

1
2 An act relating to procedures for the
3 satisfaction of debts; amending s. 55.141,
4 F.S.; revising provisions relating to
5 satisfaction of judgments and decrees;
6 eliminating the authority of judges to act
7 under these provisions when there is no clerk
8 of court; revising requirements of the clerk
9 when accepting payment for satisfaction of a
10 judgment and executing and recording a
11 satisfaction of judgment; providing a sample
12 form to be used by a clerk when recording a
13 satisfaction of judgment; revising provisions
14 relating to notification of satisfaction of
15 judgment to a judgment holder; amending s.
16 55.202, F.S.; revising procedures for acquiring
17 a judgment lien; authorizing the court to file
18 a judgment lien certificate before a judgment
19 becomes final under certain circumstances;
20 providing that an improperly filed certificate
21 is of no effect; amending s. 55.204, F.S.;
22 revising provisions relating to the
23 continuation of judgment liens; revising
24 provisions requiring the Department of State to
25 maintain certain files and information;
26 amending s. 55.205, F.S.; deleting a provision
27 authorizing certain creditors to bring certain
28 actions against the property of a debtor;
29 amending ss. 55.602, 55.603, 55.604, 55.605,
30 and 55.606, F.S.; revising provisions relating
31 to foreign judgments to apply only to

1 out-of-country foreign judgments; amending s.
2 56.21, F.S.; revising requirements for notices
3 of a levy and execution sale; amending s.
4 56.27, F.S.; clarifying provisions relating to
5 payment of money received under execution;
6 amending s. 56.29, F.S.; revising requirements
7 regarding supplementary proceedings for
8 unsatisfied judgments; amending s. 77.03, F.S.;
9 deleting the provision that a garnishing
10 creditor must believe that execution would be
11 unavailing; amending s. 77.04, F.S.; specifying
12 a time period for a garnishee to serve an
13 answer to a writ; amending s. 77.041, F.S.;
14 increasing the time period during which a
15 garnishing creditor may object to the debtor's
16 claim of exemption and request a hearing;
17 amending s. 77.07, F.S.; providing for
18 automatic dissolution of a writ and discharge
19 of a garnishee of liability under certain
20 circumstances; granting a plaintiff the right
21 to extend a writ for a certain time period;
22 providing procedures; amending s. 222.01, F.S.;
23 revising provisions relating to the designation
24 of homestead property by the owner prior to
25 levy to include foreign judgments; amending s.
26 319.27, F.S.; correcting a cross-reference;
27 amending s. 679.1021, F.S.; redefining the term
28 "lien creditor"; amending s. 701.02, F.S.;
29 providing that chapters 670-680 of the Uniform
30 Commercial Code govern the attachment and
31 perfection of a security interest in a mortgage

1 upon real property and in a promissory note or
2 other right to payment or performance secured
3 by that mortgage; providing that the assignment
4 of such a mortgage need not be recorded under
5 s. 701.02, F.S., in order for a security
6 interest in the mortgage to attach or be
7 perfected under the Uniform Commercial Code;
8 providing that a creditor or subsequent
9 purchaser of real property or of any interest
10 therein may rely on a full or partial release,
11 discharge, consent, joinder, subordination,
12 satisfaction, or assignment of a mortgage upon
13 the property which was made by the mortgagee of
14 record, without regard to the filing of certain
15 Uniform Commercial Code financing statements;
16 providing that the filing of such a financing
17 statement does not constitute notice for the
18 purposes of s. 701.02, F.S.; defining the term
19 "mortgagee of record"; providing effective
20 dates.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 55.141, Florida Statutes, is
25 amended to read:

26 55.141 Satisfaction of judgments and decrees; duties
27 of clerk ~~and judge~~.--

28 (1) All judgments and decrees for the payment of money
29 rendered in the courts of this state and which have become
30 final, may be satisfied at any time prior to the actual levy
31 of execution issued thereon by payment of the full amount of

1 such judgment or decree, with interest thereon, plus the costs
2 of the issuance, if any, of execution thereon into the
3 registry of the court where rendered.

4 (2) Upon such payment, the clerk, ~~or the judge if~~
5 ~~there is no clerk,~~ shall execute ~~issue his or her receipt~~
6 ~~therefor~~ and ~~shall~~ record in the official records a
7 satisfaction of judgment, ~~provided by the judgment holder,~~
8 upon payment of the recording charge prescribed in s.
9 28.24(12) ~~plus the necessary costs of mailing to the clerk or~~
10 ~~judge.~~ Upon payment of the amount required in subsection (1)
11 and the recording charge required by this subsection and
12 execution and recordation of the satisfaction by the clerk,
13 any lien created by the judgment is satisfied and discharged.
14 ~~The clerk or judge shall formally notify the owner of record~~
15 ~~of such judgment or decree, if such person and his or her~~
16 ~~address are known to the clerk or judge receiving such~~
17 ~~payment, and, upon request therefor, shall pay over to the~~
18 ~~person entitled, or to his or her order, the full amount of~~
19 ~~the payment so received, less his or her service charge for~~
20 ~~providing a receipt upon the court issuing a writ of execution~~
21 ~~on such judgment or decree, if any has been issued, and less~~
22 ~~his or her service charge for receiving into and paying out of~~
23 ~~the registry of the court such payment, together with the~~
24 ~~service charge of the clerk for receiving into and paying such~~
25 ~~money out of the registry of the court.~~

