

By Senator Passidomo

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A bill to be entitled

An act relating to bankruptcy matters in foreclosure proceedings; creating s. 702.12, F.S.; authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; providing that submission of certain documents in a foreclosure action creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure; requiring a court to take judicial notice of orders entered in bankruptcy cases under certain circumstances; providing construction; providing applicability; providing an effective date.

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

Section 1. Section 702.12, Florida Statutes, is created to read:

702.12 Actions in foreclosure.—

(1) (a) A lienholder, in an action to foreclose a mortgage, may submit any document the defendant filed under penalty of perjury in the defendant's bankruptcy case for use as an admission by the defendant.

(b) A rebuttable presumption that the defendant has waived any defense to the foreclosure is created if a lienholder submits documents filed in the defendant's bankruptcy case which:

1. Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;

2. Have not been withdrawn by the defendant; and

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30       3. Show that a final order has been entered in the  
31 defendant's bankruptcy case which discharges the defendant's  
32 debts or confirms the defendant's repayment plan that provides  
33 for the surrender of the property.

34       (2) Pursuant to s. 90.203, a court shall take judicial  
35 notice of an order entered in a bankruptcy case upon the request  
36 of a lienholder.

37       (3) This section does not preclude the defendant in a  
38 foreclosure action from raising a defense based upon the  
39 lienholder's action or inaction subsequent to the filing of the  
40 document filed in the bankruptcy case which evidenced the  
41 defendant's intention to surrender the mortgaged property to the  
42 lienholder.

43       (4) This section applies to any foreclosure action filed on  
44 or after October 1, 2018.

45       Section 2. This act shall take effect October 1, 2018.