

By the Committee on Banking and Insurance; and Senator Joyner

597-2344-07

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A bill to be entitled

An act relating to judicial and execution sales of property; creating s. 45.0321, F.S.; requiring that, before certain court-ordered sales of property, the lienholder serve notice on the property owner of the possibility of relief through the filing of a bankruptcy petition; specifying the content of the notice; providing for an affirmative defense for failing to provide notice; amending s. 56.021, F.S., relating to the required service of notice of potential relief through bankruptcy; conforming provisions to changes made by the act; amending s. 702.035, F.S.; clarifying that the number of days for publishing a notice relating to a foreclosure proceeding excludes legal holidays; providing an effective date.

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

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

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

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

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

27 Section 2. Section 56.021, Florida Statutes, is
28 amended to read:

29 56.021 Executions; issuance and return, alias,
30 etc.--When issued, an execution is valid and effective during
31 the life of the judgment or decree on which it is issued.

1 | When fully paid, the officer executing it shall make his or
2 | her return and file it in the court which issued the
3 | execution. If the execution is lost or destroyed, the party
4 | entitled thereto may have an alias, pluries or other copies on
5 | making proof of such loss or destruction by affidavit and
6 | filing it in the court issuing the execution. However, the
7 | execution may not be issued before the judgment creditor has
8 | filed and served a notice upon the judgment debtor in the same
9 | form as required by s. 45.0321.

10 | Section 3. Section 702.035, Florida Statutes, is
11 | amended to read:

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

1 shall be placed directly by the attorney for the petitioner,
2 by the petitioner if acting pro se, or by the clerk of the
3 court. Only the actual costs charged by the newspaper for the
4 advertisement, publication, or notice may be charged as costs
5 in the action.

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

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 1460

11 The committee substitute provides the following changes:

- 12 1. Requires the fact of service of the notice of the
13 possibility of retaining the property through the filing
14 of a bankruptcy petition to be noted on the summons and
15 the return of the service so that the leinholder's
16 compliance with the notice requirement can be verified by
17 a court, judicial officer, and title examiners.
- 18 2. Specifies the remedies available is the leinholder fails
19 to deliver the required notice.
- 20 3. Modifies the legal notice required pursuant to a
21 foreclosure proceeding in counties that have a population
22 of over 1 million people. Requires the use of the 2000 US
23 Decennial Census to determine which counties have a
24 population of over 1 million. States the requirement that
25 the notice be published 5 days a week and that the
26 newspaper in which notice is placed be published 5 days a
27 week, is exclusive of legal holidays.
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