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Proposed Committee Substitute by the Committee on Judiciary

A bill to be entitled

An act relating to foreclosures; amending s. 45.031, F.S.; requiring the clerk of court to furnish certain notices to tenants in a foreclosure case; establishing fees; proving an exception; amending s. 83.49, F.S.; requiring a landlord to pay over a deposit after foreclosure sale; amending s. 83.50, F.S.; requiring a landlord to provide notice to a tenant of a pending foreclosure case; amending s. 83.56, F.S.; providing grounds for termination of a lease upon the setting of a foreclosure sale; providing for damages; creating a pilot program for voluntary mediation between a mortgagor and a mortgagee prior to a foreclosure suit being filed; providing for administration by the Department of Financial Services; providing for a contract with a not-for-profit organization to help administer the program; prescribing duties of mortgagees, mortgagors, and mediators participating in the program; providing for the mortgagee to pay the mediator's costs in advance; providing for the allocation of costs between the mortgagee and mortgagor; authorizing the court to exempt participants from mediation following the filing of a foreclosure action; providing for the effect of the mediation on a subsequent foreclosure action; providing that participants are not entitled to successive mediation under this program; providing for future review of the program; providing for expiration



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29 of the program; providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

32
33 Section 1. Paragraph (c) of subsection (1) and subsection
34 (3) of section 45.031, Florida Statutes, are amended, and
35 subsection (11) is added to that section to read:

36 45.031 Judicial sales procedure.—In any sale of real or
37 personal property under an order or judgment, the procedures
38 provided in this section and ss. 45.0315-45.035 may be followed
39 as an alternative to any other sale procedure if so ordered by
40 the court.

41 (1) FINAL JUDGMENT.—

42 (c)1. A copy of the final judgment shall be furnished by
43 the clerk by first class mail to the last known address of every
44 party to the action or to the attorney of record for such party.

45 2. A copy of the final judgment shall be furnished by the
46 clerk by first class mail to the property being foreclosed. The
47 envelope shall be addressed to "Occupant" and shall have
48 printed, typed, or stamped on the face of the envelope the
49 statement "IMPORTANT - NOTICE OF FORECLOSURE SALE ENCLOSED." In
50 addition to the copy of the final judgment, the clerk shall
51 attach a separate page before the judgment that contains the
52 following statement: "The property you are living in or
53 occupying is scheduled for a foreclosure sale. A copy of the
54 court order is enclosed. The sale date is included the order.
55 The person who buys the property at the sale may evict you from
56 this property after the sale. You may wish to contact an
57 attorney regarding your legal rights." The trial court, the



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58 chief judge of the circuit, or the Rules of Civil Procedure may
59 direct that any additional information be included in this
60 notice. The clerk shall prepare proof of mailing and place the
61 same into the court records. The plaintiff shall pay the clerk a
62 fee of \$10 for such mailing, which cost shall include the cost
63 of copying, postage, notice, and docketing. If the property is a
64 multi-family or multi-occupant structure, a separate fee shall
65 be paid for each unit and a separate notice shall be mailed to
66 each dwelling unit.

67 3. Any irregularity in a ~~such~~ mailing required by this
68 paragraph, including the failure to include a ~~this~~ statement in
69 any final judgment or order, shall not affect the validity or
70 finality of the final judgment or order or any sale held
71 pursuant to the final judgment or order. Any sale held more than
72 35 days after the final judgment or order shall not affect the
73 validity or finality of the final judgment or order or any sale
74 held pursuant to such judgment or order.

75 (3) CONDUCT OF SALE; DEPOSIT REQUIRED; NOTICE.-

76 (a) The sale shall be conducted at public auction at the
77 time and place set forth in the final judgment.

78 (b) The clerk shall receive the service charge imposed in
79 s. 45.035 for services in making, recording, and certifying the
80 sale and title that shall be assessed as costs.

81 (c) At the time of the sale, the successful high bidder
82 shall post with the clerk a deposit equal to 5 percent of the
83 final bid. The deposit shall be applied to the sale price at the
84 time of payment. If final payment is not made within the
85 prescribed period, the clerk shall readvertise the sale as
86 provided in this section and pay all costs of the sale from the



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87 deposit. Any remaining funds shall be applied toward the
88 judgment.

