

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 874

INTRODUCER: Senator Smith

SUBJECT: Real Property Registration

DATE: April 9, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Woodham	Burgess	BI	<b>Pre-meeting</b>
2.	_____	_____	CA	_____
3.	_____	_____	JU	_____
4.	_____	_____	FT	_____
5.	_____	_____	GA	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 874 requires the Department of Financial Services (DFS) to create a statewide Internet registry of property that is deemed abandoned or vacant. Each lender holding a mortgage on vacant or abandoned real property that the lender takes action to maintain must register the property in the statewide registry. Once a mortgage is in default, the lender must determine at least once every two months whether property is vacant or abandoned. The DFS must provide the local government with jurisdiction over the property with electronic notice when property is entered into the registry; if the local government does not receive such notice from the DFS, the lender must provide it through certified mail. Proof of filing with the registry is a condition precedent for a mortgage lender to pursue a mortgage collection action, foreclosure action, or to file foreclosure proceedings in court.

A local government with jurisdiction over property entered into the registry may enter the premises to inspect the property once every three months if a lender does not notify the local government that it has conducted a physical inspection of the property within 10 days of being notified by local government of a pending inspection. If property in the registry becomes vandalized, is broken into, violates local ordinances, falls into disrepair, or becomes uninhabitable, the local government may notify the lender's maintenance agent. If the condition persists, the local government may enter the property and initiate repairs. The cost of such repairs may be recovered from the lender, with costs assessed against the property via a lien equal in priority to real property taxes. Such lien is superior to all mortgage liens and other judgments on the property.

The bill also states that property abandoned by its owner is not homestead property.

This bill creates an unspecified section of the Florida Statutes.

## II. Present Situation:

### Foreclosure

A foreclosure is a lawsuit filed by a lender when the borrower has failed to make the payments. The lender asks the court to sell the property so that the lender can recover the missed payments or the whole balance due on the loan. Once the foreclosure action is filed, parties to the action must be served. Once the foreclosure lawsuit is filed, a tenant's rights are limited. If the property is sold at auction, a writ of possession is entered, which requires the tenants to vacate the premises. A tenant's options before a writ of possession is entered can include moving out before an eviction or delaying the foreclosure process by filing a motion to delay the auction. The Office of the State Courts Administrator (OSCA) reports that foreclosure filings doubled from FY 2005-06 to FY 2006-07 and nearly tripled from FY 2006-07 to FY 2007-08. As of January 2009, the counties with the highest number of filings included Dade, Broward, Palm Beach, Orange, Lee, and Duval counties.

### Judicial Sales Procedure

Currently under the law, a mortgage company must serve a complaint, a notice of *lis pendens*, and a summons on the borrower in order to initiate foreclosure proceedings. The procedure for the sale of real or personal property, otherwise known as a judicial sale, is provided for in s. 45.031, F.S. This section provides that a final judgment from a foreclosure proceeding must include a statement notifying the property owner and subordinate lienholders, if any, that there may be additional money from the foreclosure sale and notifying the property owner that he or she may claim such additional funds without representation by a lawyer or other person, if the subject property qualified for a homestead exemption in the most recent tax year. The sale must be conducted at public auction at the time and place set forth in the final judgment. After the sale, the Certificate of Sale, which is filed and served on all parties by the clerk of court, must include the amount the property was sold for and to whom it was sold. The clerk is also required to serve all parties with a copy of the Certificate of Disbursement detailing the amount of payments made to the parties pursuant to the sale and any remaining surplus. The Certificate of Disbursement must notify persons claiming a right to any excess funds that they must make a claim to the clerk within 60 days, or forfeit the right to make a claim to the owner of record at the *lis pendens* date. Essentially, the surplus will be paid to the owner at the *lis pendens* date, unless another person (such as a subordinate lienholder or assignee of the right to collect the funds) claims an interest in the proceeds during the 60-day period. If such a claim is made, the court shall set an evidentiary hearing to determine entitlement to the surplus.

### Expedited Show-Cause Foreclosure Procedure

The Legislature created an optional "speedy" foreclosure procedure for residential foreclosures in 1993, codified at s. 702.10, F.S. This section provides a fast track foreclosure process through an order to show cause, whereby a lender can obtain an *in rem* judgment. Upon filing a foreclosure complaint, the mortgagee can request an order to show cause for the entry of a final judgment. The judge must then read the complaint and verify that it states a cause of action. If the complaint is verified, the judge will issue an order to the defendant to show cause why a final

judgment should not be entered. If a defendant waives the right to be heard, the judge shall promptly enter a final judgment of foreclosure. Upon receipt of a final judgment, the procedures set out in s. 45.031, F.S., for a judicial sale should be followed.

