreclosing
 907 creditor, may bid at the auction. The individual conducting the
 908 auction may bid on behalf of the foreclosing creditor or any

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909 other person by whom he or she is authorized, but may not bid
 910 for his or her own account. The foreclosing creditor may bid by
 911 credit up to any amount up to the balance owing on the secured
 912 obligation, including the expenses of foreclosure.

913 2. A fixed bid of a person not attending the auction may
 914 be submitted by a writing received at least 24 hours before the
 915 scheduled time of the auction by the person designated in the
 916 advertisement of sale to provide information about the property.
 917 The bid must be accompanied by a deposit satisfying the
 918 requirements of s. 52.310. The bid must be read aloud by the
 919 person conducting the auction before the auction is opened to
 920 oral bids.

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

923 4. The auction is completed by the announcement of the
 924 person conducting the auction that the property is sold.

925 52.309 Deposit by successful bidder.—Immediately after the
 926 sale is complete, the successful bidder, if other than the
 927 foreclosing creditor, at an auction under this part must pay a
 928 deposit to the person conducting the sale. The deposit must be
 929 at least 10 percent of the amount of the bid or such lower
 930 amount as the advertisement of sale stated would be accepted.
 931 The deposit must be paid in cash, by certified check, or in such
 932 other form of payment as was stated to be acceptable in the
 933 advertisement of sale or is acceptable to the person conducting
 934 the sale.

935 52.310 Payment of remainder of bid.—

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

940 (2) If payment of the remainder of the bid is not timely
 941 made, the foreclosing creditor may cancel the sale and
 942 reschedule the auction as provided in s. 52.307(2) or may
 943 terminate the foreclosure under s. 52.701. In either event the
 944 deposit of the successful bidder may be forfeited and
 945 distributed in the same manner as the proceeds of a sale, but no
 946 person has any other remedy against the defaulting bidder.

947 52.311 Foreclosure amount; distribution of proceeds.—The
 948 highest amount bid at a sale is the foreclosure amount. The
 949 foreclosure must be applied by the foreclosing creditor as
 950 provided in s. 52.601 within 30 days after the time of the
 951 foreclosure. After receiving but before applying the proceeds of
 952 sale, the secured creditor may, but is not required to, invest
 953 them in a reasonable manner.

954 52.312 Deed to successful bidder; affidavit.—

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

957 (a) Record and deliver a deed, a bill of sale with respect
 958 to personal property if applicable, and such other documents as
 959 may be necessary to record the deed, all without warranty of
 960 title, conveying the collateral to or as directed by the
 961 successful bidder.

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962 (b) Execute and record in the public records of each
 963 county in which the security instrument being foreclosed was
 964 recorded an affidavit containing the following:
 965 1. Identification of the security instrument foreclosed,
 966 including the official records book and page number, or official
 967 document number at which it was recorded, if any.
 968 2. Identification the debtor.
 969 3. A sufficient description of the collateral and
 970 identification of the official records book and page number, or
 971 official document number at which the notice of foreclosure was
 972 recorded.
 973 4. Identification of persons to whom notice of foreclosure
 974 was given and the official records book and page number, or
 975 official document number at which documents reflecting their
 976 interests in the collateral were recorded, if any.
 977 5. A statement as to which, if any, of the persons
 978 identified pursuant to subparagraph 4. were given special notice
 979 of foreclosure preserving their interests from termination by
 980 the foreclosure.
 981 6. A statement that the foreclosing creditor has complied
 982 with all provisions of this chapter for a foreclosure by
 983 auction.
 984 7. Identification of the person acquiring title to the
 985 collateral by virtue of the foreclosure, and a statement that
 986 title has passed to that person.

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

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

993 PART IV

994 FORECLOSURE BY NEGOTIATED SALE

995 52.401 Foreclosure by negotiated sale.—A secured creditor
 996 may elect to foreclose by negotiated sale. A secured creditor
 997 that elects to foreclose by negotiated sale shall comply with
 998 the requirements of this part and parts I, II, and VI.

999 52.402 Advertisement and contract of sale.—

1000 (1) The foreclosing creditor may advertise the collateral
 1001 for sale to prospective purchasers by whatever methods the
 1002 foreclosing creditor considers appropriate and may list the
 1003 collateral for sale with brokers. The foreclosing creditor may,
 1004 but is not required to, enter the real property collateral and
 1005 post on it a sign containing information about the sale.