89 (d) On the day of the sale the clerk shall furnish by first
90 class mail to the property being foreclosed a notice that reads:
91 "IMPORTANT - The property you are living in or occupying was
92 sold at foreclosure sale. The person who bought the property at
93 the sale may evict you from this property. The next notice you
94 may receive will be an eviction notice giving you only 24 hours
95 to move out and remove your belongings. If you do not comply
96 with that notice, you may be forcibly evicted and your
97 belongings removed and destroyed. That notice may be posted on
98 the door. You may wish to contact an attorney regarding your
99 legal rights." The envelope shall be addressed to "Occupant" and
100 shall have printed, typed, or stamped on the face of the
101 envelope the statement "IMPORTANT - NOTICE OF FORECLOSURE SALE
102 ENCLOSED." The trial court, the chief judge of the circuit, or
103 the Rules of Civil Procedure may direct that any additional
104 information be included in this notice. The clerk shall prepare
105 proof of mailing and place the same into the court records. The
106 plaintiff shall pay the clerk a fee of \$5 for such mailing,
107 which cost shall include the cost of copying, postage, notice,
108 and docketing. If the property is a multi-family or multi-
109 occupant structure, a separate notice shall be mailed to each
110 dwelling unit.

111 (11) In a foreclosure of a multi-family or multi-occupant
112 property, the plaintiff may elect to forego the notice
113 requirements of subparagraph (1)(c)2. and paragraph (3)(d). In
114 such case, the clerk shall not send notices or collect the
115 related fees, and the clerk shall not issue a writ of possession



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116 to the purchaser after the sale and within that foreclosure
117 case.

118 Section 2. Subsection (7) of section 83.49, Florida
119 Statutes, is amended to read:

120 83.49 Deposit money or advance rent; duty of landlord and
121 tenant.—

122 (7)

123 (a) Upon the sale or transfer of title of the rental
124 property from one owner to another, or upon a change in the
125 designated rental agent, any and all security deposits or
126 advance rents being held for the benefit of a tenant ~~the tenants~~
127 shall be transferred to the new owner or agent, together with
128 any earned interest and with an accurate accounting showing the
129 amounts to be credited to each tenant account.

130 (b) A property owner whose property has been sold at
131 foreclosure sale, or an agent of the owner, must return the
132 security deposits to tenants within 5 calendar days after the
133 sale is final. A property owner who fails to timely pay over a
134 deposit required by this paragraph commits a theft punishable
135 under s. 812.014. The court shall award the tenant restitution
136 upon conviction or plea.

137 (c) Upon the transfer of such funds and records as stated
138 herein, and upon transmittal of a written receipt therefor, the
139 transferor shall be free from the obligation imposed in
140 subsection (1) to hold such moneys on behalf of the tenant.
141 However, nothing herein shall excuse the landlord or agent for a
142 violation of the provisions of this section while in possession
143 of such deposits.

144 Section 3. Subsection (3) is added to section 83.50,



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145 Florida Statutes, to read:

146 83.50 Disclosure.—

147 (3) The landlord or the landlord's authorized
148 representative must inform a prospective or current tenant if
149 the premises is in a foreclosure proceeding. The landlord or the
150 landlord's authorized representative must inform a prospective
151 or current tenant if there are problems that, to the best of the
152 knowledge of the landlord or the landlord's agent, may cause the
153 premises to be subject to a foreclosure proceeding.

154 Section 4. Subsection (6) of section 83.56, Florida
155 Statutes, is amended to read:

156 83.56 Termination of rental agreement.—

157 (6) The Legislature finds that tenants in general have an
158 expectation that the landlord will act in good faith, as
159 required by s. 83.44. The Legislature finds that historically
160 there has always been an implied covenant of quiet enjoyment
161 attached to a lease. The Legislature further finds that it is
162 appropriate to consider that the mere setting of a foreclosure
163 sale sufficiently breaches the covenant of quiet enjoyment and
164 the expectation of good faith so as to warrant the passage of a
165 law allowing a tenant the unilateral right to declare that a
166 lease is terminated once a foreclosure sale of the leased
167 property is set. Therefore, notwithstanding any provision in a
168 lease agreement, once a foreclosure sale has been set for the
169 property rented or leased, the tenant may terminate the lease
170 agreement upon 7 days written notice to the landlord. Upon
171 termination under this subsection, the tenant is entitled to
172 receive a prorata refund of advance rents paid; the tenant shall
173 not be liable for any sum that might be due under s. 83.595; and



