

CHAMBER ACTION

1 The Justice Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to procedures for the satisfaction of
7 debts; amending s. 55.141, F.S.; revising provisions
8 relating to satisfaction of judgments and decrees;
9 eliminating the authority of judges to act under these
10 provisions when there is no clerk of court; revising
11 requirements of the clerk when accepting payment for
12 satisfaction of a judgment and executing and recording a
13 satisfaction of judgment; providing a sample form to be
14 used by a clerk when recording a satisfaction of judgment;
15 revising provisions relating to notification of
16 satisfaction of judgment to a judgment holder; amending s.
17 55.202, F.S.; revising procedures for acquiring a judgment
18 lien; authorizing the court to file a judgment lien
19 certificate before a judgment becomes final under certain
20 circumstances; providing that an improperly filed
21 certificate is of no effect; amending s. 55.204, F.S.;
22 revising provisions relating to the continuation of
23 judgment liens; revising provisions requiring the

24 Department of State to maintain certain files and
25 information; amending s. 55.205, F.S.; deleting a
26 provision authorizing certain creditors to bring certain
27 actions against the property of a debtor; amending ss.
28 55.602, 55.603, 55.604, 55.605, and 55.606, F.S.; revising
29 provisions relating to foreign judgments to apply only to
30 out-of-country foreign judgments; amending s. 56.21, F.S.;
31 revising requirements for notices of a levy and execution
32 sale; amending s. 56.27, F.S.; clarifying provisions
33 relating to payment of money received under execution;
34 amending s. 56.29, F.S.; revising requirements regarding
35 supplementary proceedings for unsatisfied judgments and
36 judgment liens; amending s. 77.03, F.S.; deleting the
37 provision that a garnishing creditor must believe that
38 execution would be unavailing; amending s. 77.04, F.S.;
39 specifying a time period for a garnishee to serve an
40 answer to a writ; amending s. 77.041, F.S.; increasing the
41 time period during which a garnishing creditor may object
42 to the debtor's claim of exemption and request a hearing;
43 amending s. 77.07, F.S.; providing for automatic
44 dissolution of a writ and discharge of a garnishee of
45 liability under certain circumstances; granting a
46 plaintiff the right to extend a writ for a certain time
47 period; providing procedures; amending s. 222.01, F.S.;
48 revising provisions relating to the designation of
49 homestead property by the owner prior to levy to include
50 foreign judgments; amending s. 319.27, F.S.; correcting a
51 cross reference; amending s. 679.1021, F.S.; redefining

52 | the term "lien creditor"; amending s. 701.02, F.S.;

53 | providing that certain chapters of the Uniform Commercial

54 | Code govern the attachment and perfection of a security

55 | interest in a mortgage upon real property and in a

56 | promissory note or other right to payment or performance

57 | secured by that mortgage; providing that the assignment of

58 | such a mortgage need not be recorded under s. 701.02,

59 | F.S., in order for a security interest in the mortgage to

60 | attach or be perfected under the Uniform Commercial Code;

61 | providing that a creditor or subsequent purchaser of real

62 | property or of any interest therein may rely on a full or

63 | partial release, discharge, consent, joinder,

64 | subordination, satisfaction, or assignment of a mortgage

65 | upon the property which was made by the mortgagee of

66 | record, without regard to the filing of certain Uniform

67 | Commercial Code financing statements; providing that the

68 | filing of such a financing statement does not constitute

69 | notice for the purposes of s. 701.02, F.S.; defining the

70 | term "mortgagee of record"; amending s. 817.801, F.S.;

71 | defining the term "creditor contribution"; amending s.

72 | 817.802, F.S.; revising the amount of fees or

73 | contributions that a debt manager or credit counselor may

74 | charge to certain debtors; amending s. 817.804, F.S.;

75 | revising an audit requirement for debt managers and credit

76 | counselors; amending s. 817.805, F.S.; excluding creditor

77 | contributions from certain funds disbursement requirements

78 | for debt managers and credit counselors; providing

79 | effective dates.

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

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

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

(1) All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

(2) Upon such payment, the clerk, ~~or the judge if there is no clerk,~~ shall execute ~~issue his or her receipt therefor~~ and ~~shall record in the official records~~ a satisfaction of judgment, ~~provided by the judgment holder,~~ upon payment of the recording charge prescribed in s. 28.24(12) ~~plus the necessary costs of mailing to the clerk or judge.~~ Upon payment of the amount required in subsection (1) and the recording charge required by this subsection and execution and recordation of the satisfaction by the clerk, any lien created by the judgment is satisfied and discharged. ~~The clerk or judge shall formally notify the owner of record of such judgment or decree, if such person and his or her address are known to the clerk or judge receiving such payment, and, upon request therefor, shall pay over to the person entitled, or to his or her order, the full~~

