

By Senator Bennett

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1                                   A bill to be entitled  
2       An act relating to mortgage foreclosures; amending s.  
3       95.281, F.S.; specifying a limited statute of  
4       limitations for certain deficiency judgments;  
5       requiring claims for deficiency connected with a  
6       foreclosure action to be filed within a time certain  
7       after a foreclosure sale; providing an exception for  
8       participation in the Florida Mortgage Foreclosure  
9       Diversion Program; providing exception criteria;  
10      creating s. 95.285, F.S.; establishing the Florida  
11      Mortgage Foreclosure Diversion Program; authorizing  
12      mortgagees to obtain an extension of the statute of  
13      limitations on mortgage deficiencies under certain  
14      circumstances; authorizing mortgagees to offer  
15      mortgagors opportunities to participate in the  
16      program; providing mortgagee and mortgagor program  
17      participation criteria, procedures, and requirements;  
18      specifying duties and limitations of mortgagors and  
19      mortgagees under the program; providing for continued  
20      participation in the program after certain deadlines;  
21      specifying participation in the program as consent to  
22      additional rights and privileges for mortgagees and  
23      voluntary waiver of rights by mortgagors; providing an  
24      effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

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28       Section 1. Subsection (1) of section 95.281, Florida  
29       Statutes, is amended, subsection (5) is renumbered as subsection

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30 (6), and a new subsection (5) is added to that section, to read:

31 95.281 Limitations; instruments encumbering real property.-

32 (1) The lien of a mortgage or other instrument encumbering  
33 real property, herein called mortgage, except those specified in  
34 subsection (6) ~~(5)~~, shall terminate after the expiration of the  
35 following periods of time:

36 (a) If the final maturity of an obligation secured by a  
37 mortgage is ascertainable from the record of it, 5 years after  
38 the date of maturity.

39 (b) If the final maturity of an obligation secured by a  
40 mortgage is not ascertainable from the record of it, 20 years  
41 after the date of the mortgage, unless prior to such time the  
42 holder of the mortgage:

43 1. Rerecords the mortgage and includes a copy of the  
44 obligation secured by the mortgage so that the final maturity is  
45 ascertainable; or

46 2. Records a copy of the obligation secured by the mortgage  
47 from which copy the final maturity is ascertainable and by  
48 affidavit identifies the mortgage by its official recording data  
49 and certifies that the obligation is the obligation described in  
50 the mortgage;

51  
52 in which case the lien shall terminate 5 years after the date of  
53 maturity.

54 (c) For all obligations, including taxes, paid by the  
55 mortgagee, 5 years from the date of payment. A mortgagee shall  
56 have no right of subrogation to the lien of the state for taxes  
57 paid by the mortgagee to protect the security of his or her  
58 mortgage unless he or she obtains an assignment from the state

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59 of the tax certificate. Redemption of the tax certificate shall  
60 be insufficient for subrogation.

61 (5) (a) All claims for a deficiency in connection with a  
62 deficiency judgment entered on or after October 1, 2010, are  
63 subject to a 6-month statute of limitations beginning upon entry  
64 of the judgment and all claims for a deficiency in connection  
65 with a foreclosure action in accordance with chapter 702 must be  
66 filed within 6 months after the foreclosure sale date or such  
67 claims are void as a matter of law, subject to the exception  
68 provided in paragraph (b).

69 (b) Any mortgagee who in good faith participates in the  
70 foreclosure diversion program under s. 95.285, shall have 5  
71 years from:

72 1. The date of a foreclosure sale to pursue a deficiency  
73 judgment with respect to any deficiency arising out of a  
74 foreclosure action pursuant to chapter 702; or

75 2. The date of a partial payoff of a mortgage loan to  
76 pursue a deficiency which arises in connection with and is  
77 incident to a short-sale payoff of such mortgage loan, and in  
78 connection with such short-sale payoff the mortgagee releases  
79 and satisfies its mortgage lien on the property.

80 (6)-(5) This section does not apply to mortgages or deeds of  
81 trust executed by any railroad or other public utility  
82 corporation or by any receiver or trustee of them or to liens or  
83 notices of liens under chapter 713.

