

By Senator Latvala

16-00275-11

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1 A bill to be entitled
2 An act relating to real property; amending s. 222.01,
3 F.S.; revising procedures for a person, including
4 certain lienholders, subsequent owners, and successors
5 in interest, to claim that a property is exempt from
6 forced sale; authorizing the exemption from forced
7 sale to be claimed if a code enforcement lien exists
8 or has been recorded against a property; providing a
9 form notice of exemption from forced sale for use by
10 certain lienholders, subsequent owners, or successors
11 in interest; requiring a clerk of court to mail a
12 notice of exemption from forced sale to a judgment
13 lienor or lienholder; providing that the judgment lien
14 or lien of a lienor or lienholder who fails to
15 institute certain legal actions within a certain time
16 does not attach to the interest of a subsequent owner,
17 lienholder, or successor in interest who files a
18 notice of exemption from forced sale; amending s.
19 695.01, F.S.; providing that certain conveyances,
20 transfers, or mortgages of real property are not valid
21 against creditors or subsequent purchasers unless such
22 documents are recorded in the official records;
23 providing that a lien imposed on real property by a
24 governmental or quasi-governmental entity for certain
25 purposes is not valid against a creditor or subsequent
26 purchasers unless the lien is recorded; specifying the
27 priority of liens; providing for the assignment of a
28 lien; amending s. 695.27, F.S.; including s. 695.28,
29 F.S., in the Uniform Real Property Electronic

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30 Recording Act; extending the existence of the
31 Electronic Recording Advisory Committee; creating s.
32 695.28, F.S.; providing for the validity of certain
33 documents that have been recorded electronically;
34 providing that the act is intended to clarify existing
35 law and applies retroactively; providing effective
36 dates.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Effective July 1, 2011, section 222.01, Florida
41 Statutes, is amended to read:

42 222.01 Designation of homestead by owner before levy.—

43 (1) (a) A natural person may claim the exemption from forced
44 sale of real property under s. 4, Art. X of the State
45 Constitution by recording a signed written statement in the
46 circuit court in the county in which the property is located:

47 1. Describing the real property, mobile home, or modular
48 home for which the exemption is claimed; and

49 2. Declaring that the real property, mobile home, or
50 modular home is the person's homestead.

51 (b) The exemption from forced sale of real property under
52 s. 4, Art. X of the State Constitution may be claimed by a
53 subsequent owner, lienholder, or successor in interest of the
54 property if the subsequent owner, lienholder, or successor in
55 interest records a signed written statement in the circuit
56 court:

57 1. Describing the real property, mobile home, or modular
58 home for which the exemption is claimed; and

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59 2. Declaring that the real property, mobile home, or
 60 modular home was a homestead until the person eligible to claim
 61 the property as his or her homestead relinquished or conveyed
 62 his or her interest in the property to the claimant. Whenever
 63 any natural person residing in this state desires to avail
 64 himself or herself of the benefit of the provisions of the
 65 constitution and laws exempting property as a homestead from
 66 forced sale under any process of law, he or she may make a
 67 statement, in writing, containing a description of the real
 68 property, mobile home, or modular home claimed to be exempt and
 69 declaring that the real property, mobile home, or modular home
 70 is the homestead of the party in whose behalf such claim is
 71 being made. Such statement shall be signed by the person making
 72 it and shall be recorded in the circuit court.

73 (2) (a) If ~~When~~ a certified copy of a judgment ~~under~~ has
 74 been filed in the public records of a county pursuant to chapter
 75 55 or a code enforcement lien under chapter 162 exists or has
 76 been recorded against a property that is exempt from forced sale
 77 under s. 4, Art. X of the State Constitution, a person who is
 78 entitled to the exemption from forced sale benefit of the
 79 provisions of the State Constitution exempting real property as
 80 homestead and who has a contract to sell or a commitment from a
 81 lender for a mortgage on the homestead may record ~~file~~ a notice
 82 of homestead in the official public records of the county in
 83 which the homestead property is located. The notice must be in
 84 substantially the following form:

NOTICE OF HOMESTEAD

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88 To:...(Name and address of judgment creditor or
89 lienholder as shown on recorded judgment or lien and
90 name and address of any other person shown in the
91 recorded judgment to receive a copy of the Notice of
92 Homestead)....

93
94 You are notified that the undersigned claims as
95 homestead exempt from levy and execution under Section
96 4, Article X of the State Constitution, the following
97 described property:

98
99 ... (Legal description) ...

100
101 The undersigned certifies, under oath, that he or she
102 has applied for and received the homestead tax
103 exemption as to the above-described property, that
104 is the tax identification parcel number of this
105 property, and that the undersigned has resided on this
106 property continuously and uninterruptedly from
107 ...(date)... to the date of this Notice of Homestead.
108 Further, the undersigned will either convey or
109 mortgage the above-described property pursuant to the
110 following:

111
112 ... (Describe the contract of sale or loan commitment
113 by date, names of parties, date of anticipated
114 closing, and amount. The name, address, and telephone
115 number of the person conducting the anticipated
116 closing must be set forth.) ...