1006 (2) The foreclosing creditor may enter into a conditional
 1007 contract of sale with a prospective purchaser or, if the
 1008 collateral is sold in parcels, with more than one purchaser. The
 1009 contract shall state the gross amount, before expenses of sale,
 1010 that the purchaser will pay for the collateral. The foreclosing
 1011 creditor's obligation to sell under the contract is subject to
 1012 the following conditions:

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1013 (a) That no objection to the foreclosure amount is made
 1014 under s. 52.404.

1015 (b) That no redemption of the collateral from the security
 1016 interest is made before the time of foreclosure.

1017 52.403 Notice of proposed negotiated sale.—If a
 1018 foreclosing creditor enters into a conditional contract of sale
 1019 as provided in s. 52.402, the foreclosing creditor shall give
 1020 notice of the proposed sale at least 30 days before the date of
 1021 the proposed sale to the persons specified in s. 52.203. The
 1022 notice of proposed sale must state:

1023 (1) The date on or after which the foreclosing creditor
 1024 proposes to sell the collateral.

1025 (2) The foreclosure amount, net of all expenses of
 1026 foreclosure and sale, that the foreclosing creditor offers to
 1027 credit against the secured debt and distribute to other persons
 1028 entitled thereto, which amount may be greater or less than the
 1029 selling price stated in the contract.

1030 (3) That if the sale is completed, title to the collateral
 1031 will be transferred to the purchaser under the contract as of
 1032 the time of foreclosure and the stated foreclosure amount will
 1033 be applied as provided in s. 52.601.

1034 (4) That the person receiving the notice may inspect a
 1035 copy of the contract of sale by communicating with an individual
 1036 who is or represents the foreclosing creditor and whose name,
 1037 address, and telephone number are given in the notice.

1038 (5) That if a debtor or any other party whose interest in
 1039 the collateral is subordinate in priority to the foreclosing

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1040 creditor's security interest objects to the sale, the debtor or
 1041 interest holder may give the foreclosing creditor a notice so
 1042 stating, and if the notice is received by the foreclosing
 1043 creditor no later than 7 days before the date of the proposed
 1044 sale, the foreclosing creditor must discontinue the foreclosure
 1045 by negotiated sale unless the foreclosing creditor elects to
 1046 preserve that person's interest from termination by the
 1047 foreclosure or discharges the person's interest.

1048 52.404 Completion of sale.-

1049 (1) A foreclosing creditor may complete the sale in
 1050 accordance with the contract of sale, subsection (2), and ss.
 1051 52.405 and 52.406 unless the creditor receives a notice
 1052 objecting to the proposed foreclosure by negotiated sale 7 or
 1053 more days before the proposed date of sale from a person who
 1054 holds an interest in the real property collateral that is
 1055 subordinate in priority to the foreclosing creditor's security
 1056 interest.

1057 (2) Upon compliance by the purchaser with a contract for
 1058 sale under this part, on or after the proposed date of sale, the
 1059 foreclosing creditor shall deliver to the purchaser or a nominee
 1060 designated by the purchaser a deed, a bill of sale if
 1061 applicable, and other documents necessary to consummate the sale
 1062 or that the parties agreed the foreclosing creditor would
 1063 supply. The foreclosing creditor shall also execute an affidavit
 1064 containing the following:

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1065 (a) Identification of the security instrument foreclosed,
 1066 including the official records book and page number or official
 1067 document number at which it was recorded, if any.

1068 (b) Identification of the debtor.

1069 (c) A sufficient description of the collateral and
 1070 identification of the official records book and page number, or
 1071 official document number at which the notice of foreclosure was
 1072 recorded.

1073 (d) Identification of persons to whom notice of
 1074 foreclosure was given and the official records book and page
 1075 number, or official document number at which documents
 1076 reflecting their interests in the collateral are recorded, if
 1077 any.

1078 (e) A statement as to which, if any, of the persons
 1079 identified pursuant to paragraph (d) were given notice under s.
 1080 52.203(5) or s. 52.406(1) (a) preserving their interests from
 1081 termination by the foreclosure.

