

Bill No. SB 1460

Barcode 113198

CHAMBER ACTION

Senate

House

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Comm: RCS
04/09/2007 06:00 PM

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The Committee on Banking and Insurance (Deutch) recommended
the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

45.0321 Notice of bankruptcy alternatives to judicial
sale.--

(1) As a condition to the entry of a final judgment
under s. 45.031 or s. 702.10, a lienholder must serve,
together with the original process and in the manner permitted
for service of a complaint, a separate notice to the property
owner containing the following statement in conspicuous type:

NOTICE OF PROPERTY SALE

A judicial or sheriff's sale of your property
that is subject to the lien of the plaintiff in

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1 this case may occur shortly. UNDER CERTAIN
 2 CIRCUMSTANCES, the United States Bankruptcy
 3 Code may provide a property owner the ability
 4 to retain the liened property and reorganize
 5 the claimed indebtedness if a bankruptcy
 6 petition is filed before the judicial or
 7 sheriff's sale occurs. In most cases, an
 8 individual will be required to complete a
 9 credit counseling briefing before being
 10 eligible to file a bankruptcy case.

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 12 (2) The fact of service of the notice shall be noted
 13 on the summons and the return of service so that the clerk of
 14 the court, the judicial officer, and any title examiners may
 15 ascertain the lienholder's compliance with this section. The
 16 lienholder's failure to deliver notice is an affirmative
 17 defense and, if such defense is not raised by the property
 18 owner, a final judgement for in rem relief but not a final
 19 money judgment may be entered against the property owner.

20 (3) This section does not affect the title or
 21 marketability of the real property subject to the judicial
 22 sale nor the validity of the title conveyed which results from
 23 the judicial sale.

24 Section 2. Section 56.021, Florida Statutes, is
 25 amended to read:

26 56.021 Executions; issuance and return, alias,
 27 etc.--When issued, an execution is valid and effective during
 28 the life of the judgment or decree on which it is issued.
 29 When fully paid, the officer executing it shall make his or
 30 her return and file it in the court which issued the
 31 execution. If the execution is lost or destroyed, the party

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1 entitled thereto may have an alias, pluries or other copies on
 2 making proof of such loss or destruction by affidavit and
 3 filing it in the court issuing the execution. However, the
 4 execution may not be issued before the judgment creditor has
 5 filed and served a notice upon the judgment debtor in the same
 6 form as required by s. 45.0321.

7 Section 3. Section 702.035, Florida Statutes, is
 8 amended to read:

9 702.035 Legal notice concerning foreclosure
 10 proceedings.--Whenever a legal advertisement, publication, or
 11 notice relating to a foreclosure proceeding is required to be
 12 placed in a newspaper, it is the responsibility of the
 13 petitioner or petitioner's attorney to place such
 14 advertisement, publication, or notice. For counties with more
 15 than 1 million total population as reflected in the 2000 ~~most~~
 16 ~~recent~~ Official Decennial Census of the United States Census
 17 Bureau as shown on the official website of the United States
 18 Census Bureau, any notice of publication required by this
 19 section shall be deemed to have been published in accordance
 20 with the law if the notice is published in a newspaper that
 21 has been entered as a periodical matter at a post office in
 22 the county in which the newspaper is published, is published a
 23 minimum of 5 days a week, exclusive of legal holidays, and has
 24 been in existence and published a minimum of 5 days a week,
 25 exclusive of legal holidays for 1 year or is a direct
 26 successor to a newspaper that has been in existence for 1 year
 27 that has been published a minimum of 5 days a week exclusive
 28 of legal holidays. The advertisement, publication, or notice
 29 shall be placed directly by the attorney for the petitioner,
 30 by the petitioner if acting pro se, or by the clerk of the
 31 court. Only the actual costs charged by the newspaper for the

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1 advertisement, publication, or notice may be charged as costs
2 in the action.

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

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete everything before the enacting clause

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10 and insert:

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A bill to be entitled

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An act relating to judicial and execution sales

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of property; creating s. 45.0321, F.S.;

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requiring that, before certain court-ordered

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sales of property, the lienholder serve notice

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on the property owner of the possibility of

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relief through the filing of a bankruptcy

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petition; specifying the content of the notice;

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providing for an affirmative defense for

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failing to provide notice; amending s. 56.021,

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F.S., relating to the required service of

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notice of potential relief through bankruptcy;

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conforming provisions to changes made by the

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act; amending s. 702.035, F.S.; clarifying that

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the number of days for publishing a notice

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relating to a foreclosure proceeding excludes

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legal holidays; providing an effective date.

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