

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 427 CS                      Procedures for the Satisfaction of Debts  
**SPONSOR(S):** Seiler and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** CS/SB 370

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	5 Y, 0 N, w/CS	Kruse	Billmeier
2) Justice Appropriations Committee	9 Y, 0 N, w/CS	Sneed	DeBeaugrine
3) Justice Council	9 Y, 0 N, w/CS	Kruse	De La Paz
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

House Bill 427 makes clarifying and technical changes to provisions in Florida law relating to judgment liens, garnishment, and security interests in mortgages. The bill amends various sections of statute to:

- clarify provisions relating to the responsibilities of a clerk of court regarding the satisfaction of a judgment lien;
- clarify provisions relating to the timing for filing a judgment lien certificate;
- clarify provisions regarding instructions to the sheriff and recordkeeping by the Department of State;
- remove an unnecessary sentence which has been read to require the filing of a judgment lien certificate as a condition precedent to seeking garnishment;
- make clarifying changes to the "Uniform Out-of-Country Foreign Money-Judgment Recognition Act";
- make clarifying changes to provisions relating to the execution of liens and execution sales to recognize the possibility of multiple judgment lien creditors and give control over the mailing of notices to the sheriff;
- recognize provisions of s. 56.27, F.S., apply to liens on real property, as well as liens on personal property;
- remove the unnecessary requirement of delivery of a writ of execution prior to initiating proceedings supplementary to execution when the judgment debtor has no property available for a judgment lien;
- permit judgment holders to choose either a writ of execution or writ of garnishment to collect a judgment;
- extend to at least one business day the amount of time a garnishee has to act on a writ of garnishment;
- extend by one business day the amount of time in which a judgment holder must object to a judgment debtor's claims of exemption from garnishment;
- provide that if a plaintiff does not file a dismissal or motion for final judgment within 6 months of filing a writ of garnishment, the writ expires automatically, unless the plaintiff files for an extension;
- provide that a homestead property owner may use the notice of homestead provisions for liens based on foreign judgments;
- provide a clarifying reference within the definition of "lien creditor" in the Uniform Commercial Code provisions of Florida law relating to secured transactions;
- clarify that a security interest in a mortgage is perfected by possession or filing of the promissory note made in connection with the mortgage; and
- clarify that for transactions involving real property creditors and subsequent purchasers, interested parties may rely on the records filed with the clerk of court as opposed to Uniform Commercial Code filings.

The bill also revises the fees that a credit counseling agency may charge a consumer for services rendered.

There appears to be no significant fiscal impact on state or local governments.

Except as otherwise provided therein, the bill takes effect upon becoming a law.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0427d.JC.doc  
**DATE:** 4/18/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – This bill permits a judgment holder to choose either a writ of execution or writ of garnishment to collect a judgment, and, extends, by one business day, the time a judgment holder has to object to a judgment debtor’s claims of exemption from garnishment, thereby increasing the options available to a judgment holder.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

In 2000, the Legislature adopted a major revision to Florida’s judgment lien laws.<sup>1</sup> This revision became effective on October 1, 2001. Prior to the revision, judgment creditors were required to file a lien in each separate county where a judgment debtor may own property. Florida was one of 11 states that still followed the lien-on-delivery rule, which provides that a true lien is not actually created on personal property until the property is levied and sold by the sheriff. The revision established a statutory framework for perfecting and prioritizing judgment liens on personal property.<sup>2</sup> With the revision in place, judgment creditors need only file a single judgment lien certificate with the Department of State. Since the implementation of this major revision, the need for some clarification to the law has been identified.<sup>3</sup>

##### **Judgment Liens**

A judgment lien refers to a lien against property that is based on an underlying money judgment. When a party prevails in a lawsuit and is awarded monetary damages, the losing party is referred to as the “judgment debtor,” and the winning party is referred to as the “judgment creditor” or “judgment holder.” If the judgment debtor fails to pay the judgment creditor all or a part of the judgment, the judgment creditor may seek to attach and execute a lien against property owned by the judgment debtor. A judgment lien may be acquired on a judgment debtor’s interest in all personal property in the state other than fixtures, money, negotiable instruments, and mortgages, by filing a judgment lien certificate with the Department of State.<sup>4</sup>