108 ~~amount of the payment so received, less his or her service~~
 109 ~~charge for providing a receipt upon the court issuing a writ of~~
 110 ~~execution on such judgment or decree, if any has been issued,~~
 111 ~~and less his or her service charge for receiving into and paying~~
 112 ~~out of the registry of the court such payment, together with the~~
 113 ~~service charge of the clerk for receiving into and paying such~~
 114 ~~money out of the registry of the court.~~

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

117

118 Satisfaction of Judgment by Clerk

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120 The undersigned Clerk acknowledges on this _____ day of (month)
 121 (year) receipt from (identity of party making payment) of \$
 122 (total amount received), comprised of \$ _____ face amount of the
 123 judgment; \$ _____ interest accruing on the judgment through the
 124 date of payment; \$ _____ costs of issuance of any execution; and \$
 125 for recording.

126

127 Pursuant to section 55.141, Florida Statutes, said sum is paid
 128 to satisfy the lien and to discharge that certain final judgment
 129 in favor of (name of judgment holder), whose last known address,
 130 if known, is (address if shown on face of judgment or in
 131 recorded affidavit pursuant to section 55.10(1), Florida
 132 Statutes,) against (name of judgment debtor) recorded in
 133 Official Records Volume/Book _____, page _____, of the public
 134 records of _____
 135 County, Florida.

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

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

Clerk of Court

(4) If an address for the judgment holder was provided under s. 55.10(1), the clerk shall formally send a copy of the satisfaction to the judgment holder at that address by certified mail with return receipt or by registered mail if the notice is to be sent outside the continental United States. If an address is not provided under s. 55.10(1) or if delivery cannot be effected to such address, the clerk may, but is not obligated to, make reasonable attempts to locate the judgment holder. The discharge of the lien by the issuance of the satisfaction is not dependent upon the delivery of notice by the clerk.

(5) Upon application of the judgment holder, the clerk shall pay over to the judgment holder the full amount of the payment received, less the clerk's fees for issuing execution on such judgment, if any has been issued; less the clerk's fees for receiving into and paying out of the registry of the court such payment; less the clerk's fees for recording the satisfaction of

164 judgment; and, if the clerk incurred expenses in locating the
 165 judgment holder, less the reasonable expenses so incurred.

166 ~~(3) Full payment of judgments and decrees as in the~~
 167 ~~preceding subsections of this section provided shall constitute~~
 168 ~~full payment and satisfaction thereof and any lien created by~~
 169 ~~such judgment or decree shall thereupon be satisfied and~~
 170 ~~discharged.~~

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

173 55.202 Judgments, orders, and decrees; lien on personal
 174 property.--

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

179 (a) A judgment lien is acquired by filing a judgment lien
 180 certificate in accordance with s. 55.203 with the Department of
 181 State after the judgment has become final and if the time to
 182 move for rehearing has lapsed, no motion for rehearing is
 183 pending, and no stay of the judgment or its enforcement is then
 184 in effect. A court may authorize, for cause shown, the filing of
 185 a judgment lien certificate before a judgment has become final
 186 when the court has authorized the issuance of a writ of
 187 execution in the same matter. A judgment lien certificate not
 188 filed in compliance with this subsection is permanently void and
 189 of no effect.

190 (b) For any lien, warrant, assessment, or judgment
 191 collected by the Department of Revenue, a judgment lien may be

192 acquired by filing the judgment lien certificate information or
 193 warrant with the Department of State in accordance with
 194 subsection (5).

195 (c) Except as provided in s. 55.208, the effective date of
 196 a judgment lien is the date, including the time of day, of
 197 filing. Although no lien attaches to property, and a creditor
 198 does not become a lien creditor as to liens under chapter 679,
 199 until the debtor acquires an interest in the property, priority
 200 among competing judgment liens is determined in order of filing
 201 date and time.

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

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

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

211 55.204 Duration and continuation of judgment lien;
 212 destruction of records.--

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

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

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219 (b) The instructions for the levy had been delivered to
220 the sheriff prior to the date of lapse of the lien ~~to permit the~~
221 ~~sheriff to act~~; and

222 (c) The property was located in the county in which the
223 sheriff has jurisdiction at the time of delivery of the
224 instruction for levy. Subsequent removal of the property does
225 not defeat the lien. A court may order continuation of the lien
226 beyond the 90-day period on a showing that extraordinary
227 circumstances have prevented levy.

228 (6) If no second judgment lien is filed, the Department of
229 State shall maintain each judgment lien file and all information
230 contained therein for a minimum of 1 year after the judgment
231 lien lapses in accordance with this section. If a second
232 judgment lien is filed, the department shall maintain both files
233 and all information contained in such files for a minimum of 1
234 year after the second judgment lien lapses.