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The undersigned also certifies, under oath, that the judgment lien or lien recorded ~~filed~~ by you on ... (date) ... ~~and recorded~~ in Official Records Book, Page, of the Public Records of County, Florida, does not constitute a valid lien on the described property.

YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU MUST FILE AN ACTION IN THE CIRCUIT COURT OF COUNTY, FLORIDA, FOR A DECLARATORY JUDGMENT TO DETERMINE THE CONSTITUTIONAL HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO FORECLOSE YOUR JUDGMENT LIEN OR LIEN ON THE PROPERTY AND RECORD A LIS PENDENS IN THE OFFICIAL PUBLIC RECORDS OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED. YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER OR LENDER, OR HIS OR HER SUCCESSORS AND ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR OF ANY JUDGMENT LIEN OR LIEN YOU MAY HAVE ON THE PROPERTY.

This day of, 2.....
.....
...(Signature of Owner)..
.....
...(Printed Name of Owner)...

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.....
... (Owner's Address)...

Sworn to and subscribed before me by
..... who is personally known to me
or produced as
identification, this day of, 2.....

.....
Notary Public

(b) If a certified copy of a judgment under chapter 55 or a code enforcement lien under chapter 162 exists or has been recorded against a property that is exempt from forced sale under s. 4, Art. X of the State Constitution, a lienholder, subsequent owner, or successor in interest to a person who was entitled to the exemption may record a notice of exemption from forced sale in the public records of the county in which the property is located. The notice must be in substantially the following form:

NOTICE EXEMPTION FROM FORCED SALE

To:...(Name and address of judgment creditor or lienholder as shown on recorded judgment or lien and name and address of any other person shown in the recorded judgment to receive a copy of the Notice of Homestead)...

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You are notified that the undersigned claims that the property described below is exempt from forced sale under Section 4, Article X of the State Constitution:

...(Legal description)...

The undersigned certifies, under oath, that the property is exempt from forced sale because the undersigned is either:

.... A lienholder having a lien that is an exception to the exemption from forced sale under Section 4, Article X of the State Constitution; or

.... A subsequent owner or successor in interest who acquired an interest in the property from a person who used the property as a homestead until the property was transferred or conveyed to the subsequent owner or successor in interest.

The undersigned further certifies, under oath, that the homestead tax exemption was received as to the above-described property, that is the tax identification parcel number of this property, and that the property has been homestead property from ... (date) ... to the date of this Notice of Exemption from Forced Sale or the date that the subsequent owner or successor in interest acquired an interest in the property. Further, the undersigned will either convey or mortgage the above-described property pursuant to

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204 the following:

205
206 ...(Describe the contract of sale or loan commitment
207 by date, names of parties, date of anticipated
208 closing, and amount. The name, address, and telephone
209 number of the person conducting the anticipated
210 closing must be set forth.)...

211
212 The undersigned also certifies, under oath, that the
213 judgment lien or lien recorded by you on ...(date)...
214 in Official Records Book, Page, of the
215 Public Records of County, Florida, does not
216 constitute a valid lien on the described property.

217
218 YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01
219 ET SEQ., FLORIDA STATUTES, THAT WITHIN 45 DAYS AFTER
220 THE MAILING OF THIS NOTICE YOU MUST FILE AN ACTION IN
221 THE CIRCUIT COURT OF COUNTY, FLORIDA, FOR A
222 DECLARATORY JUDGMENT TO DETERMINE WHETHER THE SUBJECT
223 PROPERTY IS EXEMPT FROM FORCED SALE AND RECORD A LIS
224 PENDENS IN THE OFFICIAL RECORDS OF THE COUNTY WHERE
225 THE HOMESTEAD IS LOCATED. YOUR FAILURE TO SO ACT WILL
226 RESULT IN ANY BUYER OR LENDER, OR HIS OR HER
227 SUCCESSORS AND ASSIGNS, UNDER THE ABOVE-DESCRIBED
228 CONTRACT OF SALE OR LOAN COMMITMENT TO TAKE FREE AND
229 CLEAR OF ANY JUDGMENT LIEN OR LIEN YOU MAY HAVE ON THE
230 PROPERTY.

231
232 This day of, 2.....

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234 ...(signature of lienholder, subsequent owner, or successor in
235 interest)...

236
237
238 ...(printed name of lienholder, subsequent owner, or successor
239 in interest)...

240
241
242 ...(address of lienholder, subsequent owner, or successor in
243 interest)...

244
245 Sworn to and subscribed before me by
246 who is personally known to me
247 or produced as
248 identification, this day of, 2.....