### **Sheriff's Sale**

Chapter 56, F.S., governs sheriff's sales, which occur when a lienholder obtains a money judgment on a formerly unsecured debt. Upon entry of a money judgment, the court issues a writ of execution, which is effective during the life of the judgment. An execution is a "court order directing a sheriff or other officer to enforce a judgment, [usually] by seizing and selling the judgment debtor's property." Upon receipt of the writ of execution, the sheriff must publicize the upcoming sale, and then an auction is held on a specified date.

### **Abandoned and Vandalized Foreclosed Property**

As foreclosures on property increase, an increasing problem for cities and municipalities is blight caused by abandoned and vandalized property. When property is foreclosed upon the occupant of the structure is often forced to leave. This can often result in overgrown lawns, unrepaired building damage, pest infestation, vandalism, squatting, and theft. A March 14, 2009 report in the Miami Herald indicates that many communities have taken action through local ordinances that provide local officials with increased authority to enter property and take corrective action. Coral Springs and Miami require the owners of vacant property to register their property and allow local authorities to gain entry. Miami has created a mandatory registry of vacant homes and commercial properties that costs a minimum of \$250 annually, with failure to comply punishable by a fine of \$1000. Miami, Miami Lakes, and Palmetto Bay have enacted legislation that increases the ability of local code officials to secure blighted structures and place a lien on the property for reimbursement of monies spent on the property.

### **Homestead Exemptions**

*Defining a Homestead* – Homesteads are explicitly defined in the Florida Constitution: Art. X(4) defines a homestead within municipal limits as "one-half acre of contiguous land." A homestead outside of municipal limits is determined in this same section as "one hundred sixty acres of contiguous land and improvements thereupon."

*Homestead Exemptions* – Exemptions for homestead are explicitly provided for under both Art. X(4) and Art VII(6) of the Florida Constitution. An exemption applies to the first twenty-five thousand dollars of a homestead's assessed valuation for all levies except special assessments. An exemption also applies to that part of the assessed value of a homestead of between fifty and seventy-five thousand dollars for all levies except school district levies.<sup>1</sup>

Owners of property who are applying for or renewing a homestead exemption must do so by March 1 of each year.<sup>2</sup> The property appraiser in the jurisdiction in question must submit renewal forms to holders of a homestead exemption by February 1, of each year.<sup>3</sup>

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<sup>1</sup> Article VII (6)(a), Florida Constitution

<sup>2</sup> Section 196.011(1)(a), F.S.

<sup>3</sup> Section 196.011(6), F.S.

*Adjudicating Homestead Status* – Once homestead status is established the existing legal presumption strongly favors the maintenance of that status even where a property may appear abandoned. Barry A. Nelson and Kevin E. Packman, writing in the Florida Bar Journal, note that:

“Once a home obtains ‘homestead’ status it remains homestead until it is abandoned. The debtor’s failure to continue to occupy the residence...is not necessarily equivalent to abandonment and ...will not necessarily cause the homestead to lose protected status. The general rule appears to be that if a debtor leaves his home due to financial, health or family reasons the debtor will not be considered to have abandoned the homestead.”<sup>4</sup>

Further rules governing homestead exemptions are contained in ch. 196, F.S. The authority of Circuit and County courts to make a declaratory judgments regarding homestead exemptions is granted in s. 86.011, F.S.

### III. Effect of Proposed Changes:

**Section 1.** Creates the “Vacant or Abandoned Real Property Registration, Maintenance, and Foreclosure Reporting Act.” The bill requires the Department of Financial Services to establish a statewide Internet registry of vacant or abandoned real property.

*Lenders Holding Mortgages Must Register Vacant or Abandoned Property* – The bill requires each lender holding a mortgage on vacant or abandoned real property, that the lender takes action to maintain, to file with the registry a description of the real property. The bill may create a disincentive for lenders to maintain property, as only property that the “lender takes action to maintain” must be registered. The description must include the property owner’s name, the address of the property, the lender’s name, the lender’s loan number, the lender’s legal agent and maintenance agent (which may be the same person), and the addresses, telephone numbers, and email address of such agents. The DFS may require other information it deems necessary to create the database. The bill authorizes the DFS to charge a fee for filing information with the database. The lender must notify the appropriate local government of the filing of information with the registry.