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

237 55.205 Effect of judgment lien.--

238 (1) ~~A valid judgment lien gives the judgment creditor the~~
239 ~~right to proceed against the property of the debtor through writ~~
240 ~~of execution, garnishment, or other judicial process.~~ A judgment
241 creditor who has not acquired a judgment lien as provided in s.
242 55.202 or whose lien has lapsed may nevertheless proceed against
243 the judgment debtor's property through any appropriate ~~other~~
244 judicial process. Such judgment creditor proceeding by writ of
245 execution acquires a lien as of the time of levy and only on the
246 property levied upon. Except as provided in s. 55.208, such

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247 judgment creditor takes subject to the claims and interest of
248 priority judgment creditors.

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

251 55.602 Definitions.--As used in this act, the term:

252 (2) "Out-of-country foreign judgment" means any judgment
253 of a foreign state granting or denying recovery of a sum of
254 money, other than a judgment for taxes, a fine, or other
255 penalty.

256 Section 6. Section 55.603, Florida Statutes, is amended to
257 read:

258 55.603 Applicability.--This act applies to any out-of-
259 country foreign judgment that is final and conclusive and
260 enforceable where rendered, even though an appeal therefrom is
261 pending or is subject to appeal.

262 Section 7. Section 55.604, Florida Statutes, is amended to
263 read:

264 55.604 Recognition and enforcement.--Except as provided in
265 s. 55.605, an out-of-country ~~a~~ foreign judgment meeting the
266 requirements of s. 55.603 is conclusive between the parties to
267 the extent that it grants or denies recovery of a sum of money.
268 Procedures for recognition and enforceability of an out-of-
269 country ~~a~~ foreign judgment shall be as follows:

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

273 (a) At the time of the recording of an out-of-country ~~a~~
274 foreign judgment, the judgment creditor shall make and record

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275 with the clerk of the circuit court an affidavit setting forth
276 the name, social security number, if known, and last known post-
277 office address of the judgment debtor and of the judgment
278 creditor.

279 (b) Promptly upon the recording of the out-of-country
280 foreign judgment and the affidavit, the clerk shall mail notice
281 of the recording of the out-of-country foreign judgment, by
282 registered mail with return receipt requested, to the judgment
283 debtor at the address given in the affidavit and shall make a
284 note of the mailing in the docket. The notice shall include the
285 name and address of the judgment creditor and of the judgment
286 creditor's attorney, if any, in this state. In addition, the
287 judgment creditor may mail a notice of the recording of the
288 judgment to the judgment debtor and may record proof of mailing
289 with the clerk. The failure of the clerk to mail notice of
290 recording will not affect the enforcement proceedings if proof
291 of mailing by the judgment creditor has been recorded.

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

296 (3) Upon the application of any party, and after proper
297 notice, the circuit court shall have jurisdiction to conduct a
298 hearing, determine the issues, and enter an appropriate order
299 granting or denying recognition in accordance with the terms of
300 this act.

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

304 (5) Upon entry of an order recognizing the out-of-country
305 foreign judgment, or upon recording of the clerk's certificate
306 set forth above, the out-of-country foreign judgment shall be
307 enforced in the same manner as the judgment of a court of this
308 state.

309 (6) Once an order recognizing the out-of-country foreign
310 judgment has been entered by a court of this state, the order
311 and a copy of the judgment may be recorded in any other county
312 of this state without further notice or proceedings, and shall
313 be enforceable in the same manner as the judgment of a court of
314 this state.

315 (7) A lien on real estate in any county shall be created
316 only when there has been recorded in the official records of the
317 county (a) a certified copy of the judgment, and (b) a copy of
318 the clerk's certificate or the order recognizing the out-of-
319 country foreign judgment. The priority of such lien will be
320 established as of the time the latter of the two recordings has
321 occurred. ~~Such lien may be partially released or satisfied by~~
322 ~~the person designated pursuant to paragraph (1).~~

323 (8) A judgment lien on personal property is acquired only
324 when a judgment lien certificate is filed in accordance with s.
325 55.203 with the Department of State.

326 Section 8. Section 55.605, Florida Statutes, is amended to
327 read:

328 55.605 Grounds for nonrecognition.--

329 (1) An out-of-country A foreign judgment is not conclusive
330 if:

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

334 (b) The foreign court did not have personal jurisdiction
335 over the defendant.

336 (c) The foreign court did not have jurisdiction over the
337 subject matter.

338 (2) An out-of-country A foreign judgment need not be
339 recognized if:

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

343 (b) The judgment was obtained by fraud.

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

347 (d) The judgment conflicts with another final and
348 conclusive order.

