

To: Bankruptcy/UCC Committee

From: Foreclosure Notice Bill Task Force

Re: Proposed Foreclosure Notice Bill

Date: August 31, 2020

Attached for your consideration, please find a proposed bill concerning notice to homeowners in foreclosure. This bill will require a notice to be included on the first page of a complaint in foreclosure actions involving certain types of residential real property.

The proposed bill incorporates prior feedback from this Committee, including:

- Eliminating the requirement to print the notice on a separate, colored sheet of paper;
- Eliminating language that implied an absolute right to the benefit of the automatic stay when a bankruptcy case is filed; and
- Including references to non-bankruptcy alternatives and resources.

Following this cover sheet is a sample complaint with the proposed required notice to demonstrate what the notice would look like in practice.

We intend to seek approval to pursue legislation in the 2020 session to pass the proposed foreclosure notice bill.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

MEGALENDER PORTFOLIO SERVICES,
LLC,

Plaintiff,

vs.

Case No.

DAVID DEBTOR; DEBBIE DEBTOR;
NEIGHBORHOOD HOMEOWNERS'
ASSOCIATION, INC.; UNKNOWN
TENANT 1; and UNKNOWN TENANT 2,

Defendants.

COMPLAINT

NOTICE TO HOMEOWNER

You are in danger of losing your home.

You should carefully read both the summons and complaint and immediately contact an attorney to obtain advice on how to protect yourself and your home. If you cannot afford to hire an attorney, you may qualify for free legal assistance through your local legal aid organization.

Under certain circumstances, the U.S. Bankruptcy Code may provide relief from foreclosure. If you qualify for such relief, filing a chapter 13 bankruptcy petition may stay a foreclosure proceeding and allow you to (i) construct a repayment plan that provides for payment of mortgage arrears over the life of the plan, while maintaining current mortgage payments as they become due, or (ii) propose mortgage modification mediation. Please note, however, that filing a bankruptcy petition for the sole purpose of staying a foreclosure, without a good faith intent to construct and fund a repayment plan, may result in sanctions.

The state encourages you to investigate all of your options in foreclosure, including contacting your lender about loss mitigation programs that may be available to you. There are also government agencies and non-profit organizations that provide educational resources, including tips on trying to negotiate with your lender during the foreclosure process. For more information about such entities, please visit the consumer protection resources on the website of the Florida Attorney General.

Mortgage foreclosure is a complex process, and homeowners in foreclosure are often targeted by scams. You should be very careful of any unsolicited offers to “save” your home. If you believe that you may be a victim of a scam involving your home, please contact the Office of the Attorney General or the Office of Financial Regulation’s Bureau of Financial Investigations.

COMPLAINT

Plaintiff, MEGALENDER PORTFOLIO SERVICES, LLC (“Lender”), by and through its undersigned counsel, sues the Defendants, DAVID DEBTOR; DEBBIE DEBTOR; NEIGHBORHOOD HOMEOWNERS’ ASSOCIATION, INC.; UNKNOWN TENANT 1; and UNKNOWN TENANT 2, and states:

31-01616-20

1 A bill to be entitled
2 An act relating to mortgage foreclosures; creating s.
3 702.13, F.S.; requiring foreclosing mortgagees to
4 provide certain notice to individual mortgagors under
5 certain circumstances; providing requirements and a
6 form for such notice; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 702.13, Florida Statutes, is created to
11 read:

12 702.13 Notice to homeowners in mortgage foreclosure
13 actions.—

14 (1) In an action involving residential real property,
15 including individual units of condominiums and cooperatives,
16 which are designed principally for occupation by from one to
17 four families, the foreclosing mortgagee must provide to the
18 mortgagor(s) the Notice to Homeowner required under this
19 section.

20 (2) The notice must be prominently displayed beginning on
21 the face of the first page of the complaint, directly below the
22 title of the complaint. The title of the notice must be in 20-
23 point boldface type; the body of the notice must be no smaller
24 than 12-point type. The notice must be in substantially the
25 following form:

26
27 NOTICE TO HOMEOWNER

28
29 You are in danger of losing your home.

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30
31 You should carefully read both the summons and
32 complaint and immediately contact an attorney to
33 obtain advice on how to protect yourself and your
34 home. If you cannot afford to hire an attorney, you
35 may qualify for free legal assistance through your
36 local legal aid organization.

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63 homeowners in foreclosure are often targeted by scams.
64 You should be very careful of any unsolicited offers
65 to "save" your home. If you believe that you may be a
66 victim of a scam involving your home, please contact
67 the Office of the Attorney General or the Office of
68 Financial Regulation's Bureau of Financial
69 Investigations.

70 Section 2. This act shall take effect July 1, 2021.