

By Senator Lawson

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1                   A bill to be entitled  
2       An act relating to homestead property foreclosure  
3       actions; providing a short title; specifying  
4       application to homestead property; providing  
5       procedural requirements and limitations for  
6       plaintiffs, defendants, and courts in certain  
7       foreclosure actions; specifying document production  
8       requirements; requiring mediation; specifying  
9       settlement negotiation requirements; providing  
10      criteria for commercial reasonableness of renegotiated  
11      loans; requiring the Department of Business and  
12      Professional Regulation to adopt rules relating to  
13      appraisal methods; providing for forbearance liens  
14      under certain circumstances; providing lien  
15      limitations; providing for satisfaction of such liens;  
16      requiring the Supreme Court to determine certain  
17      forms; specifying application to certain foreclosure  
18      actions; providing for future repeal; providing an  
19      effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23       Section 1. (1) This act may be cited as the "Foreclosure  
24 Bill of Rights."

25       (2) This act shall apply exclusively to actions to  
26 foreclose a mortgage on real estate used and owned as a  
27 homestead as defined in s. 196.012, Florida Statutes.

28       (3) In any action to foreclose a mortgage on homestead  
29 property, a defendant may invoke the protections of this section

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30 by filing and serving a notice to invoke the Foreclosure Bill of  
31 Rights, which shall include a sworn statement that the property  
32 in foreclosure is the defendant's homestead property. The form  
33 for a notice to invoke shall be provided to the defendant,  
34 together with the summons and complaint, with the original  
35 service of process for the foreclosure action. The Supreme Court  
36 shall determine the form of the notice to invoke.

37 (4) After the protections of this section have been invoked  
38 by a defendant, a plaintiff is not entitled to a final judgment  
39 against that defendant until all of the requirements of this  
40 section have been satisfied.

41 (5) If a default is entered against a defendant, the  
42 defendant is not entitled to the protections of this section  
43 until the default judgment is set aside.

44 (6) (a) Within 45 days after the filing and service of the  
45 notice to invoke, the plaintiffs shall provide for a new  
46 appraisal of the property in foreclosure. Such appraisal shall  
47 consider ordinary transactions, short sales, and foreclosure  
48 sales of similarly situated properties within a reasonable  
49 surrounding area in determining the actual current market value  
50 of the property. The Department of Business and Professional  
51 Regulation shall adopt rules necessary to develop appraisal  
52 methods that accurately determine the actual current market  
53 value of the property.

54 (b) Within 60 days after filing the notice to invoke, each  
55 plaintiff shall provide to the defendant the results of all  
56 appraisals conducted pursuant to paragraph (a), together with  
57 true copies of all closing documents relating to the mortgage  
58 under foreclosure, including, but not limited to:

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59       1. Any loan application used to determine the defendant's  
60 creditworthiness.

61       2. Any settlement statement.

62       3. The mortgage being foreclosed.

63       4. Any promissory note related to the mortgage.

64       5. Any assignments of the mortgage or note.

65       (c)1. If any closing document is not in the actual  
66 possession of the plaintiff, the plaintiff, in order to comply  
67 with paragraph (b), must make reasonable efforts to obtain the  
68 documents and, if the documents cannot be obtained, serve on the  
69 defendant an affidavit detailing the efforts made to obtain the  
70 documents, the person or entity in whose possession the  
71 documents are believed to be, and the last known address,  
72 location, and telephone number of the person or entity in whose  
73 possession the documents are believed to be. The plaintiff shall  
74 file a certificate of compliance with the requirements of this  
75 paragraph. The Supreme Court shall determine the form of the  
76 certificate.

77       2. Within 30 days after the filing and serving of the  
78 certificate of compliance under subparagraph 1., the defendant  
79 shall provide to the plaintiff a sworn financial affidavit, a  
80 copy of the defendant's tax returns for the immediately  
81 preceding 3 years, and a copy of the defendant's bank statements  
82 for the immediately preceding 3 months. Upon motion, the court  
83 may issue any protective orders deemed to be necessary and, in  
84 the interest of justice, to protect the privacy rights of the  
85 defendant. The Supreme Court shall determine the form of the  
86 financial affidavit.

87       (7) By agreement of the parties or with prior court

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88 approval, including by administrative order, service of any  
89 documents under this section may be made in electronic format or  
90 upon such other terms as may be agreed to or ordered in the  
91 interests of justice and judicial economy.

92 (8) All actions to foreclose a mortgage shall be subject to  
93 court-ordered mediation pursuant to s. 44.102, Florida Statutes.  
94 The mediation shall be coordinated and scheduled by the parties  
95 no sooner than 60 days after completion of all other  
96 requirements of this section.

97 (9) The plaintiffs shall make a good faith effort to  
98 negotiate a settlement, which shall include efforts to  
99 renegotiate the loan at a principal equivalent to the actual  
100 market value as determined under paragraph (6) (a). In  
101 determining good faith, the court shall consider:

102 (a) Whether a renegotiated loan is commercially reasonable.

103 (b) Whether the plaintiff has made any offer.

104 (c) The reasonableness of any offer made.

105 (d) Any other factor the court deems relevant.

106 (10) In determining the commercial reasonableness of a  
107 renegotiated loan, the court shall consider the following  
108 factors:

109 (a) The income, savings, and other assets of the  
110 defendants.

111 (b) The reasonableness of the terms of the original loan,  
112 including whether issues of fraud are presented in the  
113 negotiation and closing of the original loan.

114 (c) Whether the loan term can be extended.

115 (d) Whether the interest rate can be reduced.

116 (e) Whether the repayment terms can be changed.

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117 (f) The creditworthiness of the defendants, other than as  
118 affected by the foreclosure and any related nonpayments.

119 (11) (a) If the loan is refinanced with a reduced principal  
120 at the property's actual market value, the plaintiff shall be  
121 entitled to a forbearance lien on the property for an amount  
122 equal to the difference between the original principal and the  
123 new principal. The forbearance lien shall not grant any other  
124 right to foreclose on the property or otherwise collect the  
125 moneys other than as provided in this act.

126 (b) The forbearance lien shall be recorded in the public  
127 records of the county in which the property is located. The  
128 Supreme Court shall determine the form of the forbearance lien.

129 (c)1. Upon the first resale, refinance, or transfer by  
130 operation of law or otherwise, the beneficiary of the  
131 forbearance lien shall be entitled to any proceeds of the  
132 resale, refinance, or transfer in excess of the renegotiated  
133 loan balance to be applied to satisfaction of the lien.

134 2. Upon any subsequent resale, refinance, or transfer by  
135 operation of law or otherwise, the beneficiary of the  
136 forbearance lien shall have the right to foreclose the lien.

137 (12) The clerks of the circuit courts shall provide forms,  
138 together with instructions in English and Spanish, to pro se  
139 defendants seeking assistance in any foreclosure action. Such  
140 forms shall be provided at no cost to the defendants. The  
141 Supreme Court shall determine the content of the forms and  
142 instructions to be provided.

143 (13) This act applies to foreclosure actions initiated on  
144 or after July 1, 2009, and to all active foreclosure actions in  
145 which a final judgment has not been rendered as of July 1, 2009.

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146       (14) This act expires July 1, 2014.

147       Section 2. This act shall take effect July 1, 2009.