349 (e) The proceeding in the foreign court was contrary to an
350 agreement between the parties under which the dispute in
351 question was to be settled otherwise than by proceedings in that
352 court.

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

356 (g) The foreign jurisdiction where judgment was rendered
 357 would not give recognition to a similar judgment rendered in
 358 this state.

359 Section 9. Section 55.606, Florida Statutes, is amended to
 360 read:

361 55.606 Personal jurisdiction.--The out-of-country foreign
 362 judgment shall not be refused recognition for lack of personal
 363 jurisdiction if:

364 (1) The defendant was served personally in the foreign
 365 state;

366 (2) The defendant voluntarily appeared in the proceedings,
 367 other than for the purpose of protecting property seized or
 368 threatened with seizure in the proceedings or of contesting the
 369 jurisdiction of the court over him or her;

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

373 (4) The defendant was domiciled in the foreign state when
 374 the proceedings were instituted, or, being a body corporate, had
 375 its principal place of business, was incorporated, or had
 376 otherwise acquired corporate status, in the foreign state;

377 (5) The defendant had a business office in the foreign
 378 state and the proceedings in the foreign court involved a cause
 379 of action or a claim for relief arising out of business done by
 380 the defendant through that office in the foreign state; or

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

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

386 56.21 Execution sales; notice.--Notice of all sales under
387 execution shall be given by advertisement once each week for 4
388 successive weeks in a newspaper published in the county in which
389 the sale is to take place. The time of such notice may be
390 shortened in the discretion of the court from which the
391 execution issued, upon affidavit that the property to be sold is
392 subject to decay and will not sell for its full value if held
393 until date of sale. On or before the date of the first
394 publication or posting of the notice of sale, a copy of the
395 notice of sale shall be furnished by certified mail to the
396 attorney of record of the judgment debtor, or to the judgment
397 debtor at the judgment debtor's last known address if the
398 judgment debtor does not have an attorney of record. Such copy
399 of the notice of sale shall be mailed even though a default
400 judgment was entered. When levying upon personal property, a
401 notice of such levy and execution sale and a copy of the
402 affidavit required by s. 56.27(4) shall be sent by the sheriff
403 ~~made by the levying creditor~~ to the attorneys ~~attorney~~ of record
404 of all the judgment creditors, creditor or to all the judgment
405 creditors who do not have an attorney of record, creditor who
406 have ~~has~~ acquired a judgment lien as provided in s. 55.202 or s.
407 55.204(3), and whose liens have not lapsed at the time of levy,
408 at the address listed in the judgment lien certificate, or, if
409 amended, in any amendment to the judgment lien certificate, and
410 to all secured creditors who have filed financing statements as
411 provided in part V of chapter 679 s. 679.401 in the name of the

412 judgment debtor reflecting a security interest in property of
 413 the kind to be sold at the execution sale at the address listed
 414 in the financing statement, or, if amended, in any amendment to
 415 the financing statement. Such notice shall be made in the same
 416 manner as notice is made to any judgment debtor under this
 417 section. When levying upon real property, notice of such levy
 418 and execution sale shall be made to the property owner of record
 419 in the same manner as notice is made to any judgment debtor
 420 pursuant to this section. When selling real or personal
 421 property, the sale date shall not be earlier than 30 days after
 422 the date of the first advertisement.

423 Section 11. Subsections (1), (2), and (4) of section
 424 56.27, Florida Statutes, are amended to read:

425 56.27 Executions; payment of money collected.--

426 (1) All money received under executions shall be paid, in
 427 the order prescribed, to the following: the sheriff, for costs;
 428 the levying creditor in the amount of \$500 as liquidated
 429 expenses; if the levy is upon real property, the first priority
 430 lienholder under s. 55.10; and if the levy is upon personal
 431 property, and the first priority lienholder under s. 55.202, s.
 432 55.204(3), or s. 55.208(2), as set forth in an affidavit
 433 required by subsection (4), or his or her attorney, in
 434 satisfaction of the judgment lien, provided that the judgment
 435 lien has not lapsed at the time of the levy. The receipt of the
 436 attorney shall be a release of the officer paying the money to
 437 him or her. When the name of more than one attorney appears in
 438 the court file, the money shall be paid to the attorney who
 439 originally commenced the action or who made the original defense

440 unless the file shows that another attorney has been
441 substituted.

442 (2) When property sold under execution brings more than
443 the amount needed to satisfy the provisions of subsection (1),
444 the surplus shall be paid in the order of priority to any
445 judgment lienholders whose judgment liens have not lapsed.
446 Priority of liens on personal property shall be based on the
447 effective date of the judgment lien acquired under s. 55.202, s.
448 55.204(3), or s. 55.208(2), as set forth in an affidavit
449 required under subsection (4). If there is a surplus after all
450 valid judgment liens and execution liens have been satisfied,
451 the surplus must be paid to the defendant.

