

By Senator Hill

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1 A bill to be entitled

2 An act relating to judicial sales procedure; providing a
3 short title; amending s. 45.031, F.S.; providing a
4 timeframe for the sale of property under an order or
5 judgment when the property was secured through a subprime
6 loan; defining "subprime loan"; requiring a mortgagor to
7 establish a prima facie case in the motion or pleading;
8 providing requirements with respect to such pleading;
9 providing for expiration of the provisions; requiring
10 specified notice; providing an effective date.

11
12 WHEREAS, the Florida Legislature finds that the subprime
13 mortgage lending industry has grown rapidly in Florida during the
14 last few years, and

15 WHEREAS, the Center for Responsible Lending has estimated
16 that one in five subprime loans will end up in foreclosure, and

17 WHEREAS, Florida ranks second in the country in the highest
18 number of properties currently in foreclosure, and

19 WHEREAS, foreclosures strip Florida families of their most
20 valuable asset, decrease the value of property in the proximity
21 of foreclosures, and result in a loss of tax revenue that
22 supports vital public services such as police, firefighters,
23 public schools, and other services that support local
24 communities, and

25 WHEREAS, abandoned and neglected homes that have been
26 foreclosed upon attract crime and further add to the devaluation
27 of surrounding property, and

28 WHEREAS, many homeowners facing foreclosure report that
29 their lender never offered them an opportunity for loan

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30 modification, and

31 WHEREAS, the Fannie Mae Foundation and Freddie Mac have
32 determined that one-third to one-half of borrowers with subprime
33 mortgage loans could have qualified for a loan with better terms,
34 and

35 WHEREAS, Florida's judicial system is overwhelmed with
36 foreclosure filings that are the result of subprime mortgage
37 lending, and

38 WHEREAS, incentives for parties to resolve foreclosure
39 disputes are in the best interests of Florida taxpayers, NOW,
40 THEREFORE,

41

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

43

44 Section 1. This act may be cited as the "Florida
45 Foreclosure Relief Act."

46 Section 2. Subsection (1) of section 45.031, Florida
47 Statutes, is amended to read:

48 45.031 Judicial sales procedure.--In any sale of real or
49 personal property under an order or judgment, the procedures
50 provided in this section and ss. 45.0315-45.035 may be followed
51 as an alternative to any other sale procedure if so ordered by
52 the court.

53 (1) FINAL JUDGMENT.--

54 (a) In the order or final judgment, the court shall direct
55 the clerk to sell the property at public sale on a specified day
56 that shall be not less than 20 days or more than 35 days after
57 the date thereof, on terms and conditions specified in the order
58 or judgment. A sale may be held more than 35 days after the date

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59 | of final judgment or order if the plaintiff or plaintiff's
60 | attorney consents to such time. The final judgment shall contain
61 | the following statement in conspicuous type:

62 |
63 | IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
64 | ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
65 | ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL
66 | JUDGMENT.

67 |
68 | IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
69 | REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO
70 | LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM,
71 | YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

72 | (b) A sale of property may not be held less than 110 days
73 | or more than 125 days after the date of final judgment or order
74 | if the mortgagor or mortgagor's attorney demonstrates that the
75 | property was secured through a subprime loan. "Subprime loan"
76 | means:

77 | 1. For an adjustable rate loan secured by a first lien on a
78 | dwelling that can increase in interest rate but not decrease in
79 | interest rate below the fully indexed rate at the time of
80 | origination, a loan for which the annual percentage rate is
81 | greater than 2 percentage points above the weekly average yield
82 | on 5-year United States Treasury securities as of the 15th day of
83 | the month immediately preceding the loan closing.

84 | 2. For all other loans secured by a first lien on a
85 | dwelling, a loan for which the annual percentage rate is greater
86 | than 3 percentage points above the weekly average yield on 5-year

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87 United States Treasury securities as of the 15th day of the month
88 immediately preceding the loan closing.

89 3. For loans secured by a subordinate lien on a dwelling or
90 a mortgage secured solely by a security interest in a
91 manufactured home, a loan for which the annual percentage rate is
92 greater than 5 percentage points above the weekly average yield
93 on 5-year United States Treasury securities as of the 15th day of
94 the month immediately preceding the loan closing.

95 4. For all loans in which the total loan amount is \$30,000
96 or more, the total points and fees on the loan, excluding up to 2
97 bona fide discount points, paid by the borrower at or before the
98 closing exceed 3 percent of the total loan amount; for all loans
99 in which the total loan amount is less than \$30,000, the total
100 points and fees on the loan, excluding up to 2 bona fide discount
101 points, paid by the borrower at or before closing exceed the
102 lesser of \$900 or 6 percent of the total loan amount.

103 (c) A mortgagor must establish a prima facie case in the
104 motion or pleading. Such pleading must establish that:

105 1. The mortgagor is the owner of the property subject to
106 foreclosure;

107 2. The real property subject to foreclosure is the
108 principal residence of the mortgagor;

109 3. The mortgagor owns no other real estate;

110 4. The real property is a residential building containing
111 less than six dwelling units; and

112 5. The real property is subject to a mortgage, second
113 mortgage, or home equity loan which is, or is likely to become,
114 the subject of foreclosure.

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116 Paragraphs (b) and (c) shall expire on May 1, 2010, unless
117 reenacted by the Legislature prior to that date.

118 (d) If the mortgagor or mortgagor's attorney demonstrates
119 that the property being foreclosed upon is secured through a
120 subprime loan, a notice shall be sent by the plaintiff to the
121 defendant's last known address containing contact information for
122 loan counseling services certified by the United States
123 Department of Housing and Urban Development.

124 (e) ~~(b)~~ If the property being foreclosed on has qualified
125 for the homestead tax exemption in the most recent approved tax
126 roll, the final judgment shall additionally contain the following
127 statement in conspicuous type:

128
129 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS
130 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER
131 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO
132 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE
133 ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT
134 INFORMATION FOR APPLICABLE COURT) WITHIN TEN (10) DAYS AFTER
135 THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE
136 SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

137
138 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM
139 THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS
140 YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
141 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
142 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
143 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
144 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO

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145 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL
146 AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY
147 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
148 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR
149 SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL
150 OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO
151 AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

152 (f)~~(e)~~ A copy of the final judgment shall be furnished by
153 the clerk by first class mail to the last known address of every
154 party to the action or to the attorney of record for such party.
155 Any irregularity in such mailing, including the failure to
156 include this statement in any final judgment or order, shall not
157 affect the validity or finality of the final judgment or order or
158 any sale held pursuant to the final judgment or order. Any sale
159 held more than 35 days after the final judgment or order shall
160 not affect the validity or finality of the final judgment or
161 order or any sale held pursuant to such judgment or order.

162 Section 3. This act shall take effect July 1, 2008.