

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1038

INTRODUCER: Senator Joyner

SUBJECT: Landlord-tenant Relations

DATE: March 31, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Maclure	JU	Pre-meeting
2.			BI	
3.				
4.				
5.				
6.				

I. Summary:

The bill requires a landlord to give written notice to a mortgagee that the mortgaged property is being rented. Any changes to the rental agreement also prompt additional notice by the landlord to the mortgagee.

The bill provides that tenants are automatically parties to a foreclosure action. Once the landlord receives a notice of foreclosure, the landlord shall pay the tenant's deposit money into the registry of the court no later than 14 days after receipt of the notice of a foreclosure proceeding.

The bill provides that the purchaser of a foreclosed property may not take possession of the property until 60 days after notifying the tenant of the foreclosure. It also requires that a landlord inform a prospective or current tenant if the premises is in foreclosure proceeding or whether there are problems that may cause the premises to be subject to a foreclosure action.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Current Rate of Foreclosures in Florida

The Office of the State Courts Administrator (OSCA) reports that foreclosure filings tripled from 2005-06 and then tripled again for 2007-08. As of January 2009, the counties with the highest number of filings included, Dade, Broward, Palm Beach, Orange, Lee, and Duval counties. Some courts have addressed the crisis with detailed administrative orders outlining the

foreclosure process.¹ In response to the number of administrative orders being issued by the different circuits, concerned attorneys from the private bar and legal service organizations filed a petition with the Florida Supreme Court requesting an emergency rule to require mediation in all new and pending cases involving mortgage foreclosure of owner-occupied residential properties.² The Florida Supreme Court responded on March 12, 2009, stating that the court had decided not to make the emergency petition into a case. Instead, the Court issued an administrative order establishing a statewide task force on residential mortgage foreclosure cases “to recommend to the Supreme Court policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties.”³

Foreclosures

A foreclosure is a lawsuit filed by a lender when the borrower has failed to make the payments. The lender asks the court to sell the property so that the lender can recover the missed payments or the whole balance due on the loan. Once the foreclosure action is filed, parties to the action must be served. When a property subject to foreclosure is being rented, service of the proceedings is often made on a “Jane or John Doe” at the address of the property in addition to the borrower.⁴

Once the foreclosure lawsuit is filed, a tenant’s rights are limited. If the property is sold at auction, a writ of possession is entered, which requires the tenants to vacate the premises.⁵ A tenant’s options before a writ of possession is entered can include moving out before an eviction or delaying the foreclosure process by filing a motion to delay the auction.

Judicial Sales Procedure

Currently under the law, a mortgage company must serve a complaint, a notice of *lis pendens*,⁶ and a summons on the borrower in order to initiate foreclosure proceedings. The procedure for the sale of real or personal property, otherwise known as a judicial sale, is provided for in s. 45.031, F.S. This section provides that a final judgment from a foreclosure proceeding must include a statement notifying the property owner and subordinate lienholders, if any, that there may be additional money from the foreclosure sale and notifying the property owner that he or she may claim such additional funds without representation by a lawyer or other person, if the

¹ *Foreclosure Mediation is Gaining Momentum*, The Florida Bar News (March 15, 2009).

² *In Re: Emergency Amendment to the Florida Rules of Civil Procedure to Require Pre-Judgment Mediation in Residential Mortgage Foreclosures*, February 6, 2009 (on file with the Judiciary Committee).

³ *In Re: Task Force on Residential Mortgage Foreclosure Cases*, No. AOSC09-8 (Fla. March 9, 2009).

⁴ See *Kurz v. Pappas*, 156 So. 737 (Fla. 1934), *Rhyne v. Miami-Dade Water and Sewer Auth.*, 402 So. 2d 54 (Fla. 3rd DCA 1981), and *Burns v. Bankamerica National Trust Co.*, 719 So. 2d 999 (Fla. 5th DCA 1998).

⁵ Fla. R. Civ. P. 1.580

⁶ The definition of “lis pendens,” as appropriate for this analysis, is “[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.” BLACK’S LAW DICTIONARY (8th ed. 2004). Essentially, “[t]he purpose of a notice of lis pendens is to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of property is involved in litigation.” 35 FLA. JUR. 2D *Lis Pendens* § 3 (2008).

subject property qualified for a homestead exemption in the most recent tax year.⁷ The sale must be conducted at public auction at the time and place set forth in the final judgment.⁸

After the sale, the Certificate of Sale, which is filed and served on all parties by the clerk of court, must include the amount the property was sold for and to whom it was sold.⁹ The clerk is also required to serve all parties with a copy of the Certificate of Disbursement detailing the amount of payments made to the parties pursuant to the sale and any remaining surplus.¹⁰ The Certificate of Disbursement must notify persons claiming a right to any excess funds that they must make a claim to the clerk within 60 days, or forfeit the right to make a claim to the owner of record at the *lis pendens* date.¹¹ Essentially, the surplus will be paid to the owner at the *lis pendens* date, unless another person (such as a subordinate lienholder or assignee of the right to collect the funds) claims an interest in the proceeds during the 60-day period. If such a claim is made, the court shall set an evidentiary hearing to determine entitlement to the surplus.

