

By Senator Bennett

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1 A bill to be entitled
 2 An act relating to mortgage foreclosures; amending s.
 3 95.281, F.S.; specifying a limited statute of
 4 limitations for certain deficiency judgments;
 5 requiring claims for deficiency connected with a
 6 foreclosure action to be filed within a time certain
 7 after a foreclosure sale; providing an exception for
 8 participation in the Florida Mortgage Foreclosure
 9 Diversion Program; providing exception criteria;
 10 creating s. 95.285, F.S.; establishing the Florida
 11 Mortgage Foreclosure Diversion Program; authorizing
 12 mortgagees to obtain an extension of the statute of
 13 limitations on mortgage deficiencies under certain
 14 circumstances; authorizing mortgagees to offer
 15 mortgagors opportunities to participate in the
 16 program; providing mortgagee and mortgagor program
 17 participation criteria, procedures, and requirements;
 18 specifying duties and limitations of mortgagors and
 19 mortgagees under the program; providing for continued
 20 participation in the program after certain deadlines;
 21 specifying participation in the program as consent to
 22 additional rights and privileges for mortgagees and
 23 voluntary waiver of rights by mortgagors; providing an
 24 effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

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 28 Section 1. Subsection (1) of section 95.281, Florida
 29 Statutes, is amended, subsection (5) is renumbered as subsection

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30 (6), and a new subsection (5) is added to that section, to read:

31 95.281 Limitations; instruments encumbering real property.-

32 (1) The lien of a mortgage or other instrument encumbering
33 real property, herein called mortgage, except those specified in
34 subsection (6) ~~(5)~~, shall terminate after the expiration of the
35 following periods of time:

36 (a) If the final maturity of an obligation secured by a
37 mortgage is ascertainable from the record of it, 5 years after
38 the date of maturity.

39 (b) If the final maturity of an obligation secured by a
40 mortgage is not ascertainable from the record of it, 20 years
41 after the date of the mortgage, unless prior to such time the
42 holder of the mortgage:

43 1. Rerecords the mortgage and includes a copy of the
44 obligation secured by the mortgage so that the final maturity is
45 ascertainable; or

46 2. Records a copy of the obligation secured by the mortgage
47 from which copy the final maturity is ascertainable and by
48 affidavit identifies the mortgage by its official recording data
49 and certifies that the obligation is the obligation described in
50 the mortgage;

51
52 in which case the lien shall terminate 5 years after the date of
53 maturity.

54 (c) For all obligations, including taxes, paid by the
55 mortgagee, 5 years from the date of payment. A mortgagee shall
56 have no right of subrogation to the lien of the state for taxes
57 paid by the mortgagee to protect the security of his or her
58 mortgage unless he or she obtains an assignment from the state

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59 of the tax certificate. Redemption of the tax certificate shall
60 be insufficient for subrogation.

61 (5) (a) All claims for a deficiency in connection with a
62 deficiency judgment entered on or after October 1, 2010, are
63 subject to a 6-month statute of limitations beginning upon entry
64 of the judgment and all claims for a deficiency in connection
65 with a foreclosure action in accordance with chapter 702 must be
66 filed within 6 months after the foreclosure sale date or such
67 claims are void as a matter of law, subject to the exception
68 provided in paragraph (b).

69 (b) Any mortgagee who in good faith participates in the
70 foreclosure diversion program under s. 95.285, shall have 5
71 years from:

72 1. The date of a foreclosure sale to pursue a deficiency
73 judgment with respect to any deficiency arising out of a
74 foreclosure action pursuant to chapter 702; or

75 2. The date of a partial payoff of a mortgage loan to
76 pursue a deficiency which arises in connection with and is
77 incident to a short-sale payoff of such mortgage loan, and in
78 connection with such short-sale payoff the mortgagee releases
79 and satisfies its mortgage lien on the property.

80 (6)-(5) This section does not apply to mortgages or deeds of
81 trust executed by any railroad or other public utility
82 corporation or by any receiver or trustee of them or to liens or
83 notices of liens under chapter 713.