26 (3) The satisfaction of judgment executed by the clerk
27 must be substantially in the following form:

28
29 Satisfaction of Judgment by Clerk
30
31

1 The undersigned Clerk acknowledges on this day of
2 (month), (year), receipt from (identity of party making
3 payment) of \$ (total amount received), comprised of \$ face
4 amount of the judgment; \$ interest accruing on the
5 judgment through the date of payment; \$ costs of issuance
6 of any execution; and \$ for recording.

7
8 Pursuant to section 55.141, Florida Statutes, said sum is paid
9 to satisfy the lien and to discharge that certain final
10 judgment in favor of (name of judgment holder) whose last
11 known address, if known, is (address if shown on face of
12 judgment or in recorded affidavit pursuant to section
13 55.10(1), Florida Statutes,) against (name of judgment debtor)
14 recorded in Official Records Volume/Book , page of the
15 public records of County, Florida.

16
17 Upon the execution of this satisfaction, said judgment is
18 satisfied and discharged.

19
20 If an address for the judgment holder was provided under
21 section 55.10(1), Florida Statutes, I certify that a copy of
22 this notice has been sent to the judgment holder at said
23 address by certified mail with return receipt requested or by
24 registered mail if the notice is to be sent outside the
25 continental United States.

26
27 Clerk of Court

28 (4) If an address for the judgment holder was provided
29 under s. 55.10(1), the clerk shall formally send a copy of the
30 satisfaction to the judgment holder at that address by
31 certified mail with return receipt or by registered mail if

1 the notice is to be sent outside the continental United
2 States. If an address is not provided under s. 55.10(1) or if
3 delivery cannot be effected to such address, the clerk may,
4 but is not obligated to, make reasonable attempts to locate
5 the judgment holder. The discharge of the lien by the issuance
6 of the satisfaction is not dependent upon the delivery of
7 notice by the clerk.

8 (5) Upon application of the judgment holder, the clerk
9 shall pay over to the judgment holder the full amount of the
10 payment received, less the clerk's fees for issuing execution
11 on such judgment, if any has been issued; less the clerk's
12 fees for receiving into and paying out of the registry of the
13 court such payment; less the clerk's fees for recording the
14 satisfaction of judgment; and, if the clerk incurred expenses
15 in locating the judgment holder, less the reasonable expenses
16 so incurred.

17 ~~(3) Full payment of judgments and decrees as in the~~
18 ~~preceding subsections of this section provided shall~~
19 ~~constitute full payment and satisfaction thereof and any lien~~
20 ~~created by such judgment or decree shall thereupon be~~
21 ~~satisfied and discharged.~~

22 Section 2. Subsections (2) and (3) of section 55.202,
23 Florida Statutes, are amended to read:

24 55.202 Judgments, orders, and decrees; lien on
25 personal property.--

26 (2) A judgment lien may be acquired on a judgment
27 debtor's interest in all personal property in this state
28 subject to execution under s. 56.061, other than fixtures,
29 money, negotiable instruments, and mortgages.

30 (a) A judgment lien is acquired by filing a judgment
31 lien certificate in accordance with s. 55.203 with the

1 Department of State after the judgment has become final and if
2 the time to move for rehearing has lapsed, no motion for
3 rehearing is pending, and no stay of the judgment or its
4 enforcement is then in effect. A court may authorize, for
5 cause shown, the filing of a judgment lien certificate before
6 a judgment has become final when the court has authorized the
7 issuance of a writ of execution in the same matter. A judgment
8 lien certificate not filed in compliance with this subsection
9 is permanently void and of no effect.

10 (b) For any lien, warrant, assessment, or judgment
11 collected by the Department of Revenue, a judgment lien may be
12 acquired by filing the judgment lien certificate information
13 or warrant with the Department of State in accordance with
14 subsection (5).

15 (c) Except as provided in s. 55.208, the effective
16 date of a judgment lien is the date, including the time of
17 day, of filing. Although no lien attaches to property, and a
18 creditor does not become a lien creditor as to liens under
19 chapter 679, until the debtor acquires an interest in the
20 property, priority among competing judgment liens is
21 determined in order of filing date and time.

22 (d) Except as provided in s. 55.204(3), a judgment
23 creditor may file only one effective judgment lien certificate
24 based upon a particular judgment.

25 (3) Except as otherwise provided in s. 55.208, the
26 priority of a judgment lien acquired in accordance with this
27 section or s. 55.204(3) is established at the date and time
28 the judgment lien certificate is filed.