1082 (f) A statement that the foreclosing creditor has complied
 1083 with all provisions of this chapter for a foreclosure by
 1084 negotiated sale.

1085 (g) Identification of the person acquiring title to the
 1086 collateral by virtue of the foreclosure, and a statement that
 1087 title has passed to that person.

1088 52.405 Recording of affidavit and deed; application of
 1089 foreclosure amount.—On or after the date of delivery of the
 1090 deed, the affidavit, deed, and bill of sale, if any, required
 1091 under s. 52.404 must be recorded in public records of the county

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1092 or counties where the collateral is located. When the affidavit,
 1093 deed, and bill of sale, if any, are recorded, the deed and bill
 1094 of sale transfer title to the collateral to the contract
 1095 purchaser or a nominee designated by the contract purchaser as
 1096 provided in s. 52.602. The foreclosure amount stated in the
 1097 notice of proposed negotiated sale pursuant to s. 52.403(2) must
 1098 be applied as provided in s. 52.601 within 30 days after the
 1099 time of foreclosure.

1100 52.406 Notice of objection to sale.-

1101 (1) If, 7 or more days before the proposed date of sale
 1102 under this part, a foreclosing creditor receives notice of
 1103 objection to the sale from any person who holds an interest in
 1104 the real property collateral subordinate in priority to the
 1105 foreclosing creditor's security interest, the foreclosing
 1106 creditor must:

1107 (a) Discontinue the foreclosure pursuant to s. 52.701, in
 1108 which case the notice of objection has no further effect;

1109 (b) Give notice, before the time of foreclosure, to the
 1110 person who made the objection that the person's interest in the
 1111 collateral will be preserved from termination by the
 1112 foreclosure. If the foreclosing creditor gives such notice:

1113 1. The objection of the person to whom such notice is
 1114 given may be disregarded by the foreclosing creditor;

1115 2. The foreclosure by negotiated sale may be completed;

1116 3. The affidavit recorded under s. 52.405 must identify
 1117 that interest in the collateral of the person objecting as not
 1118 being terminated by the foreclosure; and

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1119 4. That person is entitled to none of the foreclosure
 1120 amount; or

1121 (c) If the interest of the person who made the objection
 1122 is capable of being discharged for a liquidated sum of money,
 1123 tender that sum, or a lesser sum acceptable to the person whose
 1124 interest is being discharged, to the person and thereby
 1125 discharge the interest.

1126 (2) If the foreclosing creditor makes a tender as provided
 1127 in paragraph (1)(c) and keeps the tender in effect, the person
 1128 to whom the tender is made must provide the foreclosing creditor
 1129 with a suitable document in recordable form evidencing that the
 1130 person's interest has been discharged.

1131 (3) After expiration of the time for objection specified
 1132 in s. 52.404(1), a person to whom notice of foreclosure under s.
 1133 52.203 and notice of proposed sale under s. 52.403 were sent may
 1134 not assert that the foreclosure amount was inadequate.

1135 Section 5. Part V of chapter 52, Florida Statutes,
 1136 consisting of sections 52.501, 52.502, 52.503, 52.504, 52.505,
 1137 and 52.506, is created to read:

1138 PART V

1139 FORECLOSURE BY APPRAISAL

1140 52.501 Foreclosure by appraisal.—A secured creditor may
 1141 elect to foreclose by appraisal. A secured creditor that elects
 1142 to foreclose by appraisal shall comply with the requirements of
 1143 this part and parts I, II, and VI.

1144 52.502 Appraisal.—

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1145 (1) The foreclosing creditor shall obtain a written
 1146 appraisal of the collateral. The debtor and other persons in
 1147 possession of the real property collateral must provide
 1148 reasonable access to the real property to the appraiser. The
 1149 appraisal report shall state the appraiser's conclusion as to
 1150 the fair market value of the collateral as of a date not more
 1151 than 60 days before the date of foreclosure stated in the notice
 1152 of foreclosure.

1153 (2) The appraisal must be made by an independent appraiser
 1154 certified by the Appraisal Institute who is not an employee or
 1155 affiliate of the foreclosing creditor.

