

By the Committees on Banking and Insurance; and Judiciary; and Senators Constantine, Joyner, and Aronberg

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1 A bill to be entitled
2 An act relating to foreclosures; providing that the
3 purchaser of a foreclosed residential dwelling unit
4 may not take possession until a specified period after
5 notifying a tenant of the intent to take possession;
6 requiring the purchaser to submit proof of the notice
7 to the clerk of court; providing that the tenant may
8 terminate a lease upon receiving the notice; providing
9 that the notice requirement does not eliminate certain
10 requirements to make an occupant of property a party
11 to a foreclosure action; creating s. 83.495, F.S.;
12 providing requirements for landlords following
13 commencement of a foreclosure action; providing for
14 security deposits and advance rents to be maintained
15 in interest-earning accounts; providing for disclosure
16 of the foreclosure action to prospective tenants;
17 providing an exception to liability for failure to
18 provide notice; requiring the purchaser in a
19 foreclosure sale to credit the tenant for security
20 deposits and advance rents under certain conditions;
21 creating a pilot program for voluntary mediation
22 between a mortgagor and a mortgagee prior to a
23 foreclosure suit being filed; providing for
24 administration by the Office of Financial Regulation;
25 authorizing a contract with a not-for-profit
26 organization to help administer the program;
27 prescribing duties of mortgagees, mortgagors, and
28 mediators participating in the program; providing for
29 the mortgagee to pay part of the mediator's costs in

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30 advance; providing for the allocation of costs between
31 the mortgagee and mortgagor; authorizing the court to
32 exempt participants from mediation following the
33 filing of a foreclosure action; providing for the
34 effect of the mediation on a subsequent foreclosure
35 action; providing that participants are not entitled
36 to successive mediation under this program; providing
37 for future review of the program; providing for
38 confidentiality of communications; providing for
39 expiration of the program; providing an effective
40 date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Possession of foreclosed residential dwelling
45 unit; notice to tenant.—

46 (1) A purchaser who receives a certificate of title on a
47 foreclosed residential dwelling unit may take possession of the
48 premises that is subject to a rental agreement no earlier than
49 30 days after the purchaser gives the tenant written notice
50 stating that the dwelling unit has been sold and that the
51 purchaser desires to take possession of the dwelling unit. The
52 purchaser must give notice to each tenant by first class mail.

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

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

58 (4) This section does not eliminate the common law

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59 requirement to make the occupant of property a party to a
60 foreclosure action as a condition precedent to the court
61 authorizing the clerk of court to issue a writ of possession as
62 part of the foreclosure action.

63 Section 2. Section 83.495, Florida Statutes, is created to
64 read:

65 83.495 Commencement of mortgage foreclosure; disclosure;
66 security deposits and advance rents.—After the initial service
67 of the complaint is made on a landlord in any mortgage
68 foreclosure proceedings commenced against a residential dwelling
69 unit:

70 (1) The landlord or the landlord's agent shall hold as
71 provided under s. 83.49(1)(b) the total amount of money
72 deposited or advanced by a current or prospective tenant as
73 security for performance of the rental agreement or as advance
74 rent.

75 (2)(a) The landlord or a person authorized to enter into a
76 rental agreement on the landlord's behalf shall disclose the
77 existence of the pending foreclosure proceedings in writing to a
78 prospective tenant before the person executes any rental
79 agreement made during the pendency of the foreclosure
80 proceeding. The written disclosure shall inform the prospective
81 tenant that the foreclosure proceedings might affect the right
82 to possess and reside in the leased dwelling unit and that the
83 landlord is required to hold the tenant's total amount of
84 deposit money or advance rent as provided under s. 83.49(1)(b).

85 (b) A person authorized to enter into a rental agreement on
86 the landlord's behalf is not liable for failure to notify a
87 prospective tenant of the foreclosure proceeding unless he or

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88 she received notice of the existence of the pending foreclosure
89 proceedings from the landlord.