A valid judgment lien confers on the judgment holder the right to proceed against the property of the judgment debtor through writ of execution, garnishment, or other judicial process.<sup>5</sup> A writ of execution authorizes the enforcement of a money judgment. The writ must be obtained from the clerk of the court. The judgment creditor must deliver the writ to the sheriff. The writ of execution directs the sheriff to levy on the property owned by the judgment debtor located in the county. Upon levy, the sheriff seizes the property and sells it. The proceeds of the sale are distributed to cover the costs of the sale, to pay the judgment creditor and any other judgment creditors, with the remainder, if any, going to the judgment debtor.<sup>6</sup> The levy is the process by which the property is seized for sale to satisfy the writ of execution

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<sup>1</sup> Chapter 2000-258, L.O.F.

<sup>2</sup> Sections 55.201-55.209, F.S.

<sup>3</sup> See Jeffrey Davis, *Fixing Florida’s Execution Lien Law Part Two: Florida’s New Judgment Lien on Personal Property*, 54 Fla. L. Rev. 119 (2002). Prof. Davis first wrote about the need to modernize Florida judgment lien law in 1996, which was a strong motivating factor for the revisions in 2000. See Jeffrey Davis, *Fixing Florida Execution Lien Law*, 48 Fla. L. Rev. 657 (1996).

<sup>4</sup> Section 55.202(2), F.S.

<sup>5</sup> Section 55.205(1), F.S. A judgment holder who has not acquired a judgment lien through the filing of a judgment lien certificate with the Department of State may nevertheless acquire a lien by writ of execution. Such lien is acquired at the time of levy against the property of the judgment debtor and is taken subject to the claims and priority of other judgment holders.

<sup>6</sup> Chapter 30, F.S., contains provisions relating to sheriffs and their responsibilities regarding writs, execution, and other related processes.

based on the underlying judgment. A sheriff may take actual or constructive custody of personal property. The sheriff must take enough property to satisfy the judgment, although he or she may accept payment in full on the writ in lieu of making a levy.<sup>7</sup>

### Satisfaction of Judgments

Section 55.141, F.S., authorizes a judgment debtor to satisfy the judgment against him or her before a judgment holder attempts to collect the judgment by paying the full amount of the judgment, with interest, plus the cost of issuing a satisfaction of judgment into the registry of the court that issued the judgment. Upon the payment, the clerk, or the judge if there is no clerk, must “record a satisfaction of judgment, *provided by the judgment holder*, upon payment of the recording charge . . . plus the necessary costs of mailing to the clerk or judge.”<sup>8</sup> The clerk or judge then must notify the judgment holder, if such person and his or her address are known to the clerk or judge, and pay the funds to the judgment holder upon request, less fees for receiving into and paying out of the registry of the court.<sup>9</sup>

Section 55.141, F.S., “was enacted primarily for the benefit of judgment debtors, and not judgment creditors.”<sup>10</sup> The benefits to a judgment debtor of making a payment to the registry of a court were described as follows in *Gerardi v. Carlisle*, 232 So. 2d 36, 39 (Fla. 1st DCA 1969):

By making such a deposit he precludes a levy from being made against his property, arrests the further accrual of interest on the judgment, and at the same time releases [any] property he may own from the lien of the judgment. The statute furthermore permits the judgment debtor to discharge his obligation by availing himself of the provisions of the statute under circumstances where the judgment creditor is unknown, cannot be reached, or his place of residence cannot be ascertained.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), a clerk of court in southwest Florida has declined to record a satisfaction of judgment because the judgment holder could not be located or because the judgment holder failed to deliver a satisfaction of judgment form to the clerk.<sup>11</sup> As a result, the purpose of the statute to allow an expedited procedure to clear judgment liens when the judgment holder cannot be located or refuses to timely deliver a satisfaction is defeated, according to the RPPTL.<sup>12</sup> The ability to clear judgment liens quickly is important to real estate practitioners who seek to close on a real estate transaction.<sup>13</sup>