29 Section 3. Subsections (4) and (6) of section 55.204,
30 Florida Statutes, are amended to read:

31

1 55.204 Duration and continuation of judgment lien;
2 destruction of records.--

3 (4) A judgment lien continues only as to itemized
4 property for an additional 90 days after lapse of the lien.
5 Such judgment lien will continue only if:

6 (a) The property had been itemized and its location
7 described with sufficient particularity in the instructions
8 for levy to permit the sheriff to act;

9 (b) The instructions for the levy had been delivered
10 to the sheriff prior to the date of lapse of the lien ~~to~~
11 ~~permit the sheriff to act;~~ and

12 (c) The property was located in the county in which
13 the sheriff has jurisdiction at the time of delivery of the
14 instruction for levy. Subsequent removal of the property does
15 not defeat the lien. A court may order continuation of the
16 lien beyond the 90-day period on a showing that extraordinary
17 circumstances have prevented levy.

18 (6) If no second judgment lien is filed, the
19 Department of State shall maintain each judgment lien file and
20 all information contained therein for a minimum of 1 year
21 after the judgment lien lapses in accordance with this
22 section. If a second judgment lien is filed, the department
23 shall maintain both files and all information contained in
24 such files for a minimum of 1 year after the second judgment
25 lien lapses.

26 Section 4. Subsection (1) of section 55.205, Florida
27 Statutes, is amended to read:

28 55.205 Effect of judgment lien.--

29 (1) ~~A valid judgment lien gives the judgment creditor~~
30 ~~the right to proceed against the property of the debtor~~
31 ~~through writ of execution, garnishment, or other judicial~~

1 ~~process.~~ A judgment creditor who has not acquired a judgment
2 lien as provided in s. 55.202 or whose lien has lapsed may
3 nevertheless proceed against the judgment debtor's property
4 through any appropriate ~~other~~ judicial process. Such judgment
5 creditor proceeding by writ of execution acquires a lien as of
6 the time of levy and only on the property levied upon. Except
7 as provided in s. 55.208, such judgment creditor takes subject
8 to the claims and interest of priority judgment creditors.

9 Section 5. Subsection (2) of section 55.602, Florida
10 Statutes, is amended to read:

11 55.602 Definitions.--As used in this act, the term:

12 (2) "Out-of-country foreign judgment" means any
13 judgment of a foreign state granting or denying recovery of a
14 sum of money, other than a judgment for taxes, a fine, or
15 other penalty.

16 Section 6. Section 55.603, Florida Statutes, is
17 amended to read:

18 55.603 Applicability.--This act applies to any

19 out-of-country foreign judgment that is final and conclusive
20 and enforceable where rendered, even though an appeal
21 therefrom is pending or is subject to appeal.

22 Section 7. Section 55.604, Florida Statutes, is
23 amended to read:

24 55.604 Recognition and enforcement.--Except as

25 provided in s. 55.605, an out-of-country ~~a~~ foreign judgment
26 meeting the requirements of s. 55.603 is conclusive between
27 the parties to the extent that it grants or denies recovery of
28 a sum of money. Procedures for recognition and enforceability
29 of an out-of-country ~~a~~ foreign judgment shall be as follows:
30
31

1 (1) The out-of-country foreign judgment shall be filed
2 with the clerk of the court and recorded in the public records
3 in the county or counties where enforcement is sought.

4 (a) At the time of the recording of an out-of-country
5 ~~a~~ foreign judgment, the judgment creditor shall make and
6 record with the clerk of the circuit court an affidavit
7 setting forth the name, social security number, if known, and
8 last known post-office address of the judgment debtor and of
9 the judgment creditor.

10 (b) Promptly upon the recording of the out-of-country
11 foreign judgment and the affidavit, the clerk shall mail
12 notice of the recording of the out-of-country foreign
13 judgment, by registered mail with return receipt requested, to
14 the judgment debtor at the address given in the affidavit and
15 shall make a note of the mailing in the docket. The notice
16 shall include the name and address of the judgment creditor
17 and of the judgment creditor's attorney, if any, in this
18 state. In addition, the judgment creditor may mail a notice of
19 the recording of the judgment to the judgment debtor and may
20 record proof of mailing with the clerk. The failure of the
21 clerk to mail notice of recording will not affect the
22 enforcement proceedings if proof of mailing by the judgment
23 creditor has been recorded.

24 (2) The judgment debtor shall have 30 days after
25 service of the notice to file a notice of objection with the
26 clerk of the court specifying the grounds for nonrecognition
27 or nonenforceability under this act.

28 (3) Upon the application of any party, and after
29 proper notice, the circuit court shall have jurisdiction to
30 conduct a hearing, determine the issues, and enter an
31

1 appropriate order granting or denying recognition in
2 accordance with the terms of this act.

3 (4) If the judgment debtor fails to file a notice of
4 objection within the required time, the clerk of the court
5 shall record a certificate stating that no objection has been
6 filed.

7 (5) Upon entry of an order recognizing the
8 out-of-country foreign judgment, or upon recording of the
9 clerk's certificate set forth above, the out-of-country
10 foreign judgment shall be enforced in the same manner as the
11 judgment of a court of this state.

