

1 A bill to be entitled
 2 An act relating to landlord-tenant relations; amending s.
 3 45.031, F.S.; requiring the clerk of court to furnish
 4 certain documents and notices to certain occupants of
 5 property involved in a foreclosure proceeding; providing
 6 fees; providing an exception; amending s. 83.49, F.S.;
 7 requiring a landlord to return a tenant's security deposit
 8 after foreclosure sale; providing a penalty; amending s.
 9 83.50, F.S.; requiring a landlord to provide notice to a
 10 tenant of a pending foreclosure proceeding; amending s.
 11 83.56, F.S.; providing legislative findings; providing
 12 grounds for termination of a lease upon the initiation of
 13 a foreclosure sale; providing liability of the tenant and
 14 landlord; providing application; providing an effective
 15 date.

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

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 19 Section 1. Paragraph (c) of subsection (1) and subsection
 20 (3) of section 45.031, Florida Statutes, are amended, and
 21 subsection (11) is added to that section, to read:

22 45.031 Judicial sales procedure.--In any sale of real or
 23 personal property under an order or judgment, the procedures
 24 provided in this section and ss. 45.0315-45.035 may be followed
 25 as an alternative to any other sale procedure if so ordered by
 26 the court.

27 (1) FINAL JUDGMENT.--

28 (c)1. A copy of the final judgment shall be furnished by

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29 the clerk by first class mail to the last known address of every
30 party to the action or to the attorney of record for such party.

31 2. A copy of the final judgment shall be furnished by the
32 clerk by first class mail to the address of the property being
33 foreclosed. The envelope shall be addressed to "Occupant" and
34 shall have printed, typed, or stamped on its face the statement,
35 "IMPORTANT--NOTICE OF FORECLOSURE SALE ENCLOSED." In addition to
36 the copy of the final judgment, the clerk shall attach a
37 separate page before the judgment that contains the following
38 statement: "The property you are living in or occupying is
39 scheduled for a foreclosure sale. A copy of the court order is
40 enclosed. The sale date is included in the order. The person who
41 buys the property at the sale may evict you from this property
42 after the sale. You may wish to contact an attorney regarding
43 your legal rights." The notice shall include any additional
44 information as directed by the trial court or the chief judge of
45 the circuit or as required by the Rules of Civil Procedure. The
46 clerk shall prepare proof of mailing and place the same into the
47 court records. The plaintiff shall pay the clerk a fee of \$10
48 for such mailing, which cost shall include the cost of copying,
49 postage, notice, and docketing. If the property is a multifamily
50 or multioccupant structure, a separate fee shall be paid for
51 each unit and a separate notice shall be mailed to each unit.

52 3. Any irregularity in a ~~such~~ mailing required by this
53 paragraph, including the failure to include a ~~this~~ statement in
54 any final judgment or order, shall not affect the validity or
55 finality of the final judgment or order or any sale held
56 pursuant to the final judgment or order. Any sale held more than

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57 35 days after the final judgment or order shall not affect the
58 validity or finality of the final judgment or order or any sale
59 held pursuant to such judgment or order.

60 (3) CONDUCT OF SALE; DEPOSIT REQUIRED; NOTICE.--

61 (a) The sale shall be conducted at public auction at the
62 time and place set forth in the final judgment.

63 (b) The clerk shall receive the service charge imposed in
64 s. 45.035 for services in making, recording, and certifying the
65 sale and title that shall be assessed as costs.

66 (c) At the time of the sale, the successful high bidder
67 shall post with the clerk a deposit equal to 5 percent of the
68 final bid. The deposit shall be applied to the sale price at the
69 time of payment. If final payment is not made within the
70 prescribed period, the clerk shall readvertise the sale as
71 provided in this section and pay all costs of the sale from the
72 deposit. Any remaining funds shall be applied toward the
73 judgment.

74 (d) On the day of the sale, the clerk shall furnish by
75 first class mail to the address of the property being foreclosed
76 a notice that reads: "IMPORTANT--The property you are living in
77 or occupying was sold at foreclosure sale. The person who bought
78 the property at the sale may evict you from this property. The
79 next notice you receive may be an eviction notice providing you
80 with only 24 hours to move out and remove your belongings. If
81 you do not comply with that notice, you may be forcibly evicted
82 and your belongings removed and destroyed. That notice may be
83 posted on the door. You may wish to contact an attorney
84 regarding your legal rights." The envelope shall be addressed to

85 "Occupant" and shall have printed, typed, or stamped on its face
 86 the statement, "IMPORTANT--NOTICE OF FORECLOSURE SALE ENCLOSED."
 87 The notice shall include any additional information as directed
 88 by the trial court or the chief judge of the circuit or as
 89 required by the Rules of Civil Procedure. The clerk shall
 90 prepare proof of mailing and place the same into the court
 91 records. The plaintiff shall pay the clerk a fee of \$5 for such
 92 mailing, which cost shall include the cost of copying, postage,
 93 notice, and docketing. If the property is a multifamily
 94 structure, a separate notice shall be mailed to each dwelling
 95 unit.