84 Section 2. Section 95.285, Florida Statutes, is created to
85 read:

86 95.285 Florida Mortgage Foreclosure Diversion Program.—

87 (1) A mortgagee may obtain an extension of the statute of

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88 limitations on mortgage deficiencies by consenting to
89 participate in the Florida Mortgage Foreclosure Diversion
90 Program as provided in this section.

91 (a) Prior to filing any action for foreclosure or in the
92 case of a pending foreclosure action, at any time prior to the
93 entry of the foreclosure judgment, the mortgagee may offer any
94 mortgagor the opportunity to participate in the program.

95 (b) Within 60 days after declaring a mortgage loan to be in
96 default, the mortgagee shall initiate participation in the
97 program by delivering to the mortgagor a written diversion offer
98 to voluntarily participate in the program, together with
99 information describing the terms of participation as follows:

100 1. A statement that clearly describes the program in which
101 the mortgagee shall identify and be bound to a preapproved
102 short-sale price, as well as a specified partial mortgage loan
103 payoff, which shall be binding upon the mortgagor for a period
104 of 1 year after the date of entering the program, and that, in
105 exchange for this commitment by the mortgagee, the mortgagor
106 shall voluntarily extend the statute of limitations from 6
107 months to 5 years and further agree to waive the right of
108 discharge of a deficiency judgment, if any, in any bankruptcy
109 proceeding voluntarily filed by the mortgagor within 24 months
110 after the final judgment date or date of closing on a short
111 sale.

112 2. Provide the name, current telephone numbers, and e-mail
113 and physical mailing addresses of such employees, agents, or
114 delegates of the mortgagee possessing the authority to
115 negotiate, authorize, and bind the mortgagor to the terms and
116 requirements embodied in the program and to release and satisfy

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117 any mortgage lien.

118 (c) If a mortgagee submits a diversion offer to a
119 mortgagor, the mortgagor shall have 45 days after receiving the
120 diversion offer to accept such offer in writing and, as a
121 condition precedent to participation in the program, provide to
122 the mortgagee the following:

123 1. Documentation evidencing that the mortgagor has retained
124 an attorney in this state to assist the mortgagor with
125 completing the program documentation requirements.

126 2. Documentation evidencing that the mortgagor has retained
127 a real estate broker licensed in this state to assist the
128 mortgagor with selling the property at the short-sale price,
129 including, but not limited to, providing a copy of the listing
130 agreement between the real estate broker and the mortgagor.

131 3. A financial hardship affidavit, consisting of the
132 mortgagor's assets, owned individually or jointly or held for
133 the benefit of the mortgagor, liabilities, income, and living
134 expenses, and such affidavit shall be signed under penalty of
135 perjury and acknowledged before a notary public.

136 4. An estimated HUD-1 Settlement Statement, which sets
137 forth the following:

138 a. The sales price the mortgagor proposes to sell the
139 property.

140 b. Any outstanding monetary encumbrances or liens that are
141 customarily reflected on the settlement statement, including,
142 but not limited to, any condominium or homeowners' association
143 fees and assessments, code enforcement liens, construction
144 liens, liens for outstanding real estate taxes or similar liens,
145 and estoppel fees. Reliance in good faith by a settlement agent

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146 on the statements of a mortgagor shall not subject the
147 settlement agent to liability.

148 c. The amount that the mortgagor proposes as the payoff
149 amount of any outstanding mortgage encumbering the property.

150 5. A title commitment or opinion concerning title from an
151 attorney licensed in this state that indicates all requirements
152 to convey marketable title to a third party.

153 6. Tax returns and financial statements, including, but not
154 limited to, any statement concerning bank accounts of any nature
155 or any account that contains securities or other similar
156 investments, together with such additional financial
157 documentation as the mortgagee may reasonably request.

158 (d) The mortgagor shall update its financial information
159 when reasonably requested by the mortgagee or when the mortgagor
160 experiences a material change in circumstances. In no event
161 shall the mortgagor be required to provide updated financial
162 documentation more frequently than once every 30 days, except as
163 authorized by this section.

164 (2) Upon receipt of the mortgagor's acceptance package, the
165 mortgagee shall refrain from all collection or foreclosure
166 activity for a suspension period consisting of a minimum of 1
167 year after the date of acceptance or as otherwise agreed between
168 the mortgagee and mortgagor.