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

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

460 (b) The information required under s. 55.203(1) and (2)
461 for each judgment lien certificate indexed under the name of the
462 judgment debtor as to each judgment creditor; the file number
463 assigned to the record of the original and, if any, the second
464 judgment lien; and the date of filing for each judgment lien
465 certificate under s. 55.202 or s. 55.204(3); and

466 (c) A statement that the levying creditor either does not
467 have any other levy in process or, if another levy is in

468 process, the levying creditor believes in good faith that the
469 total value of the property under execution does not exceed the
470 amount of outstanding judgments.

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

473 56.29 Proceedings supplementary.--

474 (1) When any person or entity holds an unsatisfied
475 judgment or judgment lien obtained under chapter 55 execution
476 ~~and has delivered a writ of execution to any sheriff, the~~
477 judgment holder or judgment lienholder plaintiff in execution
478 may file an affidavit so stating, identifying, if applicable,
479 the issuing court, the case number, and the unsatisfied amount
480 of the judgment or judgment lien, including accrued costs and
481 interest, and stating that the execution is valid and
482 outstanding, and thereupon the judgment holder or judgment
483 lienholder is entitled to these proceedings supplementary to
484 execution.

485 Section 13. Section 77.03, Florida Statutes, is amended to
486 read:

487 77.03 Issuance of writ after judgment.--After judgment has
488 been obtained against defendant but before the writ of
489 garnishment is issued, the plaintiff, the plaintiff's agent or
490 attorney, shall file a motion (which shall not be verified or
491 negative defendant's exemptions) stating the amount of the
492 ~~judgment and that movant does not believe that defendant has in~~
493 ~~his or her possession visible property on which a levy can be~~
494 ~~made sufficient to satisfy the judgment.~~ The motion may be filed

GARNISHMENT OF WAGES, MONEY,
AND OTHER PROPERTY

The Writ of Garnishment delivered to you with this Notice means that wages, money, and other property belonging to you have been garnished to pay a court judgment against you.

HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

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

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

551 If you request a hearing, it will be held as soon as
 552 possible after your request is received by the court. The
 553 plaintiff must file any objection within 3 ~~2~~ business days if
 554 you hand delivered to the plaintiff a copy of the form for Claim
 555 of Exemption and Request for Hearing or, alternatively, 8
 556 business ~~7~~ days if you mailed a copy of the form for claim and
 557 request to the plaintiff. If the plaintiff files an objection to
 558 your Claim of Exemption and Request for Hearing, the clerk will
 559 notify you and the other parties of the time and date of the
 560 hearing. You may attend the hearing with or without an attorney.
 561 If the plaintiff fails to file an objection, no hearing is
 562 required, the writ of garnishment will be dissolved and your
 563 wages, money, or property will be released.

564
 565 YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION
 566 IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR PROPERTY
 567 FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK
 568 CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL
 569 ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CANNOT
 570 AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE
 571 AVAILABLE. CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK
 572 THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM IN
 573 YOUR AREA.

574
 575 CLAIM OF EXEMPTION AND
 576 REQUEST FOR HEARING
 577

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578 I claim exemptions from garnishment under the following
 579 categories as checked:
 580 ____1. Head of family wages. (You must check a. or b. below.)
 581 ____a. I provide more than one-half of the support for a child
 582 or other dependent and have net earnings of \$500 or less per
 583 week.
 584 ____b. I provide more than one-half of the support for a child
 585 or other dependent, have net earnings of more than \$500 per
 586 week, but have not agreed in writing to have my wages garnished.
 587 ____2. Social Security benefits.
 588 ____3. Supplemental Security Income benefits.
 589 ____4. Public assistance (welfare).
 590 ____5. Workers' Compensation.
 591 ____6. Unemployment Compensation.
 592 ____7. Veterans' benefits.
 593 ____8. Retirement or profit-sharing benefits or pension money.
 594 ____9. Life insurance benefits or cash surrender value of a
 595 life insurance policy or proceeds of annuity contract.
 596 ____10. Disability income benefits.
 597 ____11. Prepaid College Trust Fund or Medical Savings Account.
 598 ____12. Other exemptions as provided by law.

599 _____(explain)

600
 601 I request a hearing to decide the validity of my claim. Notice
 602 of the hearing should be given to me at:

603
 604 Address: _____

605

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606 Telephone number: _____

607

608 The statements made in this request are true to the best of my
609 knowledge and belief.

610

611 _____

612 Defendant's signature

613

614 Date _____

615

616 STATE OF FLORIDA

617

618 COUNTY OF

619

620 Sworn and subscribed to before me this _____ day of (month
621 and year), by (name of person making statement)

622

623 Notary Public/Deputy Clerk

624

625 Personally Known _____ OR Produced Identification _____

626

627 Type of Identification Produced _____

628

629 (3) Upon the filing by a defendant of a claim of exemption
630 and request for hearing, a hearing will be held as soon as is
631 practicable to determine the validity of the claimed exemptions.