12 (6) Once an order recognizing the out-of-country
13 foreign judgment has been entered by a court of this state,
14 the order and a copy of the judgment may be recorded in any
15 other county of this state without further notice or
16 proceedings, and shall be enforceable in the same manner as
17 the judgment of a court of this state.

18 (7) A lien on real estate in any county shall be
19 created only when there has been recorded in the official
20 records of the county (a) a certified copy of the judgment,
21 and (b) a copy of the clerk's certificate or the order
22 recognizing the out-of-country foreign judgment. The priority
23 of such lien will be established as of the time the latter of
24 the two recordings has occurred. ~~Such lien may be partially~~
25 ~~released or satisfied by the person designated pursuant to~~
26 ~~paragraph (1).~~

27 (8) A judgment lien on personal property is acquired
28 only when a judgment lien certificate is filed in accordance
29 with s. 55.203 with the Department of State.

30 Section 8. Section 55.605, Florida Statutes, is
31 amended to read:

1 55.605 Grounds for nonrecognition.--

2 (1) An out-of-country ~~A~~ foreign judgment is not
3 conclusive if:

4 (a) The judgment was rendered under a system which
5 does not provide impartial tribunals or procedures compatible
6 with the requirements of due process of law.

7 (b) The foreign court did not have personal
8 jurisdiction over the defendant.

9 (c) The foreign court did not have jurisdiction over
10 the subject matter.

11 (2) An out-of-country ~~A~~ foreign judgment need not be
12 recognized if:

13 (a) The defendant in the proceedings in the foreign
14 court did not receive notice of the proceedings in sufficient
15 time to enable him or her to defend.

16 (b) The judgment was obtained by fraud.

17 (c) The cause of action or claim for relief on which
18 the judgment is based is repugnant to the public policy of
19 this state.

20 (d) The judgment conflicts with another final and
21 conclusive order.

22 (e) The proceeding in the foreign court was contrary
23 to an agreement between the parties under which the dispute in
24 question was to be settled otherwise than by proceedings in
25 that court.

26 (f) In the case of jurisdiction based only on personal
27 service, the foreign court was a seriously inconvenient forum
28 for the trial of the action.

29 (g) The foreign jurisdiction where judgment was
30 rendered would not give recognition to a similar judgment
31 rendered in this state.

1 Section 9. Section 55.606, Florida Statutes, is
2 amended to read:

3 55.606 Personal jurisdiction.--The out-of-country
4 foreign judgment shall not be refused recognition for lack of
5 personal jurisdiction if:

6 (1) The defendant was served personally in the foreign
7 state;

8 (2) The defendant voluntarily appeared in the
9 proceedings, other than for the purpose of protecting property
10 seized or threatened with seizure in the proceedings or of
11 contesting the jurisdiction of the court over him or her;

12 (3) The defendant, prior to the commencement of the
13 proceedings, had agreed to submit to the jurisdiction of the
14 foreign court with respect to the subject matter involved;

15 (4) The defendant was domiciled in the foreign state
16 when the proceedings were instituted, or, being a body
17 corporate, had its principal place of business, was
18 incorporated, or had otherwise acquired corporate status, in
19 the foreign state;

20 (5) The defendant had a business office in the foreign
21 state and the proceedings in the foreign court involved a
22 cause of action or a claim for relief arising out of business
23 done by the defendant through that office in the foreign
24 state; or

25 (6) The defendant operated a motor vehicle or airplane
26 in the foreign state and the proceedings involved a cause of
27 action or claim for relief arising out of such operation.

28 Section 10. Effective October 1, 2005, section 56.21,
29 Florida Statutes, is amended to read:

30 56.21 Execution sales; notice.--Notice of all sales
31 under execution shall be given by advertisement once each week

1 for 4 successive weeks in a newspaper published in the county
2 in which the sale is to take place. The time of such notice
3 may be shortened in the discretion of the court from which the
4 execution issued, upon affidavit that the property to be sold
5 is subject to decay and will not sell for its full value if
6 held until date of sale. On or before the date of the first
7 publication or posting of the notice of sale, a copy of the
8 notice of sale shall be furnished by certified mail to the
9 attorney of record of the judgment debtor, or to the judgment
10 debtor at the judgment debtor's last known address if the
11 judgment debtor does not have an attorney of record. Such copy
12 of the notice of sale shall be mailed even though a default
13 judgment was entered. When levying upon personal property, a
14 notice of such levy and execution sale and a copy of the
15 affidavit required by s. 56.27(4) shall be sent by the sheriff
16 ~~made by the levying creditor~~ to the attorneys attorney of
17 record of all the judgment creditors, creditor or to all the
18 judgment creditors who do not have an attorney of record,
19 ~~creditor~~ who have ~~has~~ acquired a judgment lien as provided in
20 s. 55.202 or s. 55.204(3), and whose liens have not lapsed at
21 the time of levy, at the address listed in the judgment lien
22 certificate, or, if amended, in any amendment to the judgment
23 lien certificate, and to all secured creditors who have filed
24 financing statements as provided in part V of chapter 679 s-
25 ~~679.401~~ in the name of the judgment debtor reflecting a
26 security interest in property of the kind to be sold at the
27 execution sale at the address listed in the financing
28 statement, or, if amended, in any amendment to the financing
29 statement. Such notice shall be made in the same manner as
30 notice is made to any judgment debtor under this section. When
31 levying upon real property, notice of such levy and execution

1 sale shall be made to the property owner of record in the same
2 manner as notice is made to any judgment debtor pursuant to
3 this section. When selling real or personal property, the sale
4 date shall not be earlier than 30 days after the date of the
5 first advertisement.

