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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2009	.	
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The Committee on Banking and Insurance (Fasano) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Possession of foreclosed residential dwelling  
unit; notice to tenant.-

(1) A purchaser who receives a certificate of title on a  
foreclosed residential dwelling unit may take possession of the  
premises that is subject to a rental agreement no earlier than  
30 days after the purchaser gives the tenant written notice



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12 stating that the dwelling unit has been sold and that the  
13 purchaser desires to take possession of the dwelling unit. The  
14 purchaser must give notice to each tenant by first class mail.

15 (2) The clerk of court may not issue a writ of possession  
16 unless the purchaser submits to the clerk a copy of the notice  
17 provided to the tenant as required by subsection (1).

18 (3) Upon receipt of the notice, the tenant may terminate  
19 the lease by giving 7 days' written notice to the purchaser.

20 (4) Nothing in this section eliminates the common law  
21 requirement to make the occupant of property a party to a  
22 foreclosure action as a condition precedent to the court  
23 authorizing the clerk of court to issue a writ of possession as  
24 part of the foreclosure action.

25 Section 2. Section 83.495, Florida Statutes, is created to  
26 read:

27 83.495 Commencement of mortgage foreclosure; disclosure;  
28 security deposits and advance rents.—After the initial service  
29 of the complaint is made on a landlord in any mortgage  
30 foreclosure proceedings commenced against a residential dwelling  
31 unit:

32 (1) The landlord or the landlord's agent shall hold as  
33 provided under s. 83.49(1)(b) the total amount of money  
34 deposited or advanced by a current or prospective tenant as  
35 security for performance of the rental agreement or as advance  
36 rent.

37 (2) (a) The landlord or a person authorized to enter into a  
38 rental agreement on the landlord's behalf shall disclose the  
39 existence of the pending foreclosure proceedings in writing to a  
40 prospective tenant, before the person executes any rental



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41 agreement made during the pendency of the foreclosure  
42 proceeding. The written disclosure shall inform the prospective  
43 tenant that the foreclosure proceedings might affect the right  
44 to possess and reside in the leased dwelling unit and that the  
45 landlord is required to hold the tenant's total amount of  
46 deposit money or advance rent as provided under s. 83.49(1)(b).

47 (b) A person authorized to enter into a rental agreement on  
48 the landlord's behalf shall not be liable for failure to notify  
49 a prospective tenant of the foreclosure proceeding unless he or  
50 she received notice of the existence of the pending foreclosure  
51 proceedings from the landlord.

52 (3) In the event the landlord or the landlord's agent does  
53 not hold the deposit money or advance rent as provided under s.  
54 83.49(1)(b) and the property is sold in foreclosure, the  
55 purchaser shall credit the tenant's account for any deposit  
56 money paid by the tenant, and make claims against the deposit  
57 pursuant to the provision of s. 83.49(1)(b) attributable to the  
58 tenant. The purchaser shall also credit the tenant's account for  
59 any advance rent for an unexpired rental period. The tenant must  
60 have documentation demonstrating the payment of the security  
61 deposit or advance rent in order to receive the credit.

62 Section 3. Pilot program for mortgage foreclosure presuit  
63 mediation.-

64 (1) CREATION.-

65 (a) It is the intent of the Legislature to facilitate the  
66 resolution of disputes between mortgagors of homestead property  
67 and their mortgagees in order to assist homeowners facing  
68 imminent foreclosure and to reduce the number of foreclosure  
69 filings in the state courts system.



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70 (b) There is created a statewide pilot program to  
71 facilitate voluntary mediation between a mortgagor of homestead  
72 property and a mortgagee prior to the mortgagee filing an action  
73 in circuit court to foreclose on the homestead property.

74 (c) To be eligible to participate in the pilot program, the  
75 mortgagor must have received from the county property appraiser  
76 in accordance with section 196.011, Florida Statutes, a  
77 homestead exemption on the real property that is the subject of  
78 presuit mediation.

79 (2) ADMINISTRATION.—Subject to an appropriation by the  
80 Legislature, the Office of Financial Regulation shall administer  
81 the pilot program. Notwithstanding any provision in chapter 287,  
82 Florida Statutes, to the contrary, the office may contract with  
83 a qualified not-for-profit organization to assist in the  
84 administration of this program without competitive solicitation.  
85 At a minimum, such a contract shall provide for the not-for-  
86 profit organization to:

87 (a) Recruit mediators certified by the Supreme Court to  
88 participate in the program;

89 (b) Provide training to participating mediators;

90 (c) Assist in the identification of locations to conduct  
91 mediations;

92 (d) Establish procedures to be followed in mediations,  
93 including, but not limited to, procedures relating to the  
94 conduct of mediations in person or via telephone or video  
95 conference; and

96 (e) Market the availability of the program.

