

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
 14 the 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

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29 | their lender never offered them an opportunity for loan
 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
 34 | terms, 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
 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
 66 FINAL 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
 70 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A
 71 CLAIM, 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
 78 a dwelling that can increase in interest rate but not decrease
 79 in 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
 83 of 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-
87 year United States Treasury securities as of the 15th day of the
88 month immediately preceding the loan closing.

89 3. For loans secured by a subordinate lien on a dwelling
90 or a mortgage secured solely by a security interest in a
91 manufactured home, a loan for which the annual percentage rate
92 is greater than 5 percentage points above the weekly average
93 yield on 5-year United States Treasury securities as of the 15th
94 day of 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
97 2 bona fide discount points, paid by the borrower at or before
98 the closing exceed 3 percent of the total loan amount; for all
99 loans in which the total loan amount is less than \$30,000, the
100 total points and fees on the loan, excluding up to 2 bona fide
101 discount points, paid by the borrower at or before closing
102 exceed the 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.

115
 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
 122 for 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
 127 following 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
 136 FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE
 137 COURT.

138

139 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
 140 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
 141 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
 142 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
 143 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
 144 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
 145 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO
 146 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST
 147 LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY
 148 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
 149 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR
 150 SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL
 151 OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO
 152 AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

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

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