6 Section 11. Subsections (1), (2), and (4) of section
7 56.27, Florida Statutes, are amended to read:

8 56.27 Executions; payment of money collected.--

9 (1) All money received under executions shall be paid,
10 in the order prescribed, to the following: the sheriff, for
11 costs; the levying creditor in the amount of \$500 as
12 liquidated expenses; if the levy is upon real property, the
13 first priority lienholder under s. 55.10; and if the levy is
14 upon personal property, and the first priority lienholder
15 under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth
16 in an affidavit required by subsection (4), or his or her
17 attorney, in satisfaction of the judgment lien, provided that
18 the judgment lien has not lapsed at the time of the levy. The
19 receipt of the attorney shall be a release of the officer
20 paying the money to him or her. When the name of more than one
21 attorney appears in the court file, the money shall be paid to
22 the attorney who originally commenced the action or who made
23 the original defense unless the file shows that another
24 attorney has been substituted.

25 (2) When property sold under execution brings more
26 than the amount needed to satisfy the provisions of subsection
27 (1), the surplus shall be paid in the order of priority to any
28 judgment lienholders whose judgment liens have not lapsed.
29 Priority of liens on personal property shall be based on the
30 effective date of the judgment lien acquired under s. 55.202,
31 s. 55.204(3), or s. 55.208(2), as set forth in an affidavit

1 required under subsection (4). If there is a surplus after all
2 valid judgment liens and execution liens have been satisfied,
3 the surplus must be paid to the defendant.

4 (4) ~~On or~~ Before the date of the first publication or
5 posting of the notice of sale provided for under s. 56.21, the
6 levying creditor shall deliver to the sheriff file an
7 affidavit setting forth the following as to the judgment
8 debtor:

9 (a) An attestation that the levying creditor has
10 reviewed the database or judgment lien records established in
11 accordance with ss. 55.201-55.209 and that the information
12 contained in the affidavit based on that review is true and
13 correct;

14 (b) The information required under s. 55.203(1) and
15 (2) for each judgment lien certificate indexed under the name
16 of the judgment debtor as to each judgment creditor; the file
17 number assigned to the record of the original and, if any, the
18 second judgment lien; and the date of filing for each judgment
19 lien certificate under s. 55.202 or s. 55.204(3); and

20 (c) A statement that the levying creditor either does
21 not have any other levy in process or, if another levy is in
22 process, the levying creditor believes in good faith that the
23 total value of the property under execution does not exceed
24 the amount of outstanding judgments.

25 Section 12. Subsection (1) of section 56.29, Florida
26 Statutes, is amended to read:

27 56.29 Proceedings supplementary.--

28 (1) When any person or entity holds an unsatisfied
29 judgment or judgment lien obtained under chapter 55 ~~execution~~
30 ~~and has delivered a writ of execution to any sheriff,~~ the
31 judgment holder or judgment lienholder ~~plaintiff in execution~~

1 may file an affidavit so stating, identifying, if applicable,
2 the issuing court, the case number, and the unsatisfied amount
3 of the judgment or judgment lien, including accrued costs and
4 interest, and stating that the execution is valid and
5 outstanding, and thereupon the judgment holder or judgment
6 lienholder is entitled to these proceedings supplementary to
7 execution.

8 Section 13. Section 77.03, Florida Statutes, is
9 amended to read:

10 77.03 Issuance of writ after judgment.--After judgment
11 has been obtained against defendant but before the writ of
12 garnishment is issued, the plaintiff, the plaintiff's agent or
13 attorney, shall file a motion (which shall not be verified or
14 negative defendant's exemptions) stating the amount of the
15 judgment ~~and that movant does not believe that defendant has~~
16 ~~in his or her possession visible property on which a levy can~~
17 ~~be made sufficient to satisfy the judgment.~~ The motion may be
18 filed and the writ issued either before or after the return of
19 execution.

20 Section 14. Section 77.04, Florida Statutes, is
21 amended to read:

22 77.04 Writ; form.--The writ shall require the
23 garnishee to serve an answer to it on plaintiff within 20 days
24 after service stating whether he or she is indebted to
25 defendant at the time of the answer, or was indebted at the
26 time of service of the writ, plus sufficient time not to
27 exceed 1 business day for the garnishee to act expeditiously
28 on the writ, or at any time between such times; and in what
29 sum and what tangible or intangible personal property of
30 defendant the garnishee has in his or her possession or
31 control at the time of his or her answer, or had at the time

1 of the service of the writ, or at any time between such times;
2 and whether the garnishee knows of any other person indebted
3 to defendant, or who may have any of the property of defendant
4 in his or her possession or control. The writ shall state the
5 amount named in plaintiff's motion.