97  
98 If the office does not contract for assistance with



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99 administration of the pilot program, the office shall perform  
100 these functions.

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

103 (a) Send to the mortgagor, using certified mail, an  
104 invitation in writing to participate in presuit mediation. If  
105 the mortgagee sends the mortgagor a letter of intent to file a  
106 foreclosure action, the mortgagee shall include the invitation  
107 to participate in mediation with that letter. At a minimum, the  
108 invitation to participate in mediation shall:

109 1. Notify the mortgagor that participation in the mediation  
110 is voluntary;

111 2. Identify any options that the mortgagee may be willing  
112 to negotiate in an effort to avoid foreclosure, such as  
113 modifying or extending the loan;

114 3. Notify the mortgagor that the mediation will be  
115 conducted by an independent mediator certified by the Supreme  
116 Court;

117 4. Provide the mortgagor with the election of one of the  
118 following choices:

119 a. Selecting one of three certified mediators identified by  
120 the mortgagee in the invitation;

121 b. Designating a certified mediator of the mortgagor's own  
122 choosing; or

123 c. Authorizing the mortgagee to designate a certified  
124 mediator.

125 5. Notify the mortgagor that participation in the mediation  
126 may obligate the mortgagor to pay up to one-half of the  
127 mediator's fee;



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128           6. Include a statement encouraging the mortgagor to have an  
129 attorney accompany him or her to the mediation;

130           7. Include a statement informing the mortgagor of his or  
131 her ability to request and obtain from the mortgagee a payment  
132 history over the life of the loan;

133           8. Include a form for the mortgagor to respond to the  
134 invitation and to make the selections prescribed under this  
135 paragraph if the mortgagor responds affirmatively; and

136           9. Identify, and provide detailed contact information for,  
137 an informed employee or agent of the mortgagee whom the  
138 mortgagor may contact regarding the mediation and who has  
139 decision-making authority, or direct access to someone having  
140 that authority, with respect to approving options for resolving  
141 the dispute in order to avoid filing a foreclosure action.

142           (b) Refrain from filing an action to foreclose on the  
143 homestead property:

144           1. For at least 90 days after mailing the invitation to  
145 participate in mediation if the mortgagor agrees in writing to  
146 participate in mediation;

147           2. Until receiving written notice from the mortgagor  
148 declining to participate in mediation; or

149           3. For at least 30 days after mailing the invitation to  
150 participate in mediation and receiving no written response from  
151 the mortgagor.

152           (c) Provide, as requested by the mortgagor or the mediator  
153 and as of the date of the request, a life of loan payment  
154 history; a statement identifying the nature of the alleged  
155 default; the total principal and interest due and owing, as well  
156 as other charges, surcharges, fees, or other delinquencies being



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157 claimed against the mortgagor; and other documents in the  
158 possession of the mortgagee related to the mortgage.

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

161 (a) Respond affirmatively to the invitation, using the form  
162 provided by the mortgagee, within 20 days after receiving the  
163 invitation; and

164 (b) As part of the response:

165 1. Make the election regarding designation of the certified  
166 mediator as prescribed in subsection (3);

167 2. Provide the mortgagee with current daytime contact  
168 information for the mortgagor; and

169 3. Provide, as requested by the mortgagee or the mediator,  
170 documents in the possession of the mortgagor related to the  
171 mortgage and the mortgagor's financial condition, as well as  
172 documents that may support defenses to the foreclosure or that  
173 may be used to rebut the amounts claimed to be due and owing by  
174 the mortgagee.

175 (5) MEDIATOR'S DUTIES.—The mediator agreeing to participate  
176 in the pilot program shall:

177 (a) At the conclusion of the mediation, prepare an  
178 affidavit attesting that the mediation occurred and whether the  
179 mediation resulted in an agreement or an impasse;

180 (b) Provide a copy of the affidavit prepared under  
181 paragraph (a) to the mortgagor and the mortgagee. The mortgagee  
182 shall attach a copy of the affidavit to any subsequent  
183 foreclosure complaint filed;

184 (c) In advance of the mediation, request from the mortgagee  
185 and the mortgagor pertinent information related to the mortgage,



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186 including, but not limited to, a life of loan payment history  
187 and a statement identifying the nature of the alleged default  
188 and the total principal and interest due and owing, as well as  
189 other charges, surcharges, fees, or other delinquencies being  
190 claimed against the mortgagor;

191 (d) With the agreement of the mortgagor and the mortgagee,  
192 invite other persons with an interest in the homestead property  
193 to participate in the mediation; and

194 (e) Comply with the confidentiality provisions of the  
195 Mediation Confidentiality and Privilege Act under ss. 44.401-  
196 44.406, Florida Statutes.