1156 52.503 Notice of appraisal.—The foreclosing creditor shall
 1157 give notice of the appraisal at least 30 days before the
 1158 proposed date of the foreclosure to the persons specified in s.
 1159 52.203. The notice of appraisal shall be accompanied by a copy
 1160 of the appraisal report and shall state:

1161 (1) The date on or after which the foreclosing creditor
 1162 proposes to foreclose by appraisal.

1163 (2) The foreclosure amount, net of all expenses of
 1164 foreclosure, that the foreclosing creditor offers to credit
 1165 against the secured obligation and to distribute to other
 1166 persons entitled thereto, which amount may be greater or less
 1167 than the appraised value of the collateral.

1168 (3) That if the foreclosure by appraisal is completed,
 1169 title to the collateral will vest in the foreclosing creditor or
 1170 its nominee as of the time of foreclosure, and that the stated
 1171 foreclosure amount will be applied as provided in s. 52.601.

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1172 (4) That the person receiving the notice may obtain
 1173 further information concerning the foreclosure and the appraisal
 1174 by communicating with an individual who is or represents the
 1175 foreclosing creditor and whose name, address, and telephone
 1176 number are given in the notice.

1177 (5) That if a debtor or interest holder whose interest in
 1178 the collateral is subordinate in priority to the foreclosing
 1179 creditor's security interest objects to the foreclosure by
 1180 appraisal, the debtor or interest holder may give the
 1181 foreclosing creditor a notice so stating, and if the notice is
 1182 received by the foreclosing creditor no later than 7 days before
 1183 the date of the proposed sale, the foreclosing creditor must
 1184 discontinue the foreclosure by appraisal unless the foreclosing
 1185 creditor elects to preserve that person's interest from
 1186 termination by the foreclosure or discharges the person's
 1187 interest.

1188 52.504 Completion of foreclosure by appraisal.-

1189 (1) A foreclosing creditor may complete the foreclosure as
 1190 provided in subsection (2) and ss. 52.505 and 52.506 unless the
 1191 creditor receives a notice objecting to the proposed foreclosure
 1192 by negotiated sale 7 or more days before the proposed date of
 1193 sale from a person who holds an interest in the real property
 1194 collateral that is subordinate in priority to the foreclosing
 1195 creditor's security interest.

1196 (2) On or after the proposed date of sale, the foreclosing
 1197 creditor shall also execute an affidavit containing the
 1198 following:

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1199 (a) Identification of the security instrument foreclosed,
 1200 including the official records book and page number, or official
 1201 document number at which it was recorded, if any.

1202 (b) Identification of the debtor.

1203 (c) A sufficient description of the collateral and
 1204 identification of the official records book and page number, or
 1205 official document number at which the notice of foreclosure was
 1206 recorded.

1207 (d) Identification of persons to whom notice of
 1208 foreclosure was given and the official records book and page
 1209 number, or official document number at which documents
 1210 reflecting their interests in the collateral are recorded, if
 1211 any.

1212 (e) A statement as to which, if any, of the persons
 1213 identified pursuant to paragraph (d) were given notice under s.
 1214 52.203(5) or s. 52.506(1) (a) preserving their interests from
 1215 termination by the foreclosure.

1216 (f) A statement that the foreclosing creditor has complied
 1217 with all provisions of this chapter for a foreclosure by
 1218 appraisal.

1219 (g) Identification of the person acquiring title to the
 1220 collateral by virtue of the foreclosure, and a statement that
 1221 title has passed to that person.

1222 52.505 Recording of affidavit; application of foreclosure
 1223 amount.—On or after the proposed date of foreclosure, the
 1224 affidavit required by s. 52.504 must be recorded in the public
 1225 records of the county or counties in which the collateral is

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1226 located. When recorded, the affidavit transfers title to the
 1227 collateral to the foreclosing creditor or its nominee as
 1228 provided in s. 52.602. The foreclosure amount stated in the
 1229 notice of appraisal pursuant to s. 52.503(2) must be applied as
 1230 provided in s. 52.601 within 30 days after the time of
 1231 foreclosure.