169 (3) Within 30 days after the mortgagor's acceptance of the
170 diversion offer, the mortgagee shall provide the mortgagor the
171 amount of a preapproved price or short-sale price and the
172 partial payoff amount of the mortgage payoff the mortgagee will
173 accept to release and satisfy its mortgage or liens encumbering
174 the property.

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175 (a) In no event shall the short-sale price be greater than
176 the current appraised value of the property or the outstanding
177 balance of the mortgage loan, whichever is less. The mortgagee
178 shall have the option to update the short-sale price and the
179 partial payoff amount the mortgagee is willing to accept based
180 upon market conditions, not more frequently than once every 6
181 months. The mortgagee shall promptly deliver to the mortgagor
182 the good faith documentation that supports its proposed short-
183 sale price, including any updates to the short-sale price. Good
184 faith documentation shall include, but not be limited to, a
185 current appraisal by an appraiser licensed in this state who is
186 located in the county in which the property is located.

187 (b) The partial payoff amount shall be ratably reduced by
188 any condominium or homeowners' association fees and assessments
189 and property taxes that accrue or are recalculated after the
190 date of the diversion offer. However, in no event shall the
191 mortgagee be required to consent to release any lien when the
192 aggregate amount of condominium or homeowners' association fees
193 and assessments exceeds the amounts for which the mortgagee
194 would be liable as set forth in s. 718.116 or s. 720.3085, as
195 applicable.

196 (4) Except in the case where aggregate condominium or
197 homeowners' association fees and assessments exceed the amounts
198 authorized by chapter 718 or chapter 720, the mortgagee shall,
199 within 15 days after receiving from the mortgagor a copy of any
200 bona fide written contract setting forth a sales price equal to
201 or in excess of the mortgagee's approved short-sale price or,
202 alternatively, a payoff amount to the mortgagee equal to or in
203 excess of the partial payoff amount, deliver to the mortgagor a

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204 final payoff letter confirming the short payoff amount and
205 setting forth the amount of a deficiency, if any, the mortgagee
206 claims is still due and owed by the mortgagor. The failure of
207 the mortgagee to provide the final payoff letter within the 15-
208 day period shall not prevent the mortgagor from proceeding with
209 closing on and transferring the property and shall relieve the
210 mortgagor of any obligation to the mortgagee for a deficiency
211 judgment or any unpaid portion of the mortgage loan.

212 (5) The mortgagor and mortgagee must consent in writing to
213 the following as conditions to participation in the program:

214 (a) The mortgagor agrees to maintain the property in good
215 condition pending the short sale or foreclosure of the property
216 and to commit no waste on the property.

217 (b) The mortgagor agrees to waive any right to discharge a
218 deficiency judgment or debt owed to the mortgagee in bankruptcy
219 for a period of 24 months after date of the short-sale closing
220 or foreclosure sale.

221 (c) The mortgagor waives any rights concerning exemption
222 from garnishment.

223 (6) The mortgagee is under no obligation to provide a final
224 payoff letter or release its mortgage lien for any offer that is
225 less than its stated short-sale price or that results in a
226 mortgage loan payoff amount less than partial payoff amount.
227 Nothing in this section prevents a mortgagee from accepting less
228 than its stated short-sale offer.

229 (7) Upon mutual written consent of the mortgagee and the
230 mortgagor, the parties may continue to participate in the
231 program beyond the initial suspension period. For each
232 additional suspension period of 1 year that the mortgagee and

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233 the mortgagor participate in the program, the statute of
234 limitations for pursuing and collecting a deficiency shall be
235 extended an additional year. The parties may participate in the
236 program for such time as they both mutually agree, but in no
237 event may the total statute of limitations exceed 7 years in the
238 aggregate.

239 (8) In consideration of the additional rights and
240 privileges afforded to mortgagees and the voluntary waiver of
241 rights by mortgagors participating in the program, participation
242 in the program constitutes consent by both parties to the
243 requirements and remedies set forth in this section.

244 Section 3. This act shall take effect July 1, 2010.