249
250
251 Notary Public

252
253 (3) The clerk shall mail a copy of the notice of homestead
254 or notice of exemption from forced sale to the judgment lienor
255 or lienholder, by certified mail, return receipt requested, at
256 the address shown in the most recent recorded lien, judgment, or
257 accompanying affidavit, and to any other person designated in
258 the most recent recorded lien, judgment, or accompanying
259 affidavit to receive the notice of homestead, and shall certify
260 to such service on the face of such notice and record the
261 notice. Notwithstanding the use of certified mail, return

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262 receipt requested, service is ~~shall be~~ deemed complete upon
263 mailing.

264 (4) A lien ~~pursuant to chapter 55~~ of any lienor or
265 lienholder upon whom such notice is served, who fails to
266 institute an action for a declaratory judgment to determine
267 whether the ~~constitutional homestead status of the property is~~
268 exempt from forced sale described in the notice of homestead or
269 to file an action to foreclose the judgment lien, together with
270 the filing of a lis pendens in the official ~~public~~ records of
271 the county in which the homestead is located, within 45 days
272 after service of such notice shall be deemed as not attaching to
273 the property: ~~by virtue of its status as homestead property~~

274 (a) As to the interest of any buyer or lender, or his or
275 her successors or assigns, who takes under the contract of sale
276 or loan commitment described above within 180 days after the
277 filing in the official ~~public~~ records of the notice of
278 homestead; or

279 (b) As to the interest of any subsequent owner, lienholder,
280 or successor in interest of the property who filed a notice of
281 exemption from forced sale.

282
283 This subsection does ~~shall~~ not ~~act to~~ prohibit a lien from
284 attaching to the real property described in a ~~the~~ notice of
285 homestead at such time as the property loses its homestead
286 status.

287 (5) As provided in s. 4, Art. X of the State Constitution,
288 this subsection does ~~shall~~ not apply to liens and judgments for:

289 (a) ~~Liens and judgments for~~ The payment of taxes and
290 assessments on real property.

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291 (b) ~~Liens and judgments for~~ Obligations contracted for the
292 purchase of real property.

293 (c) ~~Liens and judgments for~~ Labor, services, or materials
294 furnished to repair or improve real property.

295 (d) ~~Liens and judgments for~~ Other obligations contracted
296 for house, field, or other labor performed on real property.

297 Section 2. Effective July 1, 2011, section 695.01, Florida
298 Statutes, is amended to read:

299 695.01 Conveyances, mortgages, and liens to be recorded.-

300 (1) A ~~No~~ conveyance, transfer, or mortgage of real
301 property, an or of any interest in the real property therein, or
302 a nor any lease for a term of 1 year or longer is not valid,
303 ~~shall be good and effectual~~ in law or equity against creditors
304 or subsequent purchasers for a valuable consideration and
305 without notice, unless the conveyance, transfer, mortgage,
306 interest, or lease is same be recorded in the official records
307 of the county in which the property is located. according to
308 ~~law; nor shall~~ Any such instrument made or executed by virtue of
309 a any power of attorney is not valid ~~be good or effectual~~ in law
310 or in equity against creditors or subsequent purchasers for a
311 valuable consideration and without notice unless the power of
312 attorney is be recorded in the official records of the county in
313 which the property is located before the ~~accruing of the~~ right
314 of such creditor or subsequent purchaser accrues. The receipt of
315 title under a quitclaim deed alone does not disqualify the
316 grantee as a bona fide purchaser without notice within the
317 meaning of the recording acts.

318 (2) A lien by a governmental entity or quasi-governmental
319 entity which attaches to real property for an improvement,

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320 service, fine, or penalty is valid and effectual against
321 creditors and subsequent purchasers for a valuable consideration
322 only if the lien is recorded in the official records of the
323 county in which the property is located. The recorded notice of
324 lien must contain the name of the owner of record, a legally
325 sufficient legal description of the property, and the tax or
326 parcel identification number applicable to the property as of
327 the date of assessment. The priority of a lien described in this
328 subsection is based on the order in which it is recorded, unless
329 the recorded notice of such lien clearly states a higher
330 priority and includes a citation to the statute or ordinance
331 authorizing a higher priority. This section prevails over any
332 conflicting home rule power or authority granted under any act,
333 ordinance, or order creating the governmental or quasi-
334 governmental entity. The requirements to state the legal
335 description and a tax or parcel identification number in a
336 notice of lien do not apply to liens evidenced by a recorded
337 mortgage; liens created pursuant to a court order or judgment;
338 liens for local, state, and federal taxes; liens for special
339 assessments levied and collected under the uniform method
340 described in s. 197.3632; liens for utility services; liens for
341 child and marital support; hospital liens; or liens imposed in
342 connection with federal or state RICO claims and criminal
343 prosecutions.

344 (3) A lien assessed, imposed, or created by a governmental
345 or quasi-governmental entity may be assigned by recording an
346 assignment in the official records of the county in which the
347 property is located. A person other than the present owner of
348 the property involved who pays the unsatisfied lien is entitled

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349 