

1 A bill to be entitled
 2 An act relating to judicial and execution sales of
 3 property; creating s. 45.0321, F.S.; requiring that, as a
 4 condition to entry of a final judgment following a
 5 judicial sale, the lienholder serve notice on the property
 6 owner of the possibility of relief through the filing of a
 7 bankruptcy petition; amending ss. 56.021 and 702.10, F.S.,
 8 relating to the required service of notice of potential
 9 relief through bankruptcy; conforming provisions to
 10 changes made by the act; providing an effective date.

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

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 14 Section 1. Section 45.0321, Florida Statutes, is created
 15 to read:

16 45.0321 Notice of bankruptcy alternatives to judicial
 17 sales.--As a condition to the entry of a final judgment under s.
 18 45.031, a lienholder shall serve, together with the original
 19 process, a notice to the property owner containing the following
 20 statement in conspicuous type:

21
 22 A judicial or sheriff's sale of your property that is subject to
 23 the lien of the plaintiff in this case may occur shortly. Under
 24 certain circumstances, the United States Bankruptcy Code may
 25 provide a property owner the ability to retain the liened
 26 property and reorganize the claimed indebtedness if a bankruptcy
 27 petition is filed BEFORE the judicial or sheriff's sale occurs.
 28 In most cases, an individual will be required to complete a

29 credit counseling briefing before being eligible to file a
 30 bankruptcy case.

31 Section 2. Section 56.021, Florida Statutes, is amended to
 32 read:

33 56.021 Executions; issuance and return, alias, etc.--When
 34 issued, an execution is valid and effective during the life of
 35 the judgment or decree on which it is issued. When fully paid,
 36 the officer executing it shall make his or her return and file
 37 it in the court which issued the execution. If the execution is
 38 lost or destroyed, the party entitled thereto may have an alias,
 39 pluries or other copies on making proof of such loss or
 40 destruction by affidavit and filing it in the court issuing the
 41 execution. However, the execution may not be issued before the
 42 judgment creditor has filed and served a notice upon the
 43 judgment debtor in the same form as required by s. 45.0321.

44 Section 3. Paragraph (a) of subsection (1) of section
 45 702.10, Florida Statutes, is amended to read:

46 702.10 Order to show cause; entry of final judgment of
 47 foreclosure; payment during foreclosure.--

48 (1) After a complaint in a foreclosure proceeding has been
 49 filed, the mortgagee may request an order to show cause for the
 50 entry of final judgment and the court shall immediately review
 51 the complaint. If, upon examination of the complaint, the court
 52 finds that the complaint is verified and alleges a cause of
 53 action to foreclose on real property, the court shall promptly
 54 issue an order directed to the defendant to show cause why a
 55 final judgment of foreclosure should not be entered.

56 (a) The order shall:

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57 | 1. Set the date and time for hearing on the order to show
58 | cause. However, the date for the hearing may not be set sooner
59 | than 20 days after the service of the order. When service is
60 | obtained by publication, the date for the hearing may not be set
61 | sooner than 30 days after the first publication. The hearing
62 | must be held within 60 days after the date of service. Failure
63 | to hold the hearing within such time does not affect the
64 | validity of the order to show cause or the jurisdiction of the
65 | court to issue subsequent orders.

66 | 2. Direct the time within which service of the order to
67 | show cause and the complaint must be made upon the defendant.

68 | 3. State that the filing of defenses by a motion or by a
69 | verified or sworn answer at or before the hearing to show cause
70 | constitutes cause for the court not to enter the attached final
71 | judgment.

72 | 4. State that the defendant has the right to file
73 | affidavits or other papers at the time of the hearing and may
74 | appear personally or by way of an attorney at the hearing.

75 | 5. State that, if the defendant files defenses by a
76 | motion, the hearing time may be used to hear the defendant's
77 | motion.

78 | 6. State that, if the defendant fails to appear at the
79 | hearing to show cause or fails to file defenses by a motion or
80 | by a verified or sworn answer or files an answer not contesting
81 | the foreclosure, the defendant may be considered to have waived
82 | the right to a hearing and in such case the court may enter a
83 | final judgment of foreclosure ordering the clerk of the court to
84 | conduct a foreclosure sale.

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85 7. State that, if the mortgage provides for reasonable
86 attorney's fees and the requested attorney's fees do not exceed
87 3 percent of the principal amount owed at the time of filing the
88 complaint, it is unnecessary for the court to hold a hearing or
89 adjudge the requested attorney's fees to be reasonable.

90 8. Attach the final judgment of foreclosure the court will
91 enter, if the defendant waives the right to be heard at the
92 hearing on the order to show cause.

93 9. Require the mortgagee to serve a copy of the order to
94 show cause on the mortgagor in the following manner:

95 a. If the mortgagor has been served with the complaint and
96 original process, service of the order may be made in the manner
97 provided in the Florida Rules of Civil Procedure.

98 b. If the mortgagor has not been served with the complaint
99 and original process, the order to show cause, together with the
100 summons and a copy of the complaint, shall be served on the
101 mortgagor in the same manner as provided by law for original
102 process.

103 10. Require the mortgagee to file and serve with the order
104 to show cause a notice in the same form as required by s.
105 45.0321.

106
107 Any final judgment of foreclosure entered under this subsection
108 is for in rem relief only. Nothing in this subsection shall
109 preclude the entry of a deficiency judgment where otherwise
110 allowed by law.

111 Section 4. This act shall take effect July 1, 2007.