### Garnishment

Under ch. 77, F.S., a judgment holder may seek to garnish a judgment debtor’s sources of income or accounts if the judgment holder believes that the judgment debtor does not have sufficient property to satisfy the judgment. As such, the law appears to prefer the seizure and sale of a judgment debtor’s property over garnishment. Under s. 77.041, F.S., a judgment debtor may claim that some of his or her assets or income is exempt from garnishment within 20 days after the receipt of a writ of garnishment. For example, the judgment debtor’s wages may not be garnished if the judgment debtor is the head of a household and furnishes more than half of the support for a child or dependent. Additionally, income and accounts including Social Security benefits, Supplemental Security Income benefits, welfare, workers’ compensation, unemployment compensation, and Prepaid College Trust Funds or Medical Savings Accounts

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<sup>7</sup> See ch. 56, F.S., for provisions regarding writs of executions and execution sales.

<sup>8</sup> Section 55.141(2), F.S. Emphasis added.

<sup>9</sup> *Id.*

<sup>10</sup> *Gerardi v. Carlisle*, 232 So. 2d 36, 39 (Fla. 1st DCA 1969).

<sup>11</sup> The Florida Bar, Real Property, Probate, and Trust Law Section, White Paper on F.S. 55.141 SATISFACTION OF JUDGMENTS AND DECREES.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

may not be garnished.<sup>14</sup> For the judgment holder to preserve rights to funds claimed under an exemption, the judgment holder must object to an exemption claim that is hand-delivered to him or her within 2 business days.<sup>15</sup> A judgment holder must object to exemption claims that are mailed to him or her within 7 business days of the date the exemption claims were mailed.

## Assignment of Mortgages

Mortgage warehousing is a process in which a warehousing bank provides financing to mortgage lenders to issue mortgage loans.<sup>16</sup> The financing from the warehousing bank to the mortgage lender is secured by a security interest in the underlying mortgages. The funds are advanced to the mortgage lender for a temporary period of time to allow the mortgage to be sold to a permanent investor. Because warehousing banks deal in large volumes of mortgages, they wish to be secure in the underlying mortgages without having to record the assignment of the security interest and incur the costs of recording.<sup>17</sup>

In *Rucker v. State Exchange Bank*, 355 So. 2d 171, 174 (Fla. 1st DCA 1978), the court held that “the assignment of a real estate mortgage securing a promissory note as collateral for a bank loan is not a secured transaction under Article 9 of the Uniform Commercial Code.” An interest in a real estate mortgage was protected by recording the assignment as required by s. 701.02, F.S., according to the court.<sup>18</sup>

According to *American Bank of the South v. Rothenberg*, 598 So. 2d 289, 290 (Fla. 5th DCA 1992):

Section 701.02, was enacted to protect a creditor or subsequent purchaser of land who has relied on the record satisfaction of a prior mortgage, which satisfaction was executed by the mortgagee after he made an unrecorded assignment of the same mortgage.

Section 701.02, F.S., is not applicable to successive assignees of mortgages.<sup>19</sup>

Article 9 of the Uniform Commercial Code (UCC), which is codified as ch. 679, F.S., was revised since *Rucker* to clearly indicate that the assignment of a mortgage securing a promissory note is a secured transaction.<sup>20</sup> Under s. 679.3131, F.S., one perfects a security interest in a real estate mortgage by possession of the promissory note. Alternatively the secured party can be perfected through filing under s. 679.3121, F.S. Nevertheless, some in the mortgage-servicing industry believe that *Rucker* stands for the proposition that the assignment of a security interest in a mortgage or the assignment of a mortgage must be recorded in order to perfect the security interest in the mortgage. The act of recording an interest in a mortgage is costly to the mortgage lending industry in terms of time and money. As a result, many assignments of an interest in Florida mortgages are not recorded.<sup>21</sup> These unrecorded mortgage assignments are viewed by

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<sup>14</sup> Section 77.041(1), F.S.

<sup>15</sup> Section 77.041(1) and (3), F.S.

<sup>16</sup> Jan Z. Krasnowiecki, J. Gregg Miller, and Lloyd R. Ziff; *The Kennedy Mortgage Co. Bankruptcy Case: New Light Shed on the Position of Mortgage Warehousing Bank*, 56 Am. Bnkr. L.J. 325, 328 (1982).