1232 52.506 Notice of objection to foreclosure.-

1233 (1) If, 7 or more days before the proposed date of
 1234 foreclosure under this part, a foreclosing creditor receives
 1235 notice of objection to the foreclosure from any person who holds
 1236 an interest in the real property collateral subordinate in
 1237 priority to the foreclosing creditor's security interest, the
 1238 foreclosing creditor must:

1239 (a) Discontinue the foreclosure pursuant to s. 52.701, in
 1240 which case the notice of objection has no further effect;

1241 (b) Give notice, before the time of foreclosure, to the
 1242 person who made the objection that the person's interest in the
 1243 collateral will be preserved from termination by the
 1244 foreclosure. If the foreclosing creditor gives such notice:

1245 1. The objection of the person to whom such notice is
 1246 given may be disregarded by the foreclosing creditor;

1247 2. The foreclosure by appraisal maybe completed;

1248 3. The affidavit recorded under s. 52.505 must identify
 1249 that interest in the collateral of the person objecting as not
 1250 being terminated by the foreclosure; and

1251 4. That person is entitled to none of the foreclosure
 1252 amount; or

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1253 (c) If the interest of the person who made the objection
 1254 is capable of being discharged for a liquidated sum of money,
 1255 tender that sum to the person and thereby discharge the
 1256 interest.

1257 (2) If the foreclosing creditor makes a tender as provided
 1258 in subsection (1)(c) and keeps the tender in effect, the person
 1259 to whom the tender is made must provide the foreclosing creditor
 1260 with a suitable document in recordable form evidencing that the
 1261 person's interest has been discharged.

1262 (3) After expiration of the time for objection specified
 1263 in s. 52.504(1), a person to whom notice of foreclosure under s.
 1264 52.203 and notice of appraisal under s. 52.503 were sent may not
 1265 assert that the foreclosure amount was inadequate.

1266 Section 6. Part VI of chapter 52, Florida Statutes,
 1267 consisting of sections 52.601, 52.602, 52.603, 52.604, 52.605,
 1268 52.606, and 52.607, is created to read:

1269 PART VI

1270 RIGHTS AFTER FORECLOSURE

1271 52.601 Application of proceeds of foreclosure.-

1272 (1) The foreclosing creditor shall apply the proceeds of
 1273 foreclosure and any investment earnings thereon in the following
 1274 order:

1275 (a) To pay or reimburse the expenses of foreclosure in the
 1276 case of a foreclosure by auction.

1277 (b) To pay the obligation secured by the foreclosed
 1278 security instrument.

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1279 (c) To pay, in the order of their priority, the amounts of
 1280 all liens and other interests of record terminated by the
 1281 foreclosure.

1282 (d) To the interest holder who owned the collateral at the
 1283 time of foreclosure.

1284 (2) If the foreclosing creditor, in applying the proceeds
 1285 of the sale, acts in good faith and without actual knowledge of
 1286 the invalidity or lack of priority of the claim of a person to
 1287 whom distribution is made, the foreclosing creditor is not
 1288 liable for an erroneous distribution. The foreclosing creditor
 1289 may maintain an action in the nature of interpleader, in a court
 1290 of competent jurisdiction sitting in a county in which some part
 1291 of the real estate collateral is located, for an order directing
 1292 the order of distribution of the proceeds of the sale.

1293 52.602 Title transferred by foreclosure.—A foreclosure
 1294 under this chapter transfers the debtor's title to the
 1295 collateral to the successful bidder under part III, the contract
 1296 purchaser under part IV, or the foreclosing creditor under part
 1297 V, subject only to interests in the collateral having priority
 1298 over the security interest foreclosed and the interests of
 1299 persons entitled to notice under s. 52.202(3) who were not given
 1300 notice of the foreclosure or whose interests were preserved from
 1301 foreclosure by notice issued under s. 52.203(5), s.
 1302 52.406(1)(b), or s. 52.506(1)(b). The interests of all of other
 1303 persons in the collateral are terminated.

1304 52.603 Action for damages or to set aside foreclosure.—

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1305 (1) Subject to subsection (3), after the time of
 1306 foreclosure an aggrieved person may commence a proceeding in a
 1307 court of competent jurisdiction seeking the following relief:

1308 (a) Damages against a foreclosing creditor for any
 1309 violation of this chapter or an applicable law or principle of
 1310 equity in the conduct of the foreclosure; or

1311 (b) That the foreclosure be set aside to correct a
 1312 violation of this chapter or to satisfy an applicable law or
 1313 principle of equity.