90 (3) In the event the landlord or the landlord's agent does
91 not hold the deposit money or advance rent as provided under s.
92 83.49(1)(b) and the property is sold in foreclosure, the
93 purchaser shall credit the tenant's account for any deposit
94 money paid by the tenant, and make claims against the deposit
95 pursuant to the provision of s. 83.49(1)(b) attributable to the
96 tenant. The purchaser shall also credit the tenant's account for
97 any advance rent for an unexpired rental period. The tenant must
98 have documentation demonstrating the payment of the security
99 deposit or advance rent in order to receive the credit.

100 Section 3. Pilot program for mortgage foreclosure presuit
101 mediation.-

102 (1) CREATION.-

103 (a) It is the intent of the Legislature to facilitate the
104 resolution of disputes between mortgagors of homestead property
105 and their mortgagees in order to assist homeowners facing
106 imminent foreclosure and to reduce the number of foreclosure
107 filings in the state courts system.

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

112 (c) To be eligible to participate in the pilot program, the
113 mortgagor must have received from the county property appraiser
114 in accordance with section 196.011, Florida Statutes, a
115 homestead exemption on the real property that is the subject of
116 presuit mediation.

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117 (2) ADMINISTRATION.—Subject to an appropriation by the
118 Legislature, the Office of Financial Regulation shall administer
119 the pilot program. Notwithstanding any provision in chapter 287,
120 Florida Statutes, to the contrary, the office may contract with
121 a qualified not-for-profit organization to assist in the
122 administration of this program without competitive solicitation.
123 At a minimum, such a contract shall provide for the not-for-
124 profit organization to:

125 (a) Recruit mediators certified by the Supreme Court to
126 participate in the program;

127 (b) Provide training to participating mediators;

128 (c) Assist in the identification of locations to conduct
129 mediations;

130 (d) Establish procedures to be followed in mediations,
131 including, but not limited to, procedures relating to the
132 conduct of mediations in person or via telephone or video
133 conference; and

134 (e) Market the availability of the program.

135
136 If the office does not contract for assistance with
137 administration of the pilot program, the office shall perform
138 these functions.

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

141 (a) Send to the mortgagor, using certified mail, an
142 invitation in writing to participate in presuit mediation. If
143 the mortgagee sends the mortgagor a letter of intent to file a
144 foreclosure action, the mortgagee shall include the invitation
145 to participate in mediation with that letter. At a minimum, the

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146 invitation to participate in mediation shall:

147 1. Notify the mortgagor that participation in the mediation
148 is voluntary;

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

152 3. Notify the mortgagor that the mediation will be
153 conducted by an independent mediator certified by the Supreme
154 Court;

155 4. Provide the mortgagor with the election of one of the
156 following choices:

157 a. Selecting one of three certified mediators identified by
158 the mortgagee in the invitation;

159 b. Designating a certified mediator of the mortgagor's own
160 choosing; or

161 c. Authorizing the mortgagee to designate a certified
162 mediator.

163 5. Notify the mortgagor that participation in the mediation
164 may obligate the mortgagor to pay up to one-half of the
165 mediator's fee;

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

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

171 8. Include a form for the mortgagor to respond to the
172 invitation and to make the selections prescribed under this
173 paragraph if the mortgagor responds affirmatively; and

174 9. Identify, and provide detailed contact information for,

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175 an informed employee or agent of the mortgagee whom the
176 mortgagor may contact regarding the mediation and who has
177 decision-making authority, or direct access to someone having
178 that authority, with respect to approving options for resolving
179 the dispute in order to avoid filing a foreclosure action.

180 (b) Refrain from filing an action to foreclose on the
181 homestead property:

182 1. For at least 90 days after mailing the invitation to
183 participate in mediation if the mortgagor agrees in writing to
184 participate in mediation;

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

187 3. For at least 30 days after mailing the invitation to
188 participate in mediation and receiving no written response from
189 the mortgagor.