<sup>17</sup> Information provided by Burt Bruton, Member of the Executive Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar, January 6, 2005.

<sup>18</sup> Section 701.02(1), F.S., states: No assignment of a mortgage upon real property or of any interest therein, shall be good or effectual in law or equity, against creditors or subsequent purchasers, for a valuable consideration, and without notice, unless the assignment is contained in a document which, in its title, indicates an assignment of mortgage and is recorded according to law.

<sup>19</sup> *American Bank of the South v. Rothenberg*, 598 So. 2d 289, 290 (Fla. 5th DCA 1992).

<sup>20</sup> See s. 679.1091(4)(k)1., F.S.

<sup>21</sup> Information provided by Stuart Ames, member of the Executive Committee of the Business Law Section of The Florida Bar, January 4, 2005.

warehousing banks as having more risk than recorded assignments. Florida borrowers may pay for the increased risk borne by warehousing banks through higher borrowing costs.<sup>22</sup>

## **Credit Counseling**

Credit counseling organizations generally attempt to assist people with managing their personal debt. These organizations may attempt to help debtors avoid foreclosure and bankruptcy, reduce loan interest rates, and lower or consolidate monthly loan payments. Credit counseling organizations may also offer individual counseling for developing budgets, managing money, using credit, and building a savings plan.

Debt management plans are often provided by credit counseling organizations as a way of allowing a debtor to pay down debt through monthly deposits to the credit counseling service, which then distributes those funds to creditors. Credit counseling services often advertise that they work with clients to create a debt repayment plan that minimizes monthly payments, interest, and related fees.

Credit counseling organizations are sometimes granted non-profit status by the Internal Revenue Service based upon the consumer education services provided by the organization.<sup>23</sup> Non-profit credit counseling organizations use various methods for producing income for the organization. Many creditors pay recovery fees or "fair share" payments to non-profit credit counseling organizations for providing an alternative means of debt collection. Additionally, credit counseling organizations may request donations from consumers or fees for their services.

Florida regulates credit counseling services in ss. 817.801-817.806, F.S. Credit counseling services are defined as "confidential money management, debt reduction, and financial educational services."<sup>24</sup> Credit counseling agency is defined as any organization providing debt management services or credit counseling services.<sup>25</sup> Section 817.802, F.S., limits the amount that may be charged for services, and states:

It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor, directly or indirectly, a fee or contribution greater than \$50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor greater than \$120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(2)(b) are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor to the person or \$35 per month.

## **HB 427**

The provisions of the bill make clarifying and technical changes to provisions in Florida law relating to judgment liens, garnishment, and security interests in mortgages.

## **Satisfaction of Judgments**

The bill clarifies that a judgment holder does not have to supply a satisfaction of judgment form to a clerk of court in order for a clerk of court to record a satisfaction of judgment under s.

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<sup>22</sup> Information provided by Stuart Ames, member of the Executive Committee of the Business Law Section of The Florida Bar, January 4, 2005.

<sup>23</sup> Marta Lugones Moakley, "Credit Repair Organizations After Regulation: Wolves in Nonprofits' Clothing?" The Florida Bar Journal, July/August 2003, at 28, 33.

<sup>24</sup> Section 817.801(1), F.S.

<sup>25</sup> Section 817.801(4), F.S.

55.141, F.S. Upon the payment of the full amount of the judgment, with interest, and other required fees into the registry of the court, a clerk must record a satisfaction of judgment. The bill also deletes a requirement for a judge to record the satisfaction of judgment if there is no clerk. The inherent equitable powers of a court may enable it to issue a satisfaction of judgment when there is no clerk.<sup>26</sup> As such, express statutory authority for a judge to issue a satisfaction of judgment may be redundant.

Additionally, the bill creates a satisfaction of judgment form for use by a clerk of court to record judgments satisfied by judgment debtors under s. 55.141, F.S.

## **Judgment Liens**

The bill clarifies that a judgment is final, enabling a judgment holder to file a lien certificate with the Department of State, when the time to move for a rehearing has expired and no motion for a rehearing is pending. However, a judge, for cause shown, may authorize a judgment holder to file a lien certificate before the judgment becomes final. According to Professor Davis, a judge may wish to authorize a judgment holder to file a lien certificate before a judgment becomes final if there has been a showing that the judgment debtor may seek to remove to an out-of-state location personal property to which a lien certificate will apply.<sup>27</sup> The bill also provides that a judgment lien certificate not filed in compliance with this subsection is permanently void and of no effect.