1314 (2) Recording of the deed and affidavit pursuant to s.
 1315 52.312, the deed and affidavit pursuant to s. 52.405, or the
 1316 affidavit pursuant to s. 52.505 conclusively establishes
 1317 compliance with all applicable notice and procedural
 1318 requirements of this chapter in favor of good faith purchasers
 1319 for value of the collateral. If the title derived from
 1320 foreclosure is not held by a good faith purchaser for value, a
 1321 person attacking the foreclosure on grounds of noncompliance
 1322 with the notice or procedural requirements of this chapter has
 1323 the burden of production and persuasion.

1324 (3) An action may not be commenced:

1325 (a) For damages for violation of this chapter, more than 3
 1326 years after the time of foreclosure; or

1327 (b) For an order to set aside a foreclosure conducted
 1328 under this chapter, more than 1 year after the time of
 1329 foreclosure.

1330 52.604 Possession after foreclosure.—A person that
 1331 acquires an interest in real property by foreclosure under this

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1332 chapter may obtain a writ of possession from the clerk of the
 1333 court of the county in which any part of the collateral is
 1334 located, or commence an action for ejectment under chapter 66 or
 1335 for unlawful detainer under chapter 82 to gain possession of the
 1336 real property against any person whose interest in the real
 1337 property was terminated by the foreclosure.

1338 52.605 Judgment for deficiency.-

1339 (1) Except as provided in subsection (2), after the time
 1340 of foreclosure the foreclosing creditor and any other person
 1341 whose security interest in the collateral was terminated by a
 1342 foreclosure under this chapter is entitled to a money judgment
 1343 against any person liable for a deficiency.

1344 (2) (a) A debtor is not liable to a foreclosing creditor
 1345 for a deficiency after a foreclosure under this chapter if:

1346 1. The foreclosing creditor waived the right to a
 1347 deficiency; or

1348 2. The debtor is a residential debtor and the secured
 1349 obligation was a purchase-money debt, unless the debtor is found
 1350 by the court not to have acted in good faith.

1351 (b) This exemption shall not apply if the purchase-money
 1352 debt has been refinanced or modified pursuant to prior mediation
 1353 or negotiation with the foreclosing creditor or its predecessor
 1354 in interest.

1355 (3) For purposes of this section, a residential debtor
 1356 acted in good faith if the debtor:

1357 (a) Peaceably vacated the real estate collateral and
 1358 relinquished any personal property collateral within 10 days

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1359 after the time of foreclosure and the giving of a notice
 1360 demanding possession by the person entitled to possession by
 1361 virtue of the foreclosure.

1362 (b) Did not commit significant affirmative waste upon the
 1363 collateral and leave such waste uncured at the time possession
 1364 was relinquished to the person entitled to possession by virtue
 1365 of the foreclosure.

1366 (c) Did not significantly contaminate the collateral with
 1367 hazardous materials and leave the contamination uncured at the
 1368 time possession was relinquished to the person entitled to
 1369 possession by virtue of the foreclosure.

1370 (d) Did not commit fraud against the foreclosing creditor.

1371 (e) Did not engage in criminal activity on the secured
 1372 real estate collateral that significantly reduced its value at
 1373 the time possession was relinquished to the person entitled to
 1374 possession by virtue of the foreclosure.

1375 (f) Did not permit significant uncured damage to be done
 1376 to the collateral by other persons or natural causes as a result
 1377 of the debtor's failure to take reasonable precautions against
 1378 the damage.

1379 (g) Provided reasonable access to the collateral for
 1380 inspection by the foreclosing creditor and prospective
 1381 purchasers after the initial notice of foreclosure was sent.

1382 (4) The burden of proof as to the absence of good faith on
 1383 the part of a residential debtor is on the person seeking a
 1384 deficiency judgment against the debtor. The absence of good

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1385 faith by one residential debtor does not make any other
 1386 residential debtor liable for a deficiency.

1387 (5) If liability of a residential debtor for a deficiency
 1388 is barred by paragraph (2) (b), liability of a guarantor of the
 1389 residential debtor's obligation is also barred.

1390 (6) This section does not prohibit recovery of a
 1391 deficiency by a person other than the foreclosing creditor.