6 Section 15. Subsections (1) and (3) of section 77.041,
7 Florida Statutes, are amended to read:

8 77.041 Notice to individual defendant for claim of
9 exemption from garnishment; procedure for hearing.--

10 (1) Upon application for a writ of garnishment by a
11 plaintiff, if the defendant is an individual, the clerk of the
12 court shall attach to the writ the following "Notice to
13 Defendant":

14
15 NOTICE TO DEFENDANT OF RIGHT AGAINST
16 GARNISHMENT OF WAGES, MONEY,
17 AND OTHER PROPERTY
18

19 The Writ of Garnishment delivered to you with this
20 Notice means that wages, money, and other property belonging
21 to you have been garnished to pay a court judgment against
22 you. HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES,
23 MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

24 State and federal laws provide that certain wages,
25 money, and property, even if deposited in a bank, savings and
26 loan, or credit union, may not be taken to pay certain types
27 of court judgments. Such wages, money, and property are exempt
28 from garnishment. The major exemptions are listed below on the
29 form for Claim of Exemption and Request for Hearing. This list
30 does not include all possible exemptions. You should consult a
31 lawyer for specific advice.

1 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY
2 FROM BEING GARNISHED, OR TO GET BACK ANYTHING
3 ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR
4 CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS
5 SET FORTH BELOW AND HAVE THE FORM NOTARIZED.
6 YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE
7 WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS
8 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU
9 MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM
10 TO THE PLAINTIFF AND THE GARNISHEE AT THE
11 ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

12 If you request a hearing, it will be held as soon as
13 possible after your request is received by the court. The
14 plaintiff must file any objection within 3 ~~2~~ business days if
15 you hand delivered to the plaintiff a copy of the form for
16 Claim of Exemption and Request for Hearing or, alternatively,
17 8 business ~~7~~ days if you mailed a copy of the form for claim
18 and request to the plaintiff. If the plaintiff files an
19 objection to your Claim of Exemption and Request for Hearing,
20 the clerk will notify you and the other parties of the time
21 and date of the hearing. You may attend the hearing with or
22 without an attorney. If the plaintiff fails to file an
23 objection, no hearing is required, the writ of garnishment
24 will be dissolved and your wages, money, or property will be
25 released.

26 YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION
27 IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR
28 PROPERTY FROM BEING APPLIED TO THE COURT
29 JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL
30 ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD
31 SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE

1 LAWYER, LEGAL SERVICES MAY BE AVAILABLE.
2 CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE
3 CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM
4 IN YOUR AREA.

5
6 CLAIM OF EXEMPTION AND
7 REQUEST FOR HEARING
8

9 I claim exemptions from garnishment under the following
10 categories as checked:

- 11 1. Head of family wages. (You must check a.
12 or b. below.)
13 a. I provide more than one-half of the
14 support for a child or other dependent and
15 have net earnings of \$500 or less per week.
16 b. I provide more than one-half of the
17 support for a child or other dependent, have
18 net earnings of more than \$500 per week, but
19 have not agreed in writing to have my wages
20 garnished.
21 2. Social Security benefits.
22 3. Supplemental Security Income benefits.
23 4. Public assistance (welfare).
24 5. Workers' Compensation.
25 6. Unemployment Compensation.
26 7. Veterans' benefits.
27 8. Retirement or profit-sharing benefits or
28 pension money.
29 9. Life insurance benefits or cash surrender
30 value of a life insurance policy or proceeds
31 of annuity contract.

- 1 10. Disability income benefits.
- 2 11. Prepaid College Trust Fund or Medical
- 3 Savings Account.
- 4 12. Other exemptions as provided by law.
- 5 (explain)

7 I request a hearing to decide the validity of my claim. Notice
 8 of the hearing should be given to me at:

9
 10 Address:
 11 Telephone number:.....

12
 13 The statements made in this request are true to the best of my
 14 knowledge and belief.

15
 16
 17 Defendant's signature
 18 Date.....

19
 20 STATE OF FLORIDA
 21 COUNTY OF

22
 23 Sworn and subscribed to before me this day of
 24 ...(month and year)..., by ...(name of person making
 25 statement)...

26 Notary Public/Deputy Clerk
 27 Personally KnownOR Produced Identification....
 28 Type of Identification Produced.....

29
 30 (3) Upon the filing by a defendant of a claim of
 31 exemption and request for hearing, a hearing will be held as

1 soon as is practicable to determine the validity of the
2 claimed exemptions. If the plaintiff does not file a sworn
3 written statement that contests the defendant's claim of
4 exemption within 3 ~~2~~ business days after hand delivering the
5 claim and request or, alternatively, 8 ~~7~~ business days, if the
6 claim and request were served by mail, no hearing is required
7 and the clerk must automatically dissolve the writ and notify
8 the parties of the dissolution by mail.

