

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 875 Landlord-Tenant Relations
SPONSOR(S): Civil Justice & Courts Policy Committee; Jones; Rogers
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1646

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|----------------------------------------------------------|-----------------|---------|----------------|
| 1) | Civil Justice & Courts Policy Committee | 9 Y, 1 N, As CS | Bond | De La Paz |
| 2) | Insurance, Business & Financial Affairs Policy Committee | | | |
| 3) | Criminal & Civil Justice Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Under current law, tenants are sometimes given as little as one day's notice that the home they rent was sold at foreclosure sale and they are being evicted. This bill:

- Requires the clerk of court to notify the occupant of property that the property is subject to a foreclosure sale, and again that a sale has occurred.
- Requires a landlord of a foreclosed property to return the security deposit no later than 5 days after the sale.
- Requires a landlord to give a prospective tenant notice that the property is or may soon be in foreclosure.
- Provides a means for a tenant to terminate a lease upon the setting of a foreclosure sale.

This bill has an indeterminate fiscal impact on clerks of court. This bill does not appear to have a fiscal impact on local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Landlord - Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.¹ A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.² The provisions of the Act specifically address the payment of rent,³ duration of leases,⁴ security deposits,⁵ maintenance of the dwelling and premises,⁶ termination of rental agreements,⁷ liquidated damages for failure to provide notice before vacating,⁸ penalty for holding over,⁹ and a landlord's remedies for the breach of a lease.¹⁰

Foreclosures

According to RealyTrac, 46,391 new foreclosures were filed in Florida in February 2009, which brings foreclosure filings up to 87,161 in Florida for 2009.¹¹ Under current law, an owner is provided notice when a foreclosure proceeding has been filed against him or her.¹² However, Florida law does not provide for notice to tenants when the dwelling unit they are renting is involved in a foreclosure proceeding. Therefore, even if a tenant is paying their rent on time, in some cases a tenant may not receive more than 24 hours notice of an eviction.

¹ Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit" which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

² Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

³ Section 83.46, F.S.

⁴ *Id.*

⁵ Section 83.49, F.S.

⁶ Sections 83.51 and 83.52, F.S.

⁷ Section 83.56, F.S.

⁸ Section 83.58, F.S.

⁹ Section 83.575, F.S.

¹⁰ Section 83.595, F.S.

¹¹ See <http://www.realtytrac.com/MapSearch/Florida.html?a=b&acct=&selStatus=>. Last accessed March 25, 2009.

¹² Section 702.10, F.S.

Effect of Bill

Foreclosure Procedure, Notices

This bill amends foreclosure procedures in s. 45.031, F.S., to provide two notices to tenants related to the foreclosure sale. The first notice will be sent by the clerk when the foreclosure sale is set,¹³ the second when the foreclosure sale has occurred.¹⁴ In addition to any additional notice required by the court, the first notice reads:

"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 in 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 second notice reads:

"IMPORTANT -- The property you are living in or occupying was sold at foreclosure sale. The person who bought the property at the sale may evict you from this property. The next notice you receive may be an eviction notice providing you with only 24 hours to move out and remove your belongings. If you do not comply with that notice, you may be forcibly evicted and your belongings removed and destroyed. That notice may be posted on the door. You may wish to contact an attorney regarding your legal rights."

Both notices are mailed by the clerk, addressed to "Occupant," in an envelope that must say that a foreclosure notice is enclosed. The clerk is entitled to a fee of \$10 for the first notice and \$5 for the second.

In a multifamily or multi-occupant structure, the plaintiff may elect not to have these notices sent, conditioned upon the plaintiff waiving any right to a writ of possession in the foreclosure case.

Residential Deposits

This bill amends s. 83.49(7), F.S., to require the property owner or the owner's agent to return a security deposit no later than 5 days after the foreclosure sale. The bill also provides that the failure to return the deposit may be considered a form of criminal theft.

Notice to Residential Tenant

This bill adds to the notice requirements in s. 83.50, F.S., to require a landlord or the landlord's agent to inform prospective or current tenants if the premises is in foreclosure proceedings or if there are reasons that to the best of the landlord's or his or her agent's knowledge may cause the premises to be subject to a foreclosure proceeding.

Termination of Residential Lease

This bill amends s. 83.56, F.S., to provide that, after a foreclosure sale has been set, a tenant may terminate a residential lease on seven days notice to the landlord. Additionally, if the tenant did not receive notice that the property was in foreclosure and the tenant has 3 months or more remaining on the lease, the tenant has a cause of action against the landlord for moving costs.

The right to terminate does not apply where the plaintiff has elected not to provide clerk's notice of the foreclosure and has thereby waived the right to a writ of possession after the sale.

¹³ The order setting a foreclosure sale must set the sale no less than 20 days from the date of the order and no more than 35 days from the date of the order. Section 45.031(1)(a), F.S. The plaintiff can agree to a longer period of time, and longer periods of time are not uncommon.

¹⁴ After the sale, the defendants have ten days to object to the form of the sale. On the 11th day or after, the clerk issues a certificate of title to the winning bidder, s. 45.031(5), F.S., and the winning bidder may apply to the clerk for a writ of possession.

B. SECTION DIRECTORY:

Section 1 amends s. 45.031, F.S., regarding judicial sales procedures.

Section 2 amends s. 83.49, F.S., regarding deposit money in residential leases.

Section 3 amends s. 83.50, F.S., regarding disclosures required in residential leases.

Section 4 amends s. 83.56, F.S., regarding termination of a residential lease.

Section 5 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Minimal indeterminate, see Fiscal Comments.

2. Expenditures:

Minimal indeterminate, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will increase the cost to lenders of a foreclosure proceeding by \$15 per unit foreclosed.

D. FISCAL COMMENTS:

This bill increases responsibilities of the clerks of the court, and creates fees to pay for the increased responsibilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 27, 2009, the Civil Justice & Courts Policy Committee substantially changed this bill, to:

- Remove the requirement that every landlord inform every lender of every lease.
- Notice to a tenant of a pending eviction was moved from after foreclosure sale to prior to the foreclosure sale, and notice forms were created.
- Removed a requirement that deposits be placed in the clerk's registry, and added a provision requiring the landlord to return the deposit no later than 5 days after the sale.
- Added provision allowing for termination of a lease after the sale is set.

The bill was then reported favorably with a committee substitute.