1392 52.606 Determining amount of deficiency.—

1393 (1) Subject to subsection (3), the deficiency to which a
 1394 foreclosing creditor is entitled after a foreclosure under this
 1395 chapter is the balance remaining, if any, after subtracting the
 1396 foreclosure amount as determined under s. 52.311, s. 52.403, or
 1397 s. 52.503, as applicable, from the balance owing on the secured
 1398 obligation, including principal, interest, legally recoverable
 1399 fees and charges and, in the case of a foreclosure by auction,
 1400 the expenses of foreclosure.

1401 (2) In an action for a deficiency brought by the
 1402 foreclosing creditor following a foreclosure by auction, a
 1403 person against whom the action is filed may petition a court of
 1404 competent jurisdiction for a determination of the fair market
 1405 value of the collateral at the time of foreclosure. After a
 1406 hearing at which all interested parties may present evidence of
 1407 fair market value, the court shall determine the fair market
 1408 value of the collateral as of the time of foreclosure. The
 1409 determination must be made by the court without a jury. If the
 1410 court determines that 90 percent of the fair market value of the
 1411 collateral was greater than the bid accepted at the foreclosure

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1412 sale, 90 percent of the fair market value must be substituted
 1413 for the foreclosure amount in making the calculations required
 1414 by subsection (1) with respect to all parties against whom a
 1415 judgment for a deficiency is entered.

1416 52.607 Effect of good faith by debtor.—If a residential
 1417 debtor acted in good faith in the foreclosure, as defined in s.
 1418 52.605(3), the debtor shall not be considered to have been in
 1419 default under the note or security instrument. This section
 1420 shall not invalidate any foreclosure pursuant to this chapter
 1421 nor any judgment in a case related to this chapter. This
 1422 section shall not affect the title or insurability of title to
 1423 real property or personal property.

1424 Section 7. Part VII of chapter 52, Florida Statutes,
 1425 consisting of section 52.701, is created to read:

1426 PART VII

1427 DISCONTINUATION OF FORECLOSURE

1428 52.701 Discontinuation of foreclosure.—

1429 (1) A foreclosing creditor may elect to discontinue
 1430 foreclosure at any time before:

1431 (a) The completion of the auction in the case of a
 1432 foreclosure by auction; or

1433 (b) The time of foreclosure, in the case of a foreclosure
 1434 by negotiated sale or by appraisal.

1435 (2) To discontinue foreclosure, the foreclosing creditor
 1436 shall give notice to the persons to whom notice of foreclosure
 1437 was required to be given under s. 52.203(2), advising them that

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1438 the foreclosure has been discontinued and whether the
 1439 foreclosing creditor will:
 1440 (a) Pursue another foreclosure by the same method;
 1441 (b) Continue to foreclose by another method under this
 1442 chapter pursuant to a notice of foreclosure previously given;
 1443 (c) Commence foreclosure by a different method authorized
 1444 by this chapter pursuant to a new notice of foreclosure;
 1445 (d) Commence foreclose by judicial proceeding; or
 1446 (e) Abandon foreclosure.
 1447 (3) If a notice sent by a foreclosing creditor under this
 1448 section includes all elements required for a notice of
 1449 foreclosure under ss. 52.203 and 52.204, no additional notice of
 1450 foreclosure is necessary to pursue a further foreclosure under
 1451 this chapter.

1452 Section 8. Part VIII of chapter 52, Florida Statutes,
 1453 consisting of sections 52.801 and 52.802, is created to read:

1454 PART VIII

1455 MISCELLANEOUS

1456 52.801 Uniformity of application and construction.—In
 1457 applying and construing this chapter, consideration must be
 1458 given to the need to promote uniformity of the law with respect
 1459 to its subject matter among states that enact its provisions.

1460 52.802 Relation to Electronic Signatures in Global and
 1461 National Commerce Act.—This chapter modifies, limits, and
 1462 supersedes the federal Electronic Signatures in Global and
 1463 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that
 1464 nothing in this chapter modifies, limits, or supersedes 15

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1465 U.S.C. s. 7001(c) or authorizes electronic delivery of any of
1466 the notices described in 15 U.S.C. s. 7003(b).

1467 Section 9. This act shall take effect July 1, 2010.