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174 the tenant shall not be liable to the landlord for any
175 liquidated damages, penalty, or early termination fee.
176 Additionally, if at the time of termination there was 3 or more
177 months remaining in the lease term and the landlord failed to
178 notify the tenant at the time of the lease of the pending
179 foreclosure case as required by s. 83.50(3), the landlord shall
180 be liable to the tenant for all of the tenant's costs to move,
181 including actual moving costs, utility hookups, lost time from
182 work, and increased rent if the new lease is for comparable
183 space, plus court costs and attorney's fees. This subsection
184 does not apply if the plaintiff has elected not to notify
185 tenants of the foreclosure under s. 45.031(11).

186 (7) ~~(6)~~ If the rental agreement is terminated, the landlord
187 shall comply with s. 83.49(3).

188 Section 5. Pilot program for mortgage foreclosure pre-suit
189 mediation.-

190 (1) CREATION.-

191 (a) It is the intent of the Legislature to facilitate the
192 resolution of disputes between mortgagees and mortgagors in
193 order to assist homeowners facing imminent foreclosure and to
194 reduce the number of foreclosure filings in the state courts
195 system.

196 (b) There is created a statewide pilot program to
197 facilitate voluntary mediation between a mortgagor and a
198 mortgagee prior to the mortgagee filing an action in circuit
199 court to foreclose on an owner-occupied residential property
200 subject to a mortgage.

201 (2) ADMINISTRATION.-The Department of Financial Services
202 shall contract with a qualified not-for-profit organization to



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203 assist in the administration of this program. At a minimum, the
204 contract shall provide for the not-for-profit organization to:

205 (a) Charge participants an administrative fee separate from
206 the mediator's fee, and not to exceed 5 percent of the maximum
207 mediator's fee authorized under this section, and use the fee to
208 support administration of this program;

209 (b) Recruit mediators certified by the Florida Supreme
210 Court to participate in the program;

211 (c) Provide training to participating mediators;

212 (d) Assist in the identification of locations to conduct
213 mediations; and

214 (e) Establish procedures to be followed in mediations,
215 including, but not limited to, procedures relating to the
216 conduct of mediations in person or via telephone or video
217 conference.

218 (3) MORTGAGEE'S DUTIES.—A mortgagee agreeing to participate
219 in mediation under this program shall:

220 (a) Send to the mortgagor, using certified mail, an
221 invitation in writing to participate in pre-suit mediation. If
222 the mortgagee sends the mortgagor a letter of intent to file a
223 foreclosure action, the mortgagee shall include the invitation
224 to participate in mediation with that letter. At a minimum, the
225 invitation to participate in mediation shall:

226 1. Notify the mortgagor that participation in the mediation
227 is voluntary;

228 2. Notify the mortgagor that the mediation will be
229 conducted by an independent mediator certified by the Supreme
230 Court;

231 3. Provide the mortgagor with the election of one of the



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- 232 following choices:
- 233 a. Selecting one of three certified mediators identified by
- 234 the mortgagee in the invitation;
- 235 b. Designating a certified mediator of the mortgagor's own
- 236 choosing; or
- 237 c. Authorizing the mortgagee to designate a certified
- 238 mediator.
- 239 4. Notify the mortgagor that participation in the mediation
- 240 may obligate the mortgagor to pay up to one half of the
- 241 mediator's fee;
- 242 5. Include a statement encouraging the mortgagor to have an
- 243 attorney accompany him or her to the mediation;
- 244 6. Include a form for the mortgagor to respond to the
- 245 invitation and to make the selections prescribed under this
- 246 paragraph if the mortgagor responds affirmatively; and
- 247 7. Identify, and provide detailed contact information for,
- 248 an informed employee or agent of the mortgagee whom the
- 249 mortgagor may contact regarding the mediation and who has
- 250 decision-making authority, or direct access to someone with that
- 251 authority, with respect to approving options for resolving the
- 252 dispute in order to avoid filing a foreclosure action.
- 253 (b) Refrain from filing an action to foreclose on the
- 254 homestead property:
- 255 1. For at least 90 days after mailing the invitation to
- 256 participate in mediation if the mortgagor agrees in writing to
- 257 participate in mediation;
- 258 2. Until receiving written notice from the mortgagor
- 259 declining to participate in mediation; or
- 260 3. For at least 30 days after mailing the invitation to



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261 participate in mediation and receiving no written response from
262 the mortgagor.

