

By Senator Joyner

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1 A bill to be entitled
 2 An act relating to judicial and execution sales of
 3 property; creating s. 702.55, F.S.; requiring a
 4 lienholder to serve a certain notice on a homestead
 5 owner before a foreclosure sale; specifying that the
 6 notice must inform of bankruptcy as a potential
 7 alternative to foreclosure and warning against
 8 foreclosure "saving" schemes; providing for an
 9 affirmative defense from foreclosure for failure to
 10 provide notice; amending s. 56.021, F.S., relating to
 11 the required service of notice of potential relief
 12 through bankruptcy; conforming provisions to changes
 13 made by the act; providing for application; providing
 14 an effective date.

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

18 Section 1. Section 702.55, Florida Statutes, is created to
 19 read:

20 702.55 Notice of bankruptcy alternative to judicial or
 21 sheriff's sale.-

22 (1) In any foreclosure of a mortgage lien or other lien
 23 against homestead property owned by a natural person or persons,
 24 the mortgagee or lienholder must serve a separate notice to the
 25 natural person property owner or owners containing the following
 26 statement in conspicuous type:

28 NOTICE REGARDING REQUESTED PROPERTY SALE

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30 If you are an individual owner of property that may be
31 affected by this action, and if any portion of the
32 property is your home or personal property, please
33 read the following notice carefully: A judicial or
34 sheriff's sale of your property that is subject to the
35 lien of the plaintiff in this case may occur shortly.
36 UNDER CERTAIN CIRCUMSTANCES, the United States
37 Bankruptcy Code may provide a property owner the
38 ability to retain the liened property and reorganize
39 the claimed indebtedness if a bankruptcy petition is
40 filed before the judicial or sheriff's sale occurs. In
41 most cases, an individual will be required to complete
42 a credit counseling briefing before being eligible to
43 file a bankruptcy case.

44
45 Further, a mortgage foreclosure is a complex process.
46 People may approach you about "saving" your home. YOU
47 SHOULD BE CAREFUL ABOUT ANY SUCH PROMISES. There are
48 government agencies and nonprofit organizations you
49 may contact for helpful information about the
50 foreclosure process. For the name and telephone number
51 of an organization near you, please call the United
52 States Department of Housing and Urban Development.

53
54 (2) The notice required by this section must be served
55 together with the original process and in the manner permitted
56 for service of the complaint, and, if so served, the fact of
57 service of the notice must be noted on the summons and the
58 return of service so that the clerk of the court and the

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59 judicial officer may ascertain whether the notice has been
60 served. In the case of service of process by publication, the
61 notice need not be separate if the published service of process
62 includes the statement set forth in subsection (1), and such
63 publication of the statement constitutes compliance with this
64 section. If the foreclosing mortgagee or lienholder fails to
65 serve the notice required by this section with the original
66 process or with the original publication of service of process,
67 the mortgagee or lienholder may cure such failure by
68 subsequently serving the notice in the manner specified in this
69 subsection at any time up to 5 business days before the natural
70 person property owner's answer is due to be served. The notice
71 need not be served on any defendant other than the natural
72 person or persons who are the record owner of the property at
73 the time the notice of lis pendens is recorded.

74 (3) The failure of the mortgagee or lienholder to serve the
75 notice required by this section constitutes an affirmative
76 defense available to a natural person property owner in an
77 action to foreclose the mortgage or other lien against homestead
78 property, and a natural person property owner who raises that
79 defense has the burden of proving that the property was the
80 homestead of such property owner on the date the foreclosure
81 action was filed. If the defense is timely raised and proved by
82 the natural person property owner, an in personam or deficiency
83 judgment may not be entered against the property owner, but an
84 in rem final judgment of foreclosure may be entered against the
85 property owner. If the affirmative defense is not timely raised
86 and proved, the failure of the mortgagee or lienholder to timely
87 serve the notice required by this section is not a bar to the

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88 entry of an in personam or deficiency judgment.

89 (4) Failure to serve the notice required by this section
90 does not affect the validity or finality of the judgment of
91 foreclosure, the validity of title or marketability of the real
92 property subject to the judicial sale, or the validity of title
93 conveyed by the judicial sale.

94 Section 2. Section 56.021, Florida Statutes, is amended to
95 read:

96 56.021 Executions; issuance and return, alias, etc.—When
97 issued, an execution is valid and effective during the life of
98 the judgment or decree on which it is issued. When fully paid,
99 the officer executing it shall make his or her return and file
100 it in the court that ~~which~~ issued the execution. If the
101 execution is lost or destroyed, the party entitled thereto may
102 have an alias, pluries, or other copies on making proof of such
103 loss or destruction by affidavit and filing it in the court
104 issuing the execution. However, if the judgment debtor or
105 property owner is a natural person, execution may not be issued
106 before the judgment creditor has filed and served a notice upon
107 such judgment debtor or property owner in the same form as
108 required by s. 702.55.

109 Section 3. This act shall take effect July 1, 2009, and
110 applies only to foreclosure proceedings commenced, and to writs
111 of execution issued, on or after that date.