Expedited Show-Cause Foreclosure Procedure

The Legislature created an optional “speedy” foreclosure procedure for residential foreclosures in 1993, codified at s. 702.10, F.S.¹² This section provides a fast track foreclosure process through an order to show cause, whereby a lender can obtain an *in rem* judgment. Upon filing a foreclosure complaint, the mortgagee can request an order to show cause for the entry of a final judgment. The judge must then read the complaint and verify that it states a cause of action.¹³ If the complaint is verified, the judge will issue an order to the defendant to show cause why a final judgment should not be entered.¹⁴ If a defendant waives the right to be heard, the judge shall promptly enter a final judgment of foreclosure.¹⁵ Upon receipt of a final judgment, the procedures set out in s. 45.031, F.S., for a judicial sale should be followed.

Sheriff’s Sale

Chapter 56, F.S., governs sheriff’s sales, which occur when a lienholder obtains a money judgment on a formerly unsecured debt. Upon entry of a money judgment, the court issues a writ of execution, which is effective during the life of the judgment.¹⁶ An execution is a “court order directing a sheriff or other officer to enforce a judgment, [usually] by seizing and selling the judgment debtor’s property.”¹⁷ Upon receipt of the writ of execution, the sheriff must publicize the upcoming sale, and then an auction is held on a specified date.

⁷ Section 45.031(1)(a) and (b), F.S.

⁸ Section 45.031(3), F.S.

⁹ Section 45.031(4), F.S.

¹⁰ Section 45.031(7), F.S.

¹¹ *Id.* The *lis pendens* date is the date the lienholder records the notice of *lis pendens* in the public land records of the county clerk’s office in which the property is located. E-mail correspondence from U.S. Bankruptcy Judge Catherine Peek McEwen to the Senate Committee on Judiciary, Feb. 4, 2008 (on file with the Senate Committee on Judiciary).

¹² Facsimile from U.S. Bankruptcy Judge Catherine Peek McEwen to the Senate Committee on Judiciary, March 12, 2007 (on file with the Senate Committee on Judiciary).

¹³ Section 702.10(1), F.S.

¹⁴ *Id.*

¹⁵ Section 702.10(1)(d), F.S.

¹⁶ Section 56.021, F.S.

¹⁷ BLACK’S LAW DICTIONARY (8th ed. 2004).

Florida Landlord Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.¹⁸ A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.¹⁹ The provisions of the Act specifically address the payment of rent,²⁰ duration of leases,²¹ security deposits,²² maintenance of the dwelling and premises,²³ termination of rental agreements,²⁴ liquidated damages for failure to provide notice before vacating,²⁵ penalty for holding over,²⁶ and a landlord's remedies for the breach of a lease.²⁷

Deposit Money or Advance Rent; Duty of Landlord and Tenant

When a tenant gives a deposit as security on a rental agreement, the landlord must hold the total amount of the deposit in either:

- A separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant(s). The deposit cannot be commingled with any other funds or pledged or used in other way until the moneys are actually due to the landlord;
- A separate interest-bearing account in a Florida banking institution for the benefit of the tenant(s), in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on the account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects; or
- The landlord may post a surety bond in the total amount of the deposits.²⁸

Disclosure by the Landlord

The landlord must disclose to the tenant in writing at or before the beginning of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands on the landlord's behalf.²⁹ Upon completion of construction of a building exceeding three stories that contains dwelling units, the landlords shall disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.³⁰

¹⁸ Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit," which is defined as a structure or part of a structure rented for use as a home, residence, or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

¹⁹ Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than one year, providing for use and occupancy of premises.

²⁰ Section 83.46, F.S.

²¹ *Id.*

²² Section 83.49, F.S.

²³ Sections 83.51 and 83.52, F.S.

²⁴ Section 83.56, F.S.

²⁵ Section 83.58, F.S.

²⁶ Section 83.575, F.S.

²⁷ Section 83.595, F.S.

²⁸ Section 83.49(1), F.S.

²⁹ Section 83.50(1), F.S.

³⁰ Section 83.50(2), F.S.

III. Effect of Proposed Changes:

The bill requires that within 30 days of a rental agreement being signed, the property owner shall give written notice to the mortgagee of the property that the property is being rented as a dwelling unit. A copy of the notice must be given to the tenant at the same time the notice is delivered to mortgagee. The notice must state the name of the tenant, the length of time of the rental agreement, and the address of the dwelling unit. The landlord or the landlord's agent must also notify the mortgagee of any change in the rental agreement no later than 14 days after learning of the change.

The bill provides that each tenant of a dwelling is a party to a foreclosure proceeding. It requires that once the landlord receives a notice of foreclosure, the landlord shall pay the tenant's deposit money into the registry of the court no later than 14 days after receipt of the notice of a foreclosure proceeding.

The bill provides that purchasers of a foreclosed property must wait 60 days after the tenant has been given written notice of the foreclosure to take possession of the property. The notice must be delivered to each tenant by registered mail, return receipt requested.

The bill provides that a landlord or the landlord's agent who rents a premises that is subject to a note or mortgage must inform a prospective or current tenant if the premises is in foreclosure proceeding or whether there are problems that may cause the premises to be subject to a foreclosure action.

The bill has an effective date of July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The purchaser of a property through a foreclosure sale may incur costs as a result of the requirement that he or she may not take possession of the property until 60 days after notifying the tenant of the foreclosure.

A landlord may experience mailing or other costs related to the requirement to notify the mortgagee that the property is rented and to notify the tenant if the property goes into foreclosure.

Tenants may benefit from the requirement for landlords to deposit a security deposit into a registry of the court because the funds will remain available.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.