9 Section 16. Subsection (5) is added to section 77.07,
10 Florida Statutes, to read:

11 77.07 Dissolution of writ.--

12 (5) If the plaintiff fails to file a dismissal or
13 motion for final judgment within 6 months after filing the
14 writ of garnishment, the writ shall automatically be dissolved
15 and the garnishee shall be discharged from further liability
16 under the writ. The plaintiff has the right to extend the writ
17 for an additional 6 months by serving the garnishee and the
18 defendant a notice of extension and filing in the underlying
19 proceeding a certification of such service.

20 Section 17. Subsections (2) and (4) of section 222.01,
21 Florida Statutes, are amended to read:

22 222.01 Designation of homestead by owner before
23 levy.--

24 (2) When a certified copy of a judgment has been filed
25 in the public records of a county pursuant to chapter 55 ~~s-~~
26 ~~55-10~~, a person who is entitled to the benefit of the
27 provisions of the State Constitution exempting real property
28 as homestead and who has a contract to sell or a commitment
29 from a lender for a mortgage on the homestead may file a
30 notice of homestead in the public records of the county in
31

1 | which the homestead property is located in substantially the
2 | following form:

3 |
4 | NOTICE OF HOMESTEAD

5 |
6 | To:...(Name and address of judgment creditor as
7 | shown on recorded judgment and name and address
8 | of any other person shown in the recorded
9 | judgment to receive a copy of the Notice of
10 | Homestead)....

11 |
12 | You are notified that the undersigned claims as
13 | homestead exempt from levy and execution under
14 | Section 4, Article X of the State Constitution,
15 | the following described property:

16 |
17 | ...(Legal description)...

18 |
19 | The undersigned certifies, under oath, that he
20 | or she has applied for and received the
21 | homestead tax exemption as to the
22 | above-described property, that is the tax
23 | identification parcel number of this property,
24 | and that the undersigned has resided on this
25 | property continuously and uninterruptedly from
26 | ...(date)... to the date of this Notice of
27 | Homestead. Further, the undersigned will either
28 | convey or mortgage the above-described property
29 | pursuant to the following:

1 ...(Describe the contract of sale or loan
2 commitment by date, names of parties, date of
3 anticipated closing, and amount. The name,
4 address, and telephone number of the person
5 conducting the anticipated closing must be set
6 forth.)...

7
8 The undersigned also certifies, under oath,
9 that the judgment lien filed by you on
10 ...(date)... and recorded in Official Records
11 Book, Page, of the Public Records of
12 County, Florida, does not constitute a
13 valid lien on the described property.

14
15 YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION
16 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN
17 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU
18 MUST FILE AN ACTION IN THE CIRCUIT COURT OF
19 COUNTY, FLORIDA, FOR A DECLARATORY
20 JUDGMENT TO DETERMINE THE CONSTITUTIONAL
21 HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO
22 FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY
23 AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS
24 OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED.
25 YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER
26 OR LENDER, OR HIS OR HER SUCCESSORS AND
27 ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF
28 SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR
29 OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE
30 PROPERTY.

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1 within 180 days after the filing in the public records of the
2 notice of homestead. This subsection shall not act to prohibit
3 a lien from attaching to the real property described in the
4 notice of homestead at such time as the property loses its
5 homestead status.

6 Section 18. Subsection (2) and paragraph (b) of
7 subsection (3) of section 319.27, Florida Statutes, are
8 amended to read:

9 319.27 Notice of lien on motor vehicles or mobile
10 homes; notation on certificate; recording of lien.--

11 (2) No lien for purchase money or as security for a
12 debt in the form of a security agreement, retain title
13 contract, conditional bill of sale, chattel mortgage, or other
14 similar instrument or any other nonpossessory lien, including
15 a lien for child support, upon a motor vehicle or mobile home
16 upon which a Florida certificate of title has been issued
17 shall be enforceable in any of the courts of this state
18 against creditors or subsequent purchasers for a valuable
19 consideration and without notice, unless a sworn notice of
20 such lien has been filed in the department and such lien has
21 been noted upon the certificate of title of the motor vehicle
22 or mobile home. Such notice shall be effective as constructive
23 notice when filed. The ~~No~~ interest of a statutory
24 nonpossessory lienor; the interest of a nonpossessory
25 execution, attachment, or equitable lienor; or the interest of
26 a lien creditor as defined in s. 679.1021(1)(zz) ~~679.301(3)~~,
27 if nonpossessory, shall not be enforceable against creditors
28 or subsequent purchasers for a valuable consideration unless
29 such interest becomes a possessory lien or is noted upon the
30 certificate of title for the subject motor vehicle or mobile
31 home prior to the occurrence of the subsequent transaction.