*Determination of Vacancy/Abandonment* – If a mortgagor is in default, the lender must determine if the property is vacant or abandoned at least once every two months, and must file the required information and the date of the inspection with the registry. Failure to complete this determination or file the results with the registry is subject to a \$500 penalty. Money collected pursuant to the penalty must be used to satisfy local government liens upon the premises that accrued prior to the filing in the registry, with excess penalty money being retained by the DFS.

*DFS Must Notify Local Government of Property Entered Into Registry* – The department must provide a copy of the registry filing and any updates by email to the local government within whose jurisdiction the property is located. Each local government must establish an e-mail address for purposes of receiving copies of registry filings. The local government shall

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<sup>4</sup>Florida’s Unlimited Homestead Exemption Does Have Some Limits by Barry A. Nelson and Kevin E. Packman January 2003, 77 Florida Bar Journal 60.

electronically confirm with the registry the receipt of registry filings received from the DFS. The registry must notify the legal agent by e-mail certifying receipt by the local government. If the lender does not receive the certification, the lender shall provide to the local government the information required to be filed with the registry by certified mail with proof of delivery, and shall electronically notify the registry of having taken such action. A local government that receives a confirmation in error must electronically notify the registry of the error, and the registry shall notify the legal agent by e-mail. When a lender is notified that a local government received a notice in error, the lender must correct the filing in the registry and ensure that the correct local government receives the notification.

*Mortgage Lenders Must Update The Registry* – When lender information is changed, the lender must update the registry and include the time the lender initiates proceedings to foreclose the mortgage on property listed in the registry. When a lender retains legal counsel to pursue a mortgage collection action or foreclosure action or files foreclosure proceedings in court, the lender shall include proof of the registry filing certifying that the proper local government received mortgage collection or foreclosure notification through the registry or through certified mail with proof of delivery. Failure to include such information causes the mortgage collection or foreclosure action to be dismissed with costs assessed against the lender. The lender may correct the failure before the dismissal, but must also pay \$1,000 into the court registry to be used to pay any outstanding liens of the local government that chose to maintain the property.

*Local Government Inspections* – Once property is listed in the registry, a local government may physically enter the property in the normal course of property inspections under the same legal authority possessed by the lender to enter the property. The local government may not enter the property if it is legally occupied. Entrance onto the property may not be made more than once every 3 months, for purposes of ensuring it is properly secured and not a danger to the surrounding area. If the inspection reveals violations of local government ordinances, the local government may issue notices to require correction of the violations. The local government must provide at least 10 days electronic notice of the inspection, including date and time of the inspection, to the maintenance agent. The maintenance agent may accompany the local government inspectors during the inspection. The lender may prohibit the local government from entering the premises of a property if the lender certifies to the local government under oath that the lender conducted a physical inspection of the property, that the property is secure, is not a danger to the surrounding area, and is in compliance with applicable local ordinances within 10 days after the notice of inspection provided by local government. A local government is immune from prosecution for entering property pursuant to making an inspection, except for negligence on the part of local government officials inspecting and maintaining the property.

*Entrance and Repairs on Property by Local Government* – If registered property is broken into or vandalized, violates the local government's ordinances, or otherwise falls into disrepair or becomes uninhabitable, the local government may notify the maintenance agent. If, after the notice, the property remains in disrepair or is uninhabitable, the local government may initiate repairs and recover the full amount of the cost of the repairs from the lender. If a local government initiates repairs, it is not required to continue them under s. 162.09, F.S. Costs for repairs are to be assessed against the property and constitute a lien on the property equal in priority to real property taxes, including any post lis pendens assessment filed by the local government during a foreclosure proceeding. The lien is superior to all mortgage liens and other

liens or judgments against the property and must be satisfied in full upon sale of the property or upon settlement or dismissal in the proceeding if the local government cites the property as required by the bill. In order for the lien to be effective as provided in this bill, the property must be cited by the local government's code enforcement agency through the local government's code enforcement process, nuisance abatement process, or unsafe structure process. The notice must be provided electronically to the lender's legal agent, and the local government must conduct a hearing to allow the lender to dispute the evidence or present evidence of its intent to secure and repair the property.

