

1 A bill to be entitled
 2 An act relating to judicial and execution sales of
 3 property; creating s. 702.55, F.S.; requiring lienholders
 4 under certain court-ordered sales of property to serve
 5 notice on property owners of the possibility of relief
 6 through the filing of a bankruptcy petition; specifying
 7 notice contents; providing for an affirmative defense for
 8 failing to provide notice; amending s. 56.021, F.S.;
 9 conforming provisions to changes made by the act;
 10 providing applicability; providing an effective date.

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

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 14 Section 1. Section 702.55, Florida Statutes, is created to
 15 read:

16 702.55 Notice of bankruptcy alternative to judicial or
 17 sheriff's sale.--

18 (1) In any foreclosure of a mortgage lien or other lien
 19 against homestead property owned by a natural person or persons,
 20 the mortgagee or lienholder must serve a separate notice to the
 21 natural person property owner or owners containing the following
 22 statement in conspicuous type:

23
 24 NOTICE REGARDING REQUESTED PROPERTY SALE

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 26 If you are an individual owner of property that may be affected
 27 by this action, and if any portion of the property is your home
 28 or personal property, please read the following notice

29 carefully: A judicial or sheriff's sale of your property that is
30 subject to the lien of the plaintiff in this case may occur
31 shortly. UNDER CERTAIN CIRCUMSTANCES, the United States
32 Bankruptcy Code may provide a property owner the ability to
33 retain the property subject to the lien of the plaintiff and
34 reorganize the claimed indebtedness if a bankruptcy petition is
35 filed before the judicial or sheriff's sale occurs. In most
36 cases, an individual will be required to complete a credit
37 counseling briefing before being eligible to file a bankruptcy
38 case. Further, a mortgage foreclosure is a complex process.
39 People may approach you about "saving" your home. YOU SHOULD BE
40 CAREFUL ABOUT ANY SUCH PROMISES. There are government agencies
41 and nonprofit organizations you may contact for helpful
42 information about the foreclosure process. For the name and
43 telephone number of an organization near you, please call the
44 Florida Office of Financial Regulation.

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46 (2) The notice required by this section shall be served
47 together with the original process and in the manner permitted
48 for service of the complaint and, if so served, the fact of
49 service of the notice must be noted on the summons and the
50 return of service so that the clerk of the court and the
51 judicial officer may ascertain whether the notice has been
52 served. In the case of service of process by publication, the
53 notice need not be separate if the published service of process
54 includes the statement set forth in subsection (1), and such
55 publication of the statement shall constitute compliance with
56 this section. If the foreclosing mortgagee or lienholder fails

57 to serve the notice required by this section with the original
58 process or with the original publication of service of process,
59 the mortgagee or lienholder may cure such failure by
60 subsequently serving the notice in the manner specified in this
61 subsection at any time up to 5 business days before the natural
62 person property owner's answer is due to be served. The notice
63 need not be served on any defendant other than the natural
64 person or persons who are the record owner of the property at
65 the time the notice of lis pendens is recorded.

66 (3) The failure of the mortgagee or lienholder to serve
67 the notice required by this section constitutes an affirmative
68 defense available to a natural person property owner in an
69 action to foreclose the mortgage or other lien against homestead
70 property, and a natural person property owner who raises the
71 defense has the burden of proving that the property was the
72 homestead of such property owner on the date the foreclosure
73 action was filed. If the defense is timely raised and proved by
74 the natural person property owner, an in personam or deficiency
75 judgment may not be entered against such property owner, but an
76 in rem final judgment of foreclosure may be entered against such
77 property owner. If the affirmative defense is not timely raised
78 and proved, the failure of a mortgagee or lienholder to timely
79 serve the notice required by this section does not bar the entry
80 of an in personam or deficiency judgment.

81 (4) Failure to serve the notice required by this section
82 does not affect the validity or finality of the judgment of
83 foreclosure, the title or marketability of the real property
84 subject to the judicial sale, or the validity of the title

85 conveyed by the judicial sale.

86 Section 2. Section 56.021, Florida Statutes, is amended to
87 read:

88 56.021 Executions; issuance and return, alias, etc.--When
89 issued, an execution is valid and effective during the life of
90 the judgment or decree on which it is issued. When fully paid,
91 the officer executing it shall make his or her return and file
92 it in the court that ~~which~~ issued the execution. If the
93 execution is lost or destroyed, the party entitled thereto may
94 have an alias, pluries, or other copies on making proof of such
95 loss or destruction by affidavit and filing it in the court
96 issuing the execution. However, if the judgment debtor or
97 property owner is a natural person, execution may not be issued
98 before the judgment creditor has filed and served a notice upon
99 the judgment debtor or property owner in the same form as
100 required by s. 702.55.

101 Section 3. This act shall take effect July 1, 2008, and
102 shall apply only to foreclosure proceedings commenced, and to
103 writs of execution issued, after that date.