84 Section 2. Section 95.285, Florida Statutes, is created to  
85 read:

86 95.285 Florida Mortgage Foreclosure Diversion Program.—

87 (1) A mortgagee may obtain an extension of the statute of

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88 limitations on mortgage deficiencies by consenting to  
89 participate in the Florida Mortgage Foreclosure Diversion  
90 Program as provided in this section.

91 (a) Prior to filing any action for foreclosure or in the  
92 case of a pending foreclosure action, at any time prior to the  
93 entry of the foreclosure judgment, the mortgagee may offer any  
94 mortgagor the opportunity to participate in the program.

95 (b) Within 60 days after declaring a mortgage loan to be in  
96 default, the mortgagee shall initiate participation in the  
97 program by delivering to the mortgagor a written diversion offer  
98 to voluntarily participate in the program, together with  
99 information describing the terms of participation as follows:

100 1. A statement that clearly describes the program in which  
101 the mortgagee shall identify and be bound to a preapproved  
102 short-sale price, as well as a specified partial mortgage loan  
103 payoff, which shall be binding upon the mortgagor for a period  
104 of 1 year after the date of entering the program, and that, in  
105 exchange for this commitment by the mortgagee, the mortgagor  
106 shall voluntarily extend the statute of limitations from 6  
107 months to 5 years and further agree to waive the right of  
108 discharge of a deficiency judgment, if any, in any bankruptcy  
109 proceeding voluntarily filed by the mortgagor within 24 months  
110 after the final judgment date or date of closing on a short  
111 sale.

112 2. Provide the name, current telephone numbers, and e-mail  
113 and physical mailing addresses of such employees, agents, or  
114 delegates of the mortgagee possessing the authority to  
115 negotiate, authorize, and bind the mortgagor to the terms and  
116 requirements embodied in the program and to release and satisfy

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117 any mortgage lien.

118 (c) If a mortgagee submits a diversion offer to a  
119 mortgagor, the mortgagor shall have 45 days after receiving the  
120 diversion offer to accept such offer in writing and, as a  
121 condition precedent to participation in the program, provide to  
122 the mortgagee the following:

123 1. Documentation evidencing that the mortgagor has retained  
124 an attorney in this state to assist the mortgagor with  
125 completing the program documentation requirements.

126 2. Documentation evidencing that the mortgagor has retained  
127 a real estate broker licensed in this state to assist the  
128 mortgagor with selling the property at the short-sale price,  
129 including, but not limited to, providing a copy of the listing  
130 agreement between the real estate broker and the mortgagor.

131 3. A financial hardship affidavit, consisting of the  
132 mortgagor's assets, owned individually or jointly or held for  
133 the benefit of the mortgagor, liabilities, income, and living  
134 expenses, and such affidavit shall be signed under penalty of  
135 perjury and acknowledged before a notary public.

136 4. An estimated HUD-1 Settlement Statement, which sets  
137 forth the following:

138 a. The sales price the mortgagor proposes to sell the  
139 property.

140 b. Any outstanding monetary encumbrances or liens that are  
141 customarily reflected on the settlement statement, including,  
142 but not limited to, any condominium or homeowners' association  
143 fees and assessments, code enforcement liens, construction  
144 liens, liens for outstanding real estate taxes or similar liens,  
145 and estoppel fees. Reliance in good faith by a settlement agent

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146 on the statements of a mortgagor shall not subject the  
147 settlement agent to liability.

148 c. The amount that the mortgagor proposes as the payoff  
149 amount of any outstanding mortgage encumbering the property.

150 5. A title commitment or opinion concerning title from an  
151 attorney licensed in this state that indicates all requirements  
152 to convey marketable title to a third party.

153 6. Tax returns and financial statements, including, but not  
154 limited to, any statement concerning bank accounts of any nature  
155 or any account that contains securities or other similar  
156 investments, together with such additional financial  
157 documentation as the mortgagee may reasonably request.

158 (d) The mortgagor shall update its financial information  
159 when reasonably requested by the mortgagee or when the mortgagor  
160 experiences a material change in circumstances. In no event  
161 shall the mortgagor be required to provide updated financial  
162 documentation more frequently than once every 30 days, except as  
163 authorized by this section.

164 (2) Upon receipt of the mortgagor's acceptance package, the  
165 mortgagee shall refrain from all collection or foreclosure  
166 activity for a suspension period consisting of a minimum of 1  
167 year after the date of acceptance or as otherwise agreed between  
168 the mortgagee and mortgagor.

