

By Senator Joyner

18-00029B-08

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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 that, before  
4           certain court-ordered sales of property, the lienholder  
5           serve notice on the property owner of the possibility of  
6           relief through the filing of a bankruptcy petition and  
7           also warning against purported foreclosure "saving"  
8           schemes; specifying the content of the notice; providing  
9           for an affirmative defense for failing to provide notice;  
10          amending s. 56.021, F.S., relating to the required service  
11          of notice of potential relief through bankruptcy;  
12          conforming provisions to changes made by the act;  
13          providing an effective date.

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

16  
17           Section 1. Section 702.55, Florida Statutes, is created to  
18           read:

19           702.55 Notice of bankruptcy alternative to judicial or  
20           sheriff's sale.--

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

26  
27                   NOTICE REGARDING REQUESTED PROPERTY SALE

28  
29           If you are an individual owner of property that may be

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30 affected by this action, and if any portion of the  
31 property is your home or personal property, please read  
32 the following notice carefully: A judicial or sheriff's  
33 sale of your property that is subject to the lien of  
34 the plaintiff in this case may occur shortly. UNDER  
35 CERTAIN CIRCUMSTANCES, the United States Bankruptcy  
36 Code may provide a property owner the ability to retain  
37 the lien property and reorganize the claimed  
38 indebtedness if a bankruptcy petition is filed before  
39 the judicial or sheriff's sale occurs. In most cases,  
40 an individual will be required to complete a credit  
41 counseling briefing before being eligible to file a  
42 bankruptcy case.

43  
44 Further, a mortgage foreclosure is a complex process.  
45 People may approach you about "saving" your home. YOU  
46 SHOULD BE CAREFUL ABOUT ANY SUCH PROMISES. There are  
47 government agencies and nonprofit organizations you may  
48 contact for helpful information about the foreclosure  
49 process. For the name and telephone number of an  
50 organization near you, please call the Florida Office  
51 of Financial Regulation.

52  
53 (2) The notice required by this section must be served  
54 together with the original process and in the manner permitted  
55 for service of the complaint, and, if so served, the fact of  
56 service of the notice must be noted on the summons and the  
57 return of service so that the clerk of the court and the  
58 judicial officer may ascertain whether the notice has been

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59 served. In the case of service of process by publication, the  
60 notice need not be separate if the published service of process  
61 includes the statement set forth in subsection (1), and such  
62 publication of the statement constitutes compliance with this  
63 section. If the foreclosing mortgagee or lienholder fails to  
64 serve the notice required by this section with the original  
65 process or with the original publication of service of process,  
66 the mortgagee or lienholder may cure such failure by  
67 subsequently serving the notice in the manner specified in this  
68 subsection at any time up to 5 business days before the natural  
69 person property owner's answer is due to be served. The notice  
70 need not be served on any defendant other than the natural  
71 person or persons who are the record owner of the property at  
72 the time the notice of lis pendens is recorded.

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

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88 deficiency judgment.

89 (4) Failure to serve the notice required by this section  
90 does not affect the validity or finality of the judgment of  
91 foreclosure, the validity of title or marketability of the real  
92 property subject to the judicial sale, or the validity of title  
93 conveyed by the judicial sale.

94 Section 2. Section 56.021, Florida Statutes, is amended  
95 to read:

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

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