The bill also clarifies the effect of a judgment lien after it lapses. Accordingly, the bill provides that a judgment lien continues for 90 day after it lapses if the instructions to levy are clear enough to permit a sheriff to levy on the judgment debtor's property and the instructions for the levy are delivered before the lapse of a judgment lien.

The bill clarifies the documents that must be maintained and the length of time those documents must be maintained by the Department of State (department) when a second judgment lien is filed by the judgment holder on the property of the judgment debtor. Under the bill, the department must maintain documents related to both the first and second liens for at least 1 year after the second judgment lien expires.

The bill deletes redundant language in s. 55.205(1), F.S., which authorizes a judgment holder to proceed against the property of a judgment debtor through judicial process. The bill also clarifies that a judgment holder that does not file a judgment lien may proceed against the judgment debtor's property through any appropriate judicial process.

Sections 55.601-55.607, F.S., provide a method for the enforcement of specified judgments issued by courts of foreign countries. Throughout these provisions, a judgment from a court of a foreign country is referred to as a foreign judgment from a "foreign state." To prevent confusion between a state of the United States and a "foreign state," the bill clarifies that a foreign state means an "out-of-country" foreign state. The bill also corrects an error in s. 55.604, F.S., by deleting the last sentence of s. 55.604(7), F.S. That sentence referred to a person designated pursuant to "paragraph (1)." No person, however, is designated in subsection (1) of s. 55.604, F.S.

Section 56.21, F.S., is amended by the bill to recognize that multiple judgment creditors may attempt to levy on the property of a judgment debtor at the same time. The bill changes the

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<sup>26</sup> See *Ford Motor Credit Co. v. Simmons*, 421 So. 2d 698, 700 (Fla. 2nd DCA 1982) (stating that "[e]very court of law possesses inherent equitable power sufficient to control its own judgments, and this includes power to set aside a satisfaction of one of its own judgments").

<sup>27</sup> Information provided by Prof. Jeffrey Davis, of the University of Florida College of Law.

responsibility of mailing a notice of the levy and execution sale from a levying creditor to the sheriff. This section is effective October 1, 2005.

Section 56.27, F.S., is amended by the bill to clarify that lien holders with the highest priority liens get paid before lien holders of lower priority are paid from the proceeds of the levy on the property of a judgment debtor.

Section 56.29, F.S., is amended by the bill to provide that a person or entity that has an unsatisfied judgment instead of an unsatisfied execution is entitled to supplemental proceedings to attempt to collect the unsatisfied judgment.

The bill also amends s. 679.1021(1)(zz), F.S., to provide that the term "lien creditor" includes a creditor that has acquired a judgment lien certificate.

### **Garnishment**

Section 77.03, F.S., is amended to allow a judgment holder to seek to garnish the income or accounts of a judgment debtor even if the debtor has visible assets that could be seized and sold to satisfy the judgment. As a result, creditors will have more options available to pursue the collection of a debt.

Section 77.04, F.S., is amended to provide a garnishee at least one business day in which to act on a writ of garnishment.

Section 77.041, F.S., is amended to increase the amount of time in which a judgment holder must object to claims of exemption from garnishment made by a judgment debtor. Under the bill, the time to object is increased from 2 business days to 3 business days from the date the claims of exemption from garnishment are hand-delivered to a judgment holder. When claims of exemption are mailed to the judgment holder, the time to object is increased from 7 business days to 8 business days.

Section 77.07, F.S., is amended to provide that if a plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ is automatically dissolved and the garnishee is discharged from further liability under the writ. A plaintiff has the right to extend the writ of garnishment for an additional 6 months by filing for an extension and notifying the garnishee and the defendant of the extension.

### **Assignment of Mortgages**

The bill creates s. 701.02(4), F.S., to clarify that the Uniform Commercial Code, as codified in the Florida Statutes, governs whether an assignment of a security interest in a mortgage has perfected or attached to the mortgage. As a result, the ambiguity as to whether assignments of security interests in mortgages must be recorded to be secured will be removed.