1 Provided the provisions of this subsection relating to a
2 nonpossessory statutory lienor; a nonpossessory execution,
3 attachment, or equitable lienor; or the interest of a lien
4 creditor as defined in s. 679.1021(1)(zz) ~~679.301(3)~~ shall not
5 apply to liens validly perfected prior to October 1, 1988. The
6 notice of lien shall provide the following information:

7 (a) The date of the lien if a security agreement,
8 retain title contract, conditional bill of sale, chattel
9 mortgage, or other similar instrument was executed prior to
10 the filing of the notice of lien;

11 (b) The name and address of the registered owner;

12 (c) A description of the motor vehicle or mobile home,
13 showing the make, type, and vehicle identification number; and

14 (d) The name and address of the lienholder.

15 (3)

16 (b) As applied to a determination of the respective
17 rights of a secured party under this chapter and a lien
18 creditor as defined by s. 679.1021(1)(zz) ~~679.301(3)~~, or a
19 nonpossessory statutory lienor, a security interest under this
20 chapter shall be perfected upon the filing of the notice of
21 lien with the department, the county tax collector, or their
22 agents. Provided, however, the date of perfection of a
23 security interest of such secured party shall be the same date
24 as the execution of the security agreement or other similar
25 instrument if the notice of lien is filed in accordance with
26 this subsection within 15 days after the debtor receives
27 possession of the motor vehicle or mobile home and executes
28 such security agreement or other similar instrument. The date
29 of filing of the notice of lien shall be the date of its
30 receipt by the department central office in Tallahassee, if
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1 first filed there, or otherwise by the office of the county
2 tax collector, or their agents.

3 Section 19. Paragraph (zz) of subsection (1) of
4 section 679.1021, Florida Statutes, is amended to read:

5 679.1021 Definitions and index of definitions.--

6 (1) In this chapter, the term:

7 (zz) "Lien creditor" means:

8 1. A creditor that has acquired a lien on the property
9 involved by attachment, levy, judgment lien certificate, or
10 the like;

11 2. An assignee for benefit of creditors from the time
12 of assignment;

13 3. A trustee in bankruptcy from the date of the filing
14 of the petition; or

15 4. A receiver in equity from the time of appointment.

16 Section 20. Section 701.02, Florida Statutes, is
17 amended to read:

18 701.02 Assignment not effectual against creditors
19 unless recorded and indicated in title of document;
20 applicability.--

21 (1) An ~~No~~ assignment of a mortgage upon real property
22 or of any interest therein, is not ~~shall be~~ good or effectual
23 in law or equity, against creditors or subsequent purchasers,
24 for a valuable consideration, and without notice, unless the
25 assignment is contained in a document that ~~which~~, in its
26 title, indicates an assignment of mortgage and is recorded
27 according to law.

28 (2) This section also applies ~~The provisions of this~~
29 ~~section shall also extend~~ to assignments of mortgages
30 resulting from transfers of all or any part or parts of the
31 debt, note or notes secured by mortgage, and none of same is

1 ~~shall be~~ effectual in law or in equity against creditors or
2 subsequent purchasers for a valuable consideration without
3 notice, unless a duly executed assignment be recorded
4 according to law.

5 (3) Any assignment of a mortgage, duly executed and
6 recorded according to law, purporting to assign the principal
7 of the mortgage debt or the unpaid balance of such principal,
8 shall, as against subsequent purchasers and creditors for
9 value and without notice, be held and deemed to assign any and
10 all accrued and unpaid interest secured by such mortgage,
11 unless such interest ~~is shall be~~ specifically and
12 affirmatively reserved in such an assignment by the assignor,
13 and ~~a no~~ reservation of such interest or any part thereof may
14 not shall be implied.

15 (4) Notwithstanding subsections (1), (2), and (3)
16 governing the assignment of mortgages, chapters 670-680 of the
17 Uniform Commercial Code of this state govern the attachment
18 and perfection of a security interest in a mortgage upon real
19 property and in a promissory note or other right to payment or
20 performance secured by that mortgage. The assignment of such a
21 mortgage need not be recorded under this section for purposes
22 of attachment or perfection of a security interest in the
23 mortgage under the Uniform Commercial Code.

24 (5) Notwithstanding subsection (4), a creditor or
25 subsequent purchaser of real property or any interest therein,
26 for valuable consideration and without notice, is entitled to
27 rely on a full or partial release, discharge, consent,
28 joinder, subordination, satisfaction, or assignment of a
29 mortgage upon such property made by the mortgagee of record,
30 without regard to the filing of any Uniform Commercial Code
31 financing statement that purports to perfect a security

1 interest in the mortgage or in a promissory note or other
2 right to payment or performance secured by the mortgage, and
3 the filing of any such financing statement does not constitute
4 notice for the purposes of this section. For the purposes of
5 this subsection, the term "mortgagee of record" means the
6 person named as the mortgagee in the recorded mortgage or, if
7 an assignment of the mortgage has been recorded in accordance
8 with this section, the term "mortgagee of record" means the
9 assignee named in the recorded assignment.

10 Section 21. Except as otherwise expressly provided in
11 this act, this act shall take effect upon becoming a law.

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