632 If the plaintiff does not file a sworn written statement that

633 contests the defendant's claim of exemption within 3 ~~2~~ business

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634 days after hand delivering the claim and request or,
635 alternatively, 8 7 business days, if the claim and request were
636 served by mail, no hearing is required and the clerk must
637 automatically dissolve the writ and notify the parties of the
638 dissolution by mail.

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

641 77.07 Dissolution of writ.--

642 (5) If the plaintiff fails to file a dismissal or motion
643 for final judgment within 6 months after filing the writ of
644 garnishment, the writ shall automatically be dissolved and the
645 garnishee shall be discharged from further liability under the
646 writ. The plaintiff has the right to extend the writ for an
647 additional 6 months by serving the garnishee and the defendant a
648 notice of extension and filing in the underlying proceeding a
649 certification of such service.

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

652 222.01 Designation of homestead by owner before levy.--

653 (2) When a certified copy of a judgment has been filed in
654 the public records of a county pursuant to chapter 55 ~~s. 55.10~~,
655 a person who is entitled to the benefit of the provisions of the
656 State Constitution exempting real property as homestead and who
657 has a contract to sell or a commitment from a lender for a
658 mortgage on the homestead may file a notice of homestead in the
659 public records of the county in which the homestead property is
660 located in substantially the following form:

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NOTICE OF HOMESTEAD

To: (Name and address of judgment creditor as shown on recorded judgment and name and address of any other person shown in the recorded judgment to receive a copy of the Notice of Homestead).

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

(Legal description)

The undersigned certifies, under oath, that he or she has applied for and received the homestead tax exemption as to the above-described property, that _____ is the tax identification parcel number of this property, and that the undersigned has resided on this property continuously and uninterruptedly from (date) to the date of this Notice of Homestead. Further, the undersigned will either convey or mortgage the above-described property pursuant to the following:

(Describe the contract of sale or loan commitment by date, names of parties, date of anticipated closing, and amount. The name, address, and telephone number of

689 | the person conducting the anticipated closing must be
690 | set forth.)

691 |
692 | The undersigned also certifies, under oath, that the
693 | judgment lien filed by you on (date) and recorded in
694 | Official Records Book ____, Page ____, of the Public
695 | Records of _____ County, Florida, does not
696 | constitute a valid lien on the described property.

697 |
698 | YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01
699 | ET SEQ., FLORIDA STATUTES, THAT WITHIN 45 DAYS AFTER
700 | THE MAILING OF THIS NOTICE YOU MUST FILE AN ACTION IN
701 | THE CIRCUIT COURT OF _____ COUNTY, FLORIDA, FOR A
702 | DECLARATORY JUDGMENT TO DETERMINE THE CONSTITUTIONAL
703 | HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO
704 | FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY AND
705 | RECORD A LIS PENDENS IN THE PUBLIC RECORDS OF THE
706 | COUNTY WHERE THE HOMESTEAD IS LOCATED. YOUR FAILURE TO
707 | SO ACT WILL RESULT IN ANY BUYER OR LENDER, OR HIS OR
708 | HER SUCCESSORS AND ASSIGNS, UNDER THE ABOVE-DESCRIBED
709 | CONTRACT OF SALE OR LOAN COMMITMENT TO TAKE FREE AND
710 | CLEAR OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE
711 | PROPERTY.

712 |
713 | This ____ day of _____, 2____.

714 | _____
715 | (Signature of Owner)

716 |

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717 _____
718 (Printed Name of Owner)

719 _____
720 _____
721 (Owner's Address)

722
723 Sworn to and subscribed before me by
724 _____ who is personally
725 known to me or produced
726 _____ as identification,
727 this ____ day of _____, 2____

728
729 _____
730 Notary Public

731
732 (4) A lien pursuant to chapter 55 s. 55.10 of any lienor
733 upon whom such notice is served, who fails to institute an
734 action for a declaratory judgment to determine the
735 constitutional homestead status of the property described in the
736 notice of homestead or to file an action to foreclose the
737 judgment lien, together with the filing of a lis pendens in the
738 public records of the county in which the homestead is located,
739 within 45 days after service of such notice shall be deemed as
740 not attaching to the property by virtue of its status as
741 homestead property as to the interest of any buyer or lender, or
742 his or her successors or assigns, who takes under the contract
743 of sale or loan commitment described above within 180 days after
744 the filing in the public records of the notice of homestead.