169 (3) Within 30 days after the mortgagor's acceptance of the  
170 diversion offer, the mortgagee shall provide the mortgagor the  
171 amount of a preapproved price or short-sale price and the  
172 partial payoff amount of the mortgage payoff the mortgagee will  
173 accept to release and satisfy its mortgage or liens encumbering  
174 the property.

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175       (a) In no event shall the short-sale price be greater than  
176 the current appraised value of the property or the outstanding  
177 balance of the mortgage loan, whichever is less. The mortgagee  
178 shall have the option to update the short-sale price and the  
179 partial payoff amount the mortgagee is willing to accept based  
180 upon market conditions, not more frequently than once every 6  
181 months. The mortgagee shall promptly deliver to the mortgagor  
182 the good faith documentation that supports its proposed short-  
183 sale price, including any updates to the short-sale price. Good  
184 faith documentation shall include, but not be limited to, a  
185 current appraisal by an appraiser licensed in this state who is  
186 located in the county in which the property is located.

187       (b) The partial payoff amount shall be ratably reduced by  
188 any condominium or homeowners' association fees and assessments  
189 and property taxes that accrue or are recalculated after the  
190 date of the diversion offer. However, in no event shall the  
191 mortgagee be required to consent to release any lien when the  
192 aggregate amount of condominium or homeowners' association fees  
193 and assessments exceeds the amounts for which the mortgagee  
194 would be liable as set forth in s. 718.116 or s. 720.3085, as  
195 applicable.

196       (4) Except in the case where aggregate condominium or  
197 homeowners' association fees and assessments exceed the amounts  
198 authorized by chapter 718 or chapter 720, the mortgagee shall,  
199 within 15 days after receiving from the mortgagor a copy of any  
200 bona fide written contract setting forth a sales price equal to  
201 or in excess of the mortgagee's approved short-sale price or,  
202 alternatively, a payoff amount to the mortgagee equal to or in  
203 excess of the partial payoff amount, deliver to the mortgagor a

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204 final payoff letter confirming the short payoff amount and  
205 setting forth the amount of a deficiency, if any, the mortgagee  
206 claims is still due and owed by the mortgagor. The failure of  
207 the mortgagee to provide the final payoff letter within the 15-  
208 day period shall not prevent the mortgagor from proceeding with  
209 closing on and transferring the property and shall relieve the  
210 mortgagor of any obligation to the mortgagee for a deficiency  
211 judgment or any unpaid portion of the mortgage loan.

212 (5) The mortgagor and mortgagee must consent in writing to  
213 the following as conditions to participation in the program:

214 (a) The mortgagor agrees to maintain the property in good  
215 condition pending the short sale or foreclosure of the property  
216 and to commit no waste on the property.

217 (b) The mortgagor agrees to waive any right to discharge a  
218 deficiency judgment or debt owed to the mortgagee in bankruptcy  
219 for a period of 24 months after date of the short-sale closing  
220 or foreclosure sale.

221 (c) The mortgagor waives any rights concerning exemption  
222 from garnishment.

223 (6) The mortgagee is under no obligation to provide a final  
224 payoff letter or release its mortgage lien for any offer that is  
225 less than its stated short-sale price or that results in a  
226 mortgage loan payoff amount less than partial payoff amount.  
227 Nothing in this section prevents a mortgagee from accepting less  
228 than its stated short-sale offer.

229 (7) Upon mutual written consent of the mortgagee and the  
230 mortgagor, the parties may continue to participate in the  
231 program beyond the initial suspension period. For each  
232 additional suspension period of 1 year that the mortgagee and

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233 the mortgagor participate in the program, the statute of  
234 limitations for pursuing and collecting a deficiency shall be  
235 extended an additional year. The parties may participate in the  
236 program for such time as they both mutually agree, but in no  
237 event may the total statute of limitations exceed 7 years in the  
238 aggregate.

239 (8) In consideration of the additional rights and  
240 privileges afforded to mortgagees and the voluntary waiver of  
241 rights by mortgagors participating in the program, participation  
242 in the program constitutes consent by both parties to the  
243 requirements and remedies set forth in this section.

244 Section 3. This act shall take effect July 1, 2010.