The bill also creates s. 701.02(5), F.S., to clarify that creditors and subsequent purchasers of real property may rely upon the real property records filed with the clerk of court. Creditors and subsequent purchasers will not have to search Uniform Commercial Code filings.

### **Credit Counseling**

The bill defines the term "creditor contribution" to mean any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by set-off to amounts otherwise payable to the creditor on behalf of debtors, provided that a creditor contribution may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor. The bill also provides that the debtor referred to is a

debtor who resides in the state. This change would allow the credit counseling agency to charge different and possibly higher fees to debtor clients residing outside the state. The bill also provides that after the initial set up or consultation with a consumer, a credit counselor or debt manager may receive additional fees by either charging not more than \$120 per year for additional consultations, or by deducting 15 percent of the monthly amount paid by the debtor for disbursement to a creditor or \$50 per month, whichever is greater. Current law provides a charge of 7.5 percent of the monthly amount paid by the debtor for disbursement to a creditor or \$35 per month.

The bill also clarifies that all accounts of a debtor held by a credit counseling agency must be audited. The bill also adds the newly defined term creditor contribution to a section of statute to allow a credit counseling agency to retain the contribution when disbursing funds to a creditor.

### **Other Provisions**

Lastly, the bill makes grammatical and technical changes to existing law.

The bill takes effect upon becoming a law except as otherwise provided therein.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends section 55.141, Florida Statutes, to clarify that a judgment holder does not have to supply a satisfaction of judgment form to a clerk of court in order for a clerk of court to record a satisfaction of judgment. This section provides that upon the payment of the full amount of the judgment, with interest, and other required fees into the registry of the court, a clerk must record a satisfaction of judgment. This section creates a satisfaction of judgment form for use by a clerk of court to record judgments satisfied by judgment debtors. This section also deletes a requirement for a judge to record the satisfaction of judgment if there is no clerk.

**Section 2.** Amends section 55.202, Florida Statutes, to clarify that a judgment has become final, enabling a judgment holder to file a lien certificate with the Department of State, when the time to move for a rehearing has expired and no motion for a rehearing is pending. This section also provides that a judge, for cause shown, may authorize a judgment holder to file a lien certificate before the judgment becomes final. Further, this section provides that a judgment lien certificate not filed in compliance with the provisions of the subsection of law in this section is permanently void and of no effect.

**Section 3.** Amends section 55.204, Florida Statutes, to provide that a judgment lien continues for 90 day after it lapses if the instructions to levy are clear enough to permit a sheriff to levy on the judgment debtor's property, and the instructions for the levy are delivered before the lapse of a judgment lien. This section also clarifies that the Department of State must maintain documents related to both the first and second liens for at least 1 year after the second judgment lien expires.

**Section 4.** Amends section 55.205, Florida Statutes, to delete redundant language that authorizes a judgment holder to proceed against the property of a judgment debtor through judicial process. This section also clarifies that a judgment holder that does not file a judgment lien may proceed against the judgment debtor's property through any appropriate judicial process.

**Section 5.** Amends section 55.602, Florida Statutes, regarding foreign judgments, to clarify that a foreign state means an "out-of-country" foreign state.

**Section 6.** Amends section 55.603, Florida Statutes, regarding foreign judgments, to clarify that a foreign state means an "out-of-country" foreign state.

**Section 7.** Amends section 55.604, Florida Statutes, regarding foreign judgments, to clarify that a foreign state means an "out-of-country" foreign state, and to delete the last sentence of subsection (7),



which refers to a person designated pursuant to “paragraph (1),” because no person is designated in subsection (1).

**Section 8.** Amends section 55.605, Florida Statutes, regarding foreign judgments, to clarify that a foreign state means an “out-of-country” foreign state.

**Section 9.** Amends section 55.606, Florida Statutes, regarding foreign judgments, to clarify that a foreign state means an “out-of-country” foreign state.

**Section 10.** Amends section 56.21, Florida Statutes, to change the responsibility of mailing a notice of the levy and execution sale from a levying creditor to the sheriff. This section is effective October 1, 2005.