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745 This subsection shall not act to prohibit a lien from attaching
746 to the real property described in the notice of homestead at
747 such time as the property loses its homestead status.

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

750 319.27 Notice of lien on motor vehicles or mobile homes;
751 notation on certificate; recording of lien.--

752 (2) No lien for purchase money or as security for a debt
753 in the form of a security agreement, retain title contract,
754 conditional bill of sale, chattel mortgage, or other similar
755 instrument or any other nonpossessory lien, including a lien for
756 child support, upon a motor vehicle or mobile home upon which a
757 Florida certificate of title has been issued shall be
758 enforceable in any of the courts of this state against creditors
759 or subsequent purchasers for a valuable consideration and
760 without notice, unless a sworn notice of such lien has been
761 filed in the department and such lien has been noted upon the
762 certificate of title of the motor vehicle or mobile home. Such
763 notice shall be effective as constructive notice when filed. The
764 ~~No~~ interest of a statutory nonpossessory lienor; the interest of
765 a nonpossessory execution, attachment, or equitable lienor; or
766 the interest of a lien creditor as defined in s. 679.1021(1)(zz)
767 ~~679.301(3)~~, if nonpossessory, shall not be enforceable against
768 creditors or subsequent purchasers for a valuable consideration
769 unless such interest becomes a possessory lien or is noted upon
770 the certificate of title for the subject motor vehicle or mobile
771 home prior to the occurrence of the subsequent transaction.

772 Provided the provisions of this subsection relating to a

773 nonpossessory statutory lienor; a nonpossessory execution,
 774 attachment, or equitable lienor; or the interest of a lien
 775 creditor as defined in s. 679.1021(1)(zz) ~~679.301(3)~~ shall not
 776 apply to liens validly perfected prior to October 1, 1988. The
 777 notice of lien shall provide the following information:

778 (a) The date of the lien if a security agreement, retain
 779 title contract, conditional bill of sale, chattel mortgage, or
 780 other similar instrument was executed prior to the filing of the
 781 notice of lien;

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

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

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

786 (3)

787 (b) As applied to a determination of the respective rights
 788 of a secured party under this chapter and a lien creditor as
 789 defined by s. 679.1021(1)(zz) ~~679.301(3)~~, or a nonpossessory
 790 statutory lienor, a security interest under this chapter shall
 791 be perfected upon the filing of the notice of lien with the
 792 department, the county tax collector, or their agents. Provided,
 793 however, the date of perfection of a security interest of such
 794 secured party shall be the same date as the execution of the
 795 security agreement or other similar instrument if the notice of
 796 lien is filed in accordance with this subsection within 15 days
 797 after the debtor receives possession of the motor vehicle or
 798 mobile home and executes such security agreement or other
 799 similar instrument. The date of filing of the notice of lien
 800 shall be the date of its receipt by the department central

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801 office in Tallahassee, if first filed there, or otherwise by the
802 office of the county tax collector, or their agents.

803 Section 19. Paragraph (zz) of subsection (1) of section
804 679.1021, Florida Statutes, is amended to read:

805 679.1021 Definitions and index of definitions.--

806 (1) In this chapter, the term:

807 (zz) "Lien creditor" means:

808 1. A creditor that has acquired a lien on the property
809 involved by attachment, levy, judgment lien certificate, or the
810 like;

811 2. An assignee for benefit of creditors from the time of
812 assignment;

813 3. A trustee in bankruptcy from the date of the filing of
814 the petition; or

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

816 Section 20. Section 701.02, Florida Statutes, is amended
817 to read:

818 701.02 Assignment not effectual against creditors unless
819 recorded and indicated in title of document; applicability.--

820 (1) An ~~Ne~~ assignment of a mortgage upon real property or
821 of any interest therein is not, ~~shall be~~ good or effectual in
822 law or equity, against creditors or subsequent purchasers, for a
823 valuable consideration, and without notice, unless the
824 assignment is contained in a document that ~~which~~, in its title,
825 indicates an assignment of mortgage and is recorded according to
826 law.

827 (2) ~~The provisions of~~ This section ~~shall~~ also applies
828 ~~extend~~ to assignments of mortgages resulting from transfers of

829 | all or any part or parts of the debt, note or notes secured by
 830 | mortgage, and none of same is ~~shall be~~ effectual in law or in
 831 | equity against creditors or subsequent purchasers for a valuable
 832 | consideration without notice, unless a duly executed assignment
 833 | be recorded according to law.