197 (6) MEDIATION COSTS.-

198 (a) The Office of Financial Regulation shall prescribe a  
199 maximum hourly fee that a mediator agreeing to provide services  
200 under this section may charge.

201 1. A mediator shall maintain of record of services provided  
202 per hour or fraction of an hour.

203 2. In no case may the total fee charged by a mediator for a  
204 mediation under this section exceed \$1,000.

205 (b) The mortgagee shall pay the first hour of mediation  
206 services in advance.

207 (c) As part of a settlement resulting from the mediation,  
208 the mortgagee and mortgagor may negotiate payment of the total  
209 costs of mediation.

210 (d) If the mediation results in an impasse and the matter  
211 proceeds to litigation, the court, in the final judgment, may  
212 tax up to one-half of the costs of mediation against the  
213 mortgagor or add up to one-half of the cost to the indebtedness.

214 (7) EXEMPTION FROM COURT-MANDATED MEDIATION.-





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215       (a) The chief judge of the circuit may authorize judges in  
216 the circuit to exempt a mortgagee who participates in good faith  
217 in presuit mediation under this section from mandatory  
218 participation in any program established by the circuit which  
219 compels mediation or conciliation following the filing of a  
220 foreclosure action and prior to the entry of a judgment.

221       (b) This section does not preclude a court from mandating  
222 that parties to a filed foreclosure action participate in  
223 mediation or conciliation.

224       (8) EFFECT OF MEDIATION.—

225       (a) Participation by the mortgagor and the mortgagee in  
226 mediation under this section does not constitute a defense to a  
227 foreclosure action by the mortgagee.

228       (b) Participation by the mortgagor in a loan modification  
229 or other financial arrangement negotiated with the mortgagee as  
230 a result of mediation under this section does not preclude the  
231 mortgagee from proceeding to foreclosure if the mortgagor fails  
232 to comply with the terms of that modification or other financial  
233 arrangement.

234       (c) Participation in mediation under this section does not  
235 entitle the mortgagor or mortgagee to successive presuit  
236 mediation under this section.

237       (9) CONFIDENTIALITY OF COMMUNICATIONS.—Communications among  
238 the mediator, the mortgagor, and the mortgagee under this  
239 section are confidential, subject to the provisions of the  
240 Mediation Confidentiality and Privilege Act under ss. 44.401-  
241 44.406, Florida Statutes.

242       (10) REVIEW AND EXPIRATION.—

243       (a) Before February 1, 2011, the Office of Financial



244 Regulation shall report to the President of the Senate and the  
245 Speaker of the House of Representatives on the mediation program  
246 under this section. The report, at a minimum, shall include:

- 247 1. Data on use of the program;  
248 2. A recommendation on whether to extend the program,  
249 including the rationale for the recommendation; and  
250 3. Any recommendations for revising the program.

251 (b) This section expires June 30, 2011.

252 Section 4. This act shall take effect July 1, 2009.

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255 ===== T I T L E A M E N D M E N T =====

256 And the title is amended as follows:

257 Delete everything before the enacting clause  
258 and insert:

259 An act relating to foreclosures; providing that the  
260 purchaser of a foreclosed residential dwelling unit may not take  
261 possession until a specified period after notifying a tenant of  
262 the intent to take possession; requiring the purchaser to submit  
263 proof of the notice to the clerk of court; providing that the  
264 tenant may terminate a lease upon receiving the notice;  
265 providing that the notice requirement does not eliminate certain  
266 requirements to make an occupant of property a party to a  
267 foreclosure action; creating s. 83.495, F.S.; providing  
268 requirements for landlords following commencement of a  
269 foreclosure action; providing for security deposits and advance  
270 rents to be maintained in interest-earning accounts; providing  
271 for disclosure of the foreclosure action to prospective tenants;  
272 providing an exception to liability for failure to provide



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273 notice; requiring the purchaser in a foreclosure sale to credit  
274 the tenant for security deposits and advance rents under certain  
275 conditions; creating a pilot program for voluntary mediation  
276 between a mortgagor and a mortgagee prior to a foreclosure suit  
277 being filed; providing for administration by the Office of  
278 Financial Regulation; authorizing a contract with a not-for-  
279 profit organization to help administer the program; prescribing  
280 duties of mortgagees, mortgagors, and mediators participating in  
281 the program; providing for the mortgagee to pay part of the  
282 mediator's costs in advance; providing for the allocation of  
283 costs between the mortgagee and mortgagor; authorizing the court  
284 to exempt participants from mediation following the filing of a  
285 foreclosure action; providing for the effect of the mediation on  
286 a subsequent foreclosure action; providing that participants are  
287 not entitled to successive mediation under this program;  
288 providing for future review of the program; providing for  
289 confidentiality of communications; providing for expiration of  
290 the program; providing an effective date.