**Section 11.** Amends section 56.27, Florida Statutes, to clarify that lien holders with the highest priority liens get paid before lien holders of lower priority are paid from the proceeds from the levy on the property of a judgment debtor.

**Section 12.** Amends section 56.29, Florida Statutes, to provide that a person or entity that has an unsatisfied judgment instead of an unsatisfied execution is entitled to supplemental proceedings to attempt to collect the unsatisfied judgment.

**Section 13.** Amends section 77.03, Florida Statutes, to allow a judgment holder to seek to garnish the income or accounts of a judgment debtor even if the debtor has visible assets that could be seized and sold to satisfy the judgment.

**Section 14.** Amends section 77.04, Florida Statutes, to extend the time for a garnishee to act on a writ of garnishment to allow action to be taken within at least one business day of the service of the writ.

**Section 15.** Amends section 77.041, Florida Statutes, to increase the amount of time a judgment holder has to object to claims of exemption from garnishment made by a judgment debtor from 2 business days to 3 business days from the date the claims of exemption from garnishment are hand-delivered to a judgment holder, and from 7 business days to 8 business days when claims of exemption are mailed to the judgment holder.

**Section 16.** Amends section 77.07, Florida Statutes, to provide that if a plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ is automatically dissolved and the garnishee is discharged from further liability under the writ. A plaintiff may file for an extension for an additional 6 months.

**Section 17.** Amends section 222.01, Florida Statutes (Designation of homestead by owner before levy), to reference chapter 55, Florida Statutes, instead of a specific subsection of chapter 55.

**Section 18.** Amends section 319.27, Florida Statutes, to change the reference to the definition of “lien creditor” to section 679.1021(1)(zz), Florida Statutes.

**Section 19.** Amends section 679.1021(1)(zz), Florida Statutes, to provide that the term “lien creditor” includes a creditor that has acquired a judgment lien certificate.

**Section 20.** Amends section 701.02, Florida Statutes, to clarify that the Uniform Commercial Code, as codified in the Florida Statutes, governs whether an assignment of a security interest in a mortgage has perfected or attached to the mortgage. This section also clarifies that creditors and subsequent purchasers of real property may rely upon the real property records filed with the clerk of court.

**Section 21.** Amends s. 817.801, Florida Statutes, to define the term “creditor contribution.”

**Section 22.** Amends s. 817.802, Florida Statutes, to indicate that a debtor is a person residing in this state. This section also modifies the fees a credit counseling service may charge a debtor residing in this state.

**Section 23.** Amends s. 817.804, Florida Statutes, to clarify that all accounts of a credit counseling service must be audited annually.

**Section 24.** Amends s. 817.805, Florida Statutes, to permit a credit counseling service to withhold a creditor contribution when making a disbursement to a creditor.

**Section 25.** Provides that the bill is effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill clarifies those procedures that a judgment debtor may follow to quickly obtain a satisfaction of judgment issued by a clerk of court. Additionally, judgment holders may be able to collect judgments more efficiently from judgment debtors. Lastly, mortgage warehousing operations may incur less cost in assigning mortgages.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

This bill was heard by the Committee on Civil Justice on February 23, 2005 and was reported favorably by the Committee with three amendments.

**Amendment 1** extends the time for a garnishee to act on a writ of garnishment to allow action to be taken by the garnishee within at least one business day of the service of the writ.

**Amendment 2** provides that if a plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ shall automatically be dissolved and the garnishee is discharged from further liability under the writ. A plaintiff may file for an extension for an additional 6 months.

**Amendment 3** is a technical amendment.

This bill was heard by the Committee on Justice Appropriations on March 18, 2005 and was reported favorably by the Committee with one amendment.

The **amendment** is a technical amendment to address concerns raised by the Department of Revenue to provide judgment lien holders the same rights to pursue satisfaction of judgment as judgment holders.

This bill was heard by the Justice Council on April 14, 2005, and was reported favorably with one amendment. The amendment revised the fees a credit counseling agency may charge a consumer for services to allow an agency to charge more than is allowed under existing law, and also made a few clarifying changes to several other statutes that regulate credit counseling agencies.