834 | (3) Any assignment of a mortgage, duly executed and
 835 | recorded according to law, purporting to assign the principal of
 836 | the mortgage debt or the unpaid balance of such principal,
 837 | shall, as against subsequent purchasers and creditors for value
 838 | and without notice, be held and deemed to assign any and all
 839 | accrued and unpaid interest secured by such mortgage, unless
 840 | such interest is ~~shall be~~ specifically and affirmatively
 841 | reserved in such an assignment by the assignor, and a ~~no~~
 842 | reservation of such interest or any part thereof may not ~~shall~~
 843 | be implied.

844 | (4) Notwithstanding subsections (1), (2), and (3)
 845 | governing the assignment of mortgages, the provisions of the
 846 | Uniform Commercial Code of this state, chapters 670-680, govern
 847 | the attachment and perfection of a security interest in a
 848 | mortgage upon real property and in a promissory note or other
 849 | right to payment or performance secured by that mortgage. The
 850 | assignment of such a mortgage need not be recorded under this
 851 | section for purposes of attachment or perfection of a security
 852 | interest in the mortgage under the Uniform Commercial Code.

853 | (5) Notwithstanding subsection (4), a creditor or
 854 | subsequent purchaser of real property or any interest therein,
 855 | for valuable consideration and without notice, is entitled to
 856 | rely on a full or partial release, discharge, consent, joinder,

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857 subordination, satisfaction, or assignment of a mortgage upon
 858 such property made by the mortgagee of record, without regard to
 859 the filing of any Uniform Commercial Code financing statement
 860 that purports to perfect a security interest in the mortgage or
 861 in a promissory note or other right to payment or performance
 862 secured by the mortgage, and the filing of any such financing
 863 statement does not constitute notice for the purposes of this
 864 section. For the purposes of this subsection, the term
 865 "mortgagee of record" means the person named as the mortgagee in
 866 the recorded mortgage or, if an assignment of the mortgage has
 867 been recorded in accordance with this section, the term
 868 "mortgagee of record" means the assignee named in the recorded
 869 assignment.

870 Section 21. Subsection (5) is added to section 817.801,
 871 Florida Statutes, to read:

872 817.801 Definitions.--As used in this part:

873 (5) "Creditor contribution" means any sum that a creditor
 874 agrees to contribute to a credit counseling agency, whether
 875 directly or by setoff to amounts otherwise payable to the
 876 creditor on behalf of debtors. However, a creditor contribution
 877 may not reduce any sums to be credited to the account of a
 878 debtor making a payment to the credit counseling agency for
 879 further payment to the creditor.

880 Section 22. Section 817.802, Florida Statutes, is amended
 881 to read:

882 817.802 Unlawful fees and costs.--

883 (1) It is unlawful for any person, while engaging in debt
 884 management services or credit counseling services, to charge or

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885 | accept from a debtor residing in this state, directly or
 886 | indirectly, a fee or contribution greater than \$50 for the
 887 | initial setup or initial consultation. Subsequently, the person
 888 | may not charge or accept a fee or contribution from a debtor
 889 | residing in this state greater than \$120 per year for additional
 890 | consultations or, alternatively, if debt management services as
 891 | defined in s. 817.801(2)(b) are provided, the person may charge
 892 | the greater of 15 ~~7.5~~ percent of the amount paid monthly by the
 893 | debtor to the person or \$25 ~~\$35~~ per month, not to exceed a total
 894 | of \$50 per month.

895 | (2) ~~No provision of~~ This section does not prohibit
 896 | ~~prohibits~~ any person, while engaging in debt management or
 897 | credit counseling services, from imposing upon and receiving
 898 | from a debtor a reasonable and separate charge or fee for
 899 | insufficient funds transactions.

900 | Section 23. Paragraph (a) of subsection (1) of section
 901 | 817.804, Florida Statutes, is amended to read:

902 | 817.804 Requirements; disclosure and financial
 903 | reporting.--

904 | (1) Any person engaged in debt management services or
 905 | credit counseling services shall:

906 | (a) Obtain from a certified public accountant licensed
 907 | under s. 473.308 an annual audit that shall include ~~of~~ all
 908 | accounts of such person in which the funds of debtors are
 909 | deposited and from which payments are made to creditors on
 910 | behalf of debtors.

911 | Section 24. Section 817.805, Florida Statutes, is amended
 912 | to read:

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913 817.805 Disbursement of funds.--Any person engaged in debt
 914 management or credit counseling services shall disburse to the
 915 appropriate creditors all funds received from a debtor, less any
 916 fees permitted by s. 817.802 and any creditor contributions,
 917 within 30 days after receipt of such funds. Further, any person
 918 engaged in such services shall maintain a separate trust account
 919 for the receipt of any funds from debtors ~~each debtor~~ and the
 920 disbursement of such funds on behalf of such debtors ~~debtor~~.

921 Section 25. Except as otherwise expressly provided in this
 922 act, this act shall take effect upon becoming a law.