

By Senator Joyner

18-1282-07

1 A bill to be entitled

2 An act relating to judicial and execution sales

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

4 requiring that, as a condition to entry of a

5 final judgment following a judicial sale, the

6 lienholder serve notice on the property owner

7 of the possibility of relief through the filing

8 of a bankruptcy petition; amending ss. 56.021

9 and 702.10, F.S., relating to the required

10 service of notice of potential relief through

11 bankruptcy; conforming provisions to changes

12 made by the act; providing an effective date.

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

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

18 45.0321 Notice of bankruptcy alternatives to judicial

19 sales.--As a condition to the entry of a final judgment under

20 s. 45.031, a lienholder must serve, together with the original

21 process, a notice to the property owner containing the

22 following statement in conspicuous type:

24 A judicial or sheriff's sale of your property

25 that is subject to the lien of the plaintiff in

26 this case may occur shortly. Under certain

27 circumstances, the United States Bankruptcy

28 Code may provide a property owner the ability

29 to retain the lien property and reorganize

30 the claimed indebtedness if a bankruptcy

31 petition is filed BEFORE the judicial or

1 sheriff's sale occurs. In most cases, an
2 individual will be required to complete a
3 credit counseling briefing before being
4 eligible to file a bankruptcy case.

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6 Section 2. Section 56.021, Florida Statutes, is
7 amended to read:

8 56.021 Executions; issuance and return, alias,
9 etc.--When issued, an execution is valid and effective during
10 the life of the judgment or decree on which it is issued.
11 When fully paid, the officer executing it shall make his or
12 her return and file it in the court which issued the
13 execution. If the execution is lost or destroyed, the party
14 entitled thereto may have an alias, pluries or other copies on
15 making proof of such loss or destruction by affidavit and
16 filing it in the court issuing the execution. However, the
17 execution may not be issued before the judgment creditor has
18 filed and served a notice upon the judgment debtor in the same
19 form as required by s. 45.0321.

20 Section 3. Paragraph (a) of subsection (1) of section
21 702.10, Florida Statutes, is amended to read:

22 702.10 Order to show cause; entry of final judgment of
23 foreclosure; payment during foreclosure.--

24 (1) After a complaint in a foreclosure proceeding has
25 been filed, the mortgagee may request an order to show cause
26 for the entry of final judgment and the court shall
27 immediately review the complaint. If, upon examination of the
28 complaint, the court finds that the complaint is verified and
29 alleges a cause of action to foreclose on real property, the
30 court shall promptly issue an order directed to the defendant
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1 to show cause why a final judgment of foreclosure should not
2 be entered.

3 (a) The order shall:

4 1. Set the date and time for hearing on the order to
5 show cause. However, the date for the hearing may not be set
6 sooner than 20 days after the service of the order. When
7 service is obtained by publication, the date for the hearing
8 may not be set sooner than 30 days after the first
9 publication. The hearing must be held within 60 days after the
10 date of service. Failure to hold the hearing within such time
11 does not affect the validity of the order to show cause or the
12 jurisdiction of the court to issue subsequent orders.

13 2. Direct the time within which service of the order
14 to show cause and the complaint must be made upon the
15 defendant.

16 3. State that the filing of defenses by a motion or by
17 a verified or sworn answer at or before the hearing to show
18 cause constitutes cause for the court not to enter the
19 attached final judgment.

20 4. State that the defendant has the right to file
21 affidavits or other papers at the time of the hearing and may
22 appear personally or by way of an attorney at the hearing.

23 5. State that, if the defendant files defenses by a
24 motion, the hearing time may be used to hear the defendant's
25 motion.

26 6. State that, if the defendant fails to appear at the
27 hearing to show cause or fails to file defenses by a motion or
28 by a verified or sworn answer or files an answer not
29 contesting the foreclosure, the defendant may be considered to
30 have waived the right to a hearing and in such case the court
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1 may enter a final judgment of foreclosure ordering the clerk
2 of the court to conduct a foreclosure sale.

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

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

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

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

17 b. If the mortgagor has not been served with the
18 complaint and original process, the order to show cause,
19 together with the summons and a copy of the complaint, shall
20 be served on the mortgagor in the same manner as provided by
21 law for original process.

22 10. Require the mortgagee to file and serve with the
23 order to show cause a notice in the same form as required by
24 s. 45.0321.

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26 Any final judgment of foreclosure entered under this
27 subsection is for in rem relief only. Nothing in this
28 subsection shall preclude the entry of a deficiency judgment
29 where otherwise allowed by law.

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

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SENATE SUMMARY

Requires a lienholder to serve notice on a property owner whose property is subject to judicial sale of the possibility of relief through the filing of a bankruptcy petition.