

By Senator Joyner

18-01615-10

20101688__

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 the owner that bankruptcy is a
 7 potential alternative to foreclosure and warn 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
 29 If you are an individual owner of property that may be

18-01615-10

20101688

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

43
44 Further, a mortgage foreclosure is a complex process.
45 People may approach you about "saving" your home. YOU
46 SHOULD BE CAREFUL ABOUT ANY SUCH PROMISES. There are
47 government agencies and nonprofit organizations you
48 may contact for helpful information about the
49 foreclosure process. For the name and telephone number
50 of an organization near you, please call the United
51 States Department of Housing and Urban Development.

52
53 (2) The notice required by this section must be served
54 together with the original process and in the manner permitted
55 for service of the complaint, and, if so served, the fact of
56 service of the notice must be noted on the summons and the
57 return of service so that the clerk of the court and the
58 judicial officer may ascertain whether the notice has been

18-01615-10

20101688

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

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

18-01615-10

20101688

88 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, 2010, and
110 applies only to foreclosure proceedings commenced, and to writs
111 of execution issued, on or after that date.