96 (11) WAIVER OF NOTICE.--In a foreclosure of a multifamily
 97 or multioccupant property, the plaintiff may elect to forego the
 98 notice requirements of subparagraph (1)(c)2. and paragraph
 99 (3)(d). In such case, the clerk shall not send notices or
 100 collect the related fees, and the clerk shall not issue a writ
 101 of possession to the purchaser after the sale and within that
 102 foreclosure case.

103 Section 2. Subsection (7) of section 83.49, Florida
 104 Statutes, is amended to read:

105 83.49 Deposit money or advance rent; duty of landlord and
 106 tenant.--

107 (7) (a) Upon the sale or transfer of title of the rental
 108 property from one owner to another, or upon a change in the
 109 designated rental agent, any and all security deposits or
 110 advance rents being held for the benefit of a tenant ~~the tenants~~
 111 shall be transferred to the new owner or agent, together with
 112 any earned interest and with an accurate accounting showing the

113 amounts to be credited to the ~~each~~ tenant account.

114 (b) A property owner or agent of an owner whose property
 115 has been sold at a foreclosure sale must return the security
 116 deposits to the tenant within 5 calendar days after the sale is
 117 final or within the time required in this section, whichever is
 118 sooner. A property owner who fails to timely return the deposit
 119 required by this paragraph commits a theft punishable under s.
 120 812.014. A court of competent jurisdiction shall award the
 121 tenant restitution upon a conviction or plea of a violation of
 122 this paragraph.

123 (c) Upon the transfer of such funds and records as stated
 124 herein, and upon transmittal of a written receipt therefor, the
 125 transferor shall be free from the obligation imposed in
 126 subsection (1) to hold such moneys on behalf of the tenant.
 127 However, nothing herein shall excuse the landlord or agent for a
 128 violation of the provisions of this section while in possession
 129 of such deposits.

130 Section 3. Subsection (3) is added to section 83.50,
 131 Florida Statutes, to read:

132 83.50 Disclosure.--

133 (3) The landlord or the landlord's authorized
 134 representative must inform prospective and current tenants if
 135 the premises is in a foreclosure proceeding. The landlord or the
 136 landlord's authorized representative must inform prospective and
 137 current tenants if there are problems that, to the best of the
 138 knowledge of the landlord or the landlord's agent, may cause the
 139 premises to be subject to a foreclosure proceeding.

140 Section 4. Subsection (6) of section 83.56, Florida

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141 Statutes, is renumbered as subsection (7), and a new subsection
142 (6) is added to that section to read:

143 83.56 Termination of rental agreement.--

144 (6) The Legislature finds that tenants have an expectation
145 that the landlord will act in good faith, as required by s.
146 83.44. The Legislature finds that there has historically been an
147 implied covenant of quiet enjoyment attached to a lease. The
148 Legislature further finds that it is appropriate to consider
149 that the mere setting of a foreclosure sale sufficiently
150 breaches the covenant of quiet enjoyment and the expectation of
151 good faith so as to warrant the passage of a law allowing a
152 tenant the unilateral right to declare that a lease is
153 terminated once a foreclosure sale of the leased property is
154 set. Therefore, notwithstanding any provision in a lease
155 agreement, once a foreclosure sale has been set for the property
156 rented or leased, the tenant may terminate the lease agreement
157 upon 7 days' written notice to the landlord. Upon termination
158 under this subsection, the tenant is entitled to receive a pro
159 rata refund of advance rents paid. The tenant shall not be
160 liable for any sum that might be due under s. 83.595, and the
161 tenant shall not be liable to the landlord for any liquidated
162 damages, penalties, or early termination fees. Additionally, if
163 3 or more months remained in the lease term at the time of
164 termination and the landlord failed to notify the tenant at the
165 time of the lease of the pending foreclosure case as required by
166 s. 83.50(3), the landlord shall be liable to the tenant for all
167 of the tenant's moving costs, including actual moving costs,
168 utility installation, lost employment wages, and increased rent

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169 if the new lease is for comparable space, plus court costs and
170 attorney's fees. This subsection shall not apply if the
171 plaintiff has elected not to notify tenants of the foreclosure
172 under s. 45.031(11).

173 Section 5. This act shall take effect July 1, 2009.