

1 A bill to be entitled
2 An act relating to judicial and execution sales
3 of property; creating s. 702.55, F.S.;
4 requiring that, before certain court-ordered
5 sales of property, the lienholder serve notice
6 on the property owner of the possibility of
7 relief through the filing of a bankruptcy
8 petition; specifying the content of the notice;
9 providing for an affirmative defense for
10 failing to provide notice; amending s. 56.021,
11 F.S., relating to the required service of
12 notice of potential relief through bankruptcy;
13 conforming provisions to changes made by the
14 act; amending s. 702.035, F.S.; clarifying that
15 the number of days for publishing a notice
16 relating to a foreclosure proceeding excludes
17 legal holidays; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:
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21 Section 1. Section 702.55, Florida Statutes, is
22 created to read:

23 702.55 Notice of bankruptcy alternative to judicial or
24 sheriff's sale.--

25 (1) In any foreclosure of a mortgage lien or other
26 lien against homestead property owned by a natural person or
27 persons, the mortgagee or lienholder must serve a separate
28 notice to the natural person property owner or owners
29 containing the following statement in conspicuous type:

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31 NOTICE OF PROPERTY SALE

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2 If you are an individual owner of property that
3 may be affected by this action, and if any
4 portion of the property is your home or
5 personal property, please read the following
6 notice carefully: A judicial or sheriff's sale
7 of your property that is subject to the lien of
8 the plaintiff in this case may occur shortly.
9 UNDER CERTAIN CIRCUMSTANCES, the United States
10 Bankruptcy Code may provide a property owner
11 the ability to retain the lien property and
12 reorganize the claimed indebtedness if a
13 bankruptcy petition is filed before the
14 judicial or sheriff's sale occurs. In most
15 cases, an individual will be required to
16 complete a credit counseling briefing before
17 being eligible to file a bankruptcy case.

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19 (2) The notice required by this section shall be
20 served together with the original process and in the manner
21 permitted for service of the complaint, and, if so served, the
22 fact of service of the notice shall be noted on the summons
23 and the return of service so that the clerk of the court and
24 the judicial officer may ascertain whether the notice has been
25 served. In the case of service of process by publication, the
26 notice need not be separate if the published service of
27 process includes the statement set forth in subsection (1),
28 and such publication of the statement shall constitute
29 compliance with this section. If the foreclosing mortgagee or
30 lienholder fails to serve the notice required by this section
31 with the original process or with the original publication of

1 service of process, the mortgagee or lienholder may cure such
2 failure by subsequently serving the notice in the manner
3 specified in this subsection at any time up to 5 business days
4 before the natural person property owner's answer is due to be
5 served. The notice need not be served on any defendant other
6 than the natural person or persons who are the record owner of
7 the property at the time the notice of lis pendens is
8 recorded.

9 (3) The failure of the mortgagee or lienholder to
10 serve the notice required by this section shall constitute an
11 affirmative defense available to a natural person property
12 owner in an action to foreclose the mortgage or other lien
13 against homestead property, and a natural person property
14 owner who raises the defense shall have the burden of proving
15 that the property is the homestead of such property owner. If
16 the defense is timely raised and proved by the natural person
17 property owner, an in personam or deficiency judgment may not
18 be entered against such property owner, but an in rem final
19 judgment of foreclosure may be entered against such property
20 owner. If the affirmative defense is not timely raised and
21 proved, the failure of a mortgagee or lienholder to timely
22 serve the notice required by this section shall be no bar to
23 the entry of an in personam or deficiency judgment.

24 (4) Failure to serve the notice required by this
25 section shall not affect the validity or finality of the
26 judgment of foreclosure, nor affect the title or marketability
27 of the real property subject to the judicial sale, nor affect
28 the validity of the title conveyed by the judicial sale.

29 Section 2. Section 56.021, Florida Statutes, is
30 amended to read:

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1 56.021 Executions; issuance and return, alias,
2 etc.--When issued, an execution is valid and effective during
3 the life of the judgment or decree on which it is issued.
4 When fully paid, the officer executing it shall make his or
5 her return and file it in the court which issued the
6 execution. If the execution is lost or destroyed, the party
7 entitled thereto may have an alias, pluries or other copies on
8 making proof of such loss or destruction by affidavit and
9 filing it in the court issuing the execution. However, if the
10 judgment debtor or property owner is a natural person,
11 execution may not be issued before the judgment creditor has
12 filed and served a notice upon such judgment debtor or
13 property owner in the same form as required by s. 702.55.

14 Section 3. Section 702.035, Florida Statutes, is
15 amended to read:

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

1 exclusive of legal holidays, for 1 year or is a direct
2 successor to a newspaper that has been in existence for 1 year
3 that has been published a minimum of 5 days a week, exclusive
4 of legal holidays. The advertisement, publication, or notice
5 shall be placed directly by the attorney for the petitioner,
6 by the petitioner if acting pro se, or by the clerk of the
7 court. Only the actual costs charged by the newspaper for the
8 advertisement, publication, or notice may be charged as costs
9 in the action.

10 Section 4. This act shall take effect July 1, 2007,
11 and shall apply only to foreclosure proceedings commenced, and
12 to writs of execution issued, after that date.

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