190 (c) Provide, as requested by the mortgagor or the mediator
191 and as of the date of the request, a life of loan payment
192 history; a statement identifying the nature of the alleged
193 default; the total principal and interest due and owing, as well
194 as other charges, surcharges, fees, or other delinquencies being
195 claimed against the mortgagor; and other documents in the
196 possession of the mortgagee related to the mortgage.

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

199 (a) Respond affirmatively to the invitation, using the form
200 provided by the mortgagee, within 20 days after receiving the
201 invitation; and

202 (b) As part of the response:

203 1. Make the election regarding designation of the certified

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204 mediator as prescribed in subsection (3);

205 2. Provide the mortgagee with current daytime contact
206 information for the mortgagor; and

207 3. Provide, as requested by the mortgagee or the mediator,
208 documents in the possession of the mortgagor related to the
209 mortgage and the mortgagor's financial condition, as well as
210 documents that may support defenses to the foreclosure or that
211 may be used to rebut the amounts claimed to be due and owing by
212 the mortgagee.

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

215 (a) At the conclusion of the mediation, prepare an
216 affidavit attesting that the mediation occurred and whether the
217 mediation resulted in an agreement or an impasse;

218 (b) Provide a copy of the affidavit prepared under
219 paragraph (a) to the mortgagor and the mortgagee. The mortgagee
220 shall attach a copy of the affidavit to any subsequent
221 foreclosure complaint filed;

222 (c) In advance of the mediation, request from the mortgagee
223 and the mortgagor pertinent information related to the mortgage,
224 including, but not limited to, a life of loan payment history
225 and a statement identifying the nature of the alleged default
226 and the total principal and interest due and owing, as well as
227 other charges, surcharges, fees, or other delinquencies being
228 claimed against the mortgagor;

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

232 (e) Comply with the confidentiality provisions of the

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233 Mediation Confidentiality and Privilege Act under ss. 44.401-
234 44.406, Florida Statutes.

235 (6) MEDIATION COSTS.—

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

239 1. A mediator shall maintain of record of services provided
240 per hour or fraction of an hour.

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

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

245 (c) As part of a settlement resulting from the mediation,
246 the mortgagee and mortgagor may negotiate payment of the total
247 costs of mediation.

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

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

253 (a) The chief judge of the circuit may authorize judges in
254 the circuit to exempt a mortgagee who participates in good faith
255 in presuit mediation under this section from mandatory
256 participation in any program established by the circuit which
257 compels mediation or conciliation following the filing of a
258 foreclosure action and prior to the entry of a judgment.

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

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262 (8) EFFECT OF MEDIATION.—

263 (a) Participation by the mortgagor and the mortgagee in
264 mediation under this section does not constitute a defense to a
265 foreclosure action by the mortgagee.

266 (b) Participation by the mortgagor in a loan modification
267 or other financial arrangement negotiated with the mortgagee as
268 a result of mediation under this section does not preclude the
269 mortgagee from proceeding to foreclosure if the mortgagor fails
270 to comply with the terms of that modification or other financial
271 arrangement.

272 (c) Participation in mediation under this section does not
273 entitle the mortgagor or mortgagee to successive presuit
274 mediation under this section.

275 (9) CONFIDENTIALITY OF COMMUNICATIONS.—Communications among
276 the mediator, the mortgagor, and the mortgagee under this
277 section are confidential, subject to the provisions of the
278 Mediation Confidentiality and Privilege Act under ss. 44.401-
279 44.406, Florida Statutes.

280 (10) REVIEW AND EXPIRATION.—

281 (a) Before February 1, 2011, the Office of Financial
282 Regulation shall report to the President of the Senate and the
283 Speaker of the House of Representatives on the mediation program
284 under this section. The report, at a minimum, shall include:

285 1. Data on use of the program;

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

288 3. Any recommendations for revising the program.

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

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