263 (c) Provide, as requested by the mortgagor or the mediator,
264 documents in the possession of the mortgagee related to the
265 mortgage and the mortgagor's payment history.

266 (4) MORTGAGOR'S DUTIES.—A mortgagor agreeing to participate
267 in mediation under this program shall:

268 (a) Respond affirmatively to the invitation, using the form
269 provided by the mortgagee, within 20 days of receiving the
270 invitation;

271 (b) As part of the response, make the election regarding
272 designation of the certified mediator as prescribed in
273 subsection (3);

274 (c) Provide the mortgagee with current daytime contact
275 information for the mortgagor; and

276 (d) Provide, as requested by the mortgagee or the mediator,
277 documents in the possession of the mortgagor related to the
278 mortgage and the mortgagor's current financial status and
279 financial history.

280 (5) MEDIATOR'S DUTIES.—The mediator shall:

281 (a) Comply with the confidentiality provisions of the
282 Mediation Confidentiality and Privilege Act under sections
283 44.401-44.406, Florida Statutes;

284 (b) At the conclusion of the mediation, prepare an
285 affidavit attesting that the mediation occurred and whether the
286 mediation resulted in an agreement or an impasse;

287 (c) Provide a copy of the affidavit prepared under
288 paragraph (b) to the mortgagor and the mortgagee. The mortgagee
289 shall attach a copy of the affidavit to any subsequent



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290 foreclosure complaint filed; and

291 (d) In advance of the mediation, request from the mortgagee
292 and the mortgagor pertinent information related to the mortgage,
293 the mortgagor's payment history, the mortgagor's ability to make
294 payments toward the mortgage, and other information the mediator
295 deems pertinent to the mediation.

296 (6) MEDIATION COSTS.—

297 (a) A certified mediator providing services under this
298 section may charge a fee not exceeding \$1,000.

299 (b) The mortgagee shall pay the mediation fee in full in
300 advance of the mediation.

301 (c) As part of a settlement resulting from the mediation,
302 the mortgagee and mortgagor may negotiate reimbursement by the
303 mortgagor of a portion of the mediation fee paid by the
304 mortgagee.

305 (d) If the mediation results in an impasse and the matter
306 proceeds to litigation, the court, in the final judgment, may
307 tax up to one half of the costs of mediation against the
308 defendant or add up to one half of the cost to the indebtedness.

309 (7) EXEMPTION FROM COURT-MANDATED MEDIATION.—

310 (a) The chief judge of the circuit may authorize judges in
311 the circuit to exempt a mortgagee who participates in good faith
312 in pre-suit mediation under this section from mandatory
313 participation in any program established by the circuit which
314 compels mediation following the filing of a foreclosure action
315 and prior to the entry of a judgment.

316 (b) Nothing in this section precludes a court from
317 mandating that parties to a filed foreclosure action participate
318 in mediation.



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319 (8) EFFECT OF MEDIATION.—

320 (a) Participation by the mortgagor and the mortgagee in
321 mediation under this section does not constitute a defense to a
322 foreclosure action by the mortgagee.

323 (b) Participation by the mortgagor in a loan modification
324 or other financial arrangement negotiated with the mortgagee as
325 a result of mediation under this section does not preclude the
326 mortgagee from proceeding to foreclosure if the mortgagor fails
327 to comply with the terms of that modification or other financial
328 arrangement.

329 (c) Participation in mediation under this section does not
330 entitle the mortgagor or mortgagee to successive pre-suit
331 mediation under this section.

332 (9) REVIEW AND EXPIRATION.—

333 (a) Before February 1, 2011, the Department of Financial
334 Services shall report to the President of the Senate and the
335 Speaker of the House of Representatives on the mediation program
336 under this section. The report, at a minimum, shall include:

337 1. Data on use of the program;

338 2. A recommendation on whether to extend the program,
339 including the rationale for the recommendation; and

340 3. Any recommendations for revising the program.

341 (b) This section expires on June 30, 2011.

342 Section 6. This act shall take effect July 1, 2009.

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