

By the Committee on Judiciary; and Senators Constantine and Joyner

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1 A bill to be entitled
2 An act relating to foreclosures; amending s. 45.031,
3 F.S.; requiring the clerk of court to furnish certain
4 notices to tenants in a foreclosure case; establishing
5 fees; proving an exception; amending s. 83.49, F.S.;
6 requiring a landlord to pay over the deposit after a
7 foreclosure sale; amending s. 83.50, F.S.; requiring a
8 landlord to provide notice to a tenant of a pending
9 foreclosure case; amending s. 83.56, F.S.; providing
10 grounds for termination of a lease upon the setting of
11 a foreclosure sale; providing for damages; creating a
12 pilot program for voluntary mediation between a
13 mortgagor and a mortgagee prior to a foreclosure suit
14 being filed; providing for administration by the
15 Department of Financial Services; providing for a
16 contract with a not-for-profit organization to help
17 administer the program; prescribing duties of
18 mortgagees, mortgagors, and mediators participating in
19 the program; providing for the mortgagee to pay the
20 mediator's costs in advance; providing for the
21 allocation of costs between the mortgagee and
22 mortgagor; authorizing the court to exempt
23 participants from mediation following the filing of a
24 foreclosure action; providing for the effect of the
25 mediation on a subsequent foreclosure action;
26 providing that participants are not entitled to
27 successive mediation under this program; providing for
28 future review of the program; providing for expiration
29 of the program; providing an effective date.

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

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

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

(1) FINAL JUDGMENT.—

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

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

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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 multifamily or multi-occupant structure, a separate fee shall be
65 paid for each unit and a separate notice shall be mailed to each
66 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
87 deposit. Any remaining funds shall be applied toward the

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88 judgment.

89 (d) On the day of the sale the clerk shall furnish by
90 first-class mail to the property being foreclosed a notice that
91 reads: "IMPORTANT - The property you are living in or occupying
92 was sold at foreclosure sale. The person who bought the property
93 at the sale may evict you from this property. The next notice
94 you may receive will be an eviction notice giving you only 24
95 hours to move out and remove your belongings. If you do not
96 comply 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 multifamily or multi-
109 occupant structure, a separate notice shall be mailed to each
110 dwelling unit.

111 (11) In a foreclosure of a multifamily 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
116 to the purchaser after the sale and within that foreclosure

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

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

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

143 Section 3. Subsection (3) is added to section 83.50,
144 Florida Statutes, to read:

145 83.50 Disclosure.—

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

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

155 83.56 Termination of rental agreement.—

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

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

185 (7)~~(6)~~ If the rental agreement is terminated, the landlord
186 shall comply with s. 83.49(3).

187 Section 5. Pilot program for mortgage foreclosure presuit
188 mediation.-

189 (1) CREATION.-

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

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

200 (2) ADMINISTRATION.-The Department of Financial Services
201 shall contract with a qualified not-for-profit organization to
202 assist in the administration of this program. At a minimum, the
203 contract shall provide for the not-for-profit organization to:

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

209 (b) Recruit mediators certified by the Supreme Court to
210 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 presuit 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
232 following choices:

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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 decisionmaking authority, or direct access to someone having
251 that authority, with respect to approving options for resolving
252 the 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
261 participate in mediation and receiving no written response from

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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 after 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 ss. 44.401-
283 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
290 foreclosure complaint filed; and

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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 presuit 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) This section does not preclude a court from mandating
317 that parties to a filed foreclosure action participate in
318 mediation.

319 (8) EFFECT OF MEDIATION.—

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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 presuit
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 June 30, 2011.

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