

Bankruptcy/UCC Committee’s Proposal to Create New Section 702.13, Florida Statutes – Notice to Homeowners in Foreclosure

I. Introduction

The Bankruptcy/UCC Committee seeks to create new Section 702.13, Florida Statutes – Notice to Homeowners in Foreclosure (the “Foreclosure Notice Bill”). The Foreclosure Notice Bill will require that, in foreclosure actions involving residential real property, the foreclosing mortgagee provide a notice to the homeowner of certain rights and options available to them.

II. Purpose

The purpose of the Foreclosure Notice Bill is to educate homeowners concerning alternatives to foreclosure and to warn them about scams that target homeowners in foreclosure.

III. Summary of the Foreclosure Notice Bill

The Foreclosure Notice Bill specifies requirements for the format of the notice, including typeface requirements and placement of the notice prominently on the first page of the complaint. The Foreclosure Notice Bill also sets forth the form and content of the notice that will be required under the new statute (the “Notice to Homeowner”).

Substantively, the Notice to Homeowner: (i) notifies the homeowner that they are in danger of losing their home; (ii) provides concise, neutral information concerning the homeowner’s options to save their home, including hiring an attorney, filing bankruptcy, and contacting the lender regarding loss mitigation programs; (iii) warns the homeowner that homeowners in foreclosure are often the target of scams; and (iv) informs the homeowner that educational resources can be found on the website of the Florida Attorney General.

IV. Legislative History

In 2019, Representative Fentrice Driskell (District 63) sponsored a prior version of the Foreclosure Notice Bill, House Bill 495 (the “2019 Foreclosure Notice Bill”). The 2019 Foreclosure Notice Bill was later withdrawn. The current Foreclosure Notice Bill differs from and improves upon the 2019 Foreclosure Bill in several ways:

- The notice required under the 2019 Foreclosure Notice Bill (the “2019 Notice”) was to be printed on a separate, colored sheet of paper. This requirement was ripe for litigation because it would be difficult to prove compliance. Additionally, in practice, most plaintiffs’ attorneys transmit their service documents, including summonses and complaints, by email to their process servers to be printed and served. Thus, this requirement also would result in lenders being unreasonably vulnerable to mistakes by process servers. The new Notice to Homeowner eliminates the requirement that the notice be printed on a separate, colored sheet of

paper. Lender's attorneys will have total control over the process, and compliance will be self-evident because the notice will be placed on the face of the complaint.

- The 2019 Notice included information regarding chapter 13 bankruptcy that was too absolute in that it implied that filing chapter 13 bankruptcy will always result in a stay of the foreclosure proceedings. The information regarding chapter 13 bankruptcy was also incomplete in that it only advised of the option to construct a repayment plan that provides for payment of the mortgage arrearages over the life of the plan; it did not advise homeowners that there is also an option to participate in mortgage modification mediation in order to modify the mortgage. The current Notice to Homeowner makes it clear that filing chapter 13 bankruptcy may result in a stay of the foreclosure proceedings, and it describes both options – payment of arrearages over the life of the plan and mortgage modification mediation – that may be available to the homeowner in a chapter 13 bankruptcy case.
- Additionally, the current Notice to Homeowner also informs homeowners that many lenders have loss mitigation programs available as another alternative to foreclosure and warns homeowners to beware of scams that target homeowners in foreclosure.

V. Financial Impact

None. The Foreclosure Notice Bill will not require the State of Florida to expend funds or result in generation of revenue.

VI. Conclusion

The Foreclosure Notice Bill strikes a fair and reasonable balance between the interests of homeowners and foreclosing lenders. The information in the Notice to Homeowner is objective and neutral; it provides valuable and practical information to homeowners that will empower them to find solutions to save their home without providing legal advice or promoting certain foreclosure alternatives over others. Additionally, the Foreclosure Notice Bill does not create any onerous requirements for lenders. The formatting requirements are simple and straightforward, and compliance with the requirements will be self-evident because the Notice to Homeowner is to be displayed on the face of the complaint.