NOTE: Representatives from the Florida Bankers Association believe that the requirement that the lender enter property and remedy it if it has fallen into disrepair or is uninhabitable is an illegal obligation placed on lenders, because the lender does not own the property and thus does not have legal authority to enter property and repair it.

*Abandoned Property Loses Homestead Status* – The bill provides that abandoned property cannot be deemed homestead property.

The bill's provisions do not prohibit a local government from inspecting property and enforcing its laws, or from exercising other remedies available to local governments as provided by law. If the real property poses an immediate danger to the public health, safety, and welfare, the local government may take any action provided by law. The costs of correcting the immediate danger shall hold the same status as an assessment for government conducted repairs on property that is unsecured, vandalized, in disrepair, uninhabitable, or in violation of local government laws.

*Local Government Registries Pre-Empted* – Local governments may not maintain separate local registries for lenders to file descriptions of property. Any registration information held by a local government in a local registry shall be transmitted electronically to the registry by August 1, 2009, or at such time that the DFS notifies the local government that the department is ready to receive the information, whichever is later.

A lender that has initiated mortgage foreclosure proceedings by filing a foreclosure claim in a foreclosure action in court on a property subject to registry filing requirements, and the property has not sold pursuant to a final judgment of foreclosure or a decree of foreclosure prior to the bill's effective date, must comply with the requirements of the bill. A final judgment of foreclosure ordering the property to be sold may not be issued and a sale of the property may not be made until after the lender files with the court in the foreclosure proceeding the required notice showing compliance in notifying the registry and local government.

A group of lenders may provide a separate system of reporting the information required to be reported to the department and affected local governments, provided the system satisfies the reporting requirements of the bill. Lenders electing this option are subject to the other requirements of this section.

**Section 2.** This act is effective July 1, 2009.

**IV. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The creation of the database and the corresponding authorization of local jurisdictions to enter abandoned and vacant property and repair it should help reduce the amount of blight due to property that has fallen into disrepair. Abandoned and vacant property can be a staging ground for various illegal activities. Further, such property can have a negative effect on the value of surrounding property.

The bill places a number of duties on mortgage lenders. Property must be registered if it is in default, which may require the registration of a large number of properties where the owner has failed to timely make a payment but still lives in the home. Each mortgage lender will be required to make determinations every two months whether a property is vacant or abandoned. Making such a determination will require lenders to make multiple yearly inspections of property in order to make the determination. If the property is determined to be vacant or abandoned, the lender must file information about the property into the database, for which the DFS may charge an unspecified fee that equals the cost of recording the information and notifying local governments. The lender must also update the registry when any information is changed; including the time the lender initiates proceedings to foreclose the property. Lenders will also be required to train and perhaps hire personnel to act as “maintenance agents” responsible for the upkeep of property, and “legal agents” that receive notices related to real property. If a local government does not receive notice from the department of property entered into the registry, the lender is responsible for providing notice to the correct local government via certified mail.

The bill makes proper filing with the registry a condition precedent in order for a lender to retain legal counsel to pursue a mortgage collection action, foreclosure action, or to file foreclosure proceedings in court. Representatives from the Florida Bankers Association believe that the requirement that the lender enter property and remedy it if it has fallen into disrepair or is uninhabitable is an illegal obligation placed on lenders, because the lender does not own the property and thus does not have legal authority to enter property and repair it. The bill also permits local governments to enter onto the premises of abandoned or vacant property and conduct repairs as deemed necessary and place a lien on the property that must be satisfied and is superior to all other liens and judgments on the property.

**C. Government Sector Impact:**

The Department of Financial Services anticipates that establishing a statewide Internet database for abandoned, vacant, or foreclosed property is likely to require substantial internet technology (IT) resources and multiple paid positions to create and maintain it. The DFS believes that it would be more appropriate to house the registry within the

Office of Financial Regulation, the Department of Business and Professional Regulation, the Department of Community Affairs, or the Department of State.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

The database for SB 874 contains potentially sensitive financial information such as the lender's loan number and name, which when paired with the property owner's name, address, and other information available from the database could be obtained by persons seeking to conduct identity theft. Senate Bill 1044 provides an exemption from public records disclosure requirements for information contained in the registry; the bill has not been heard in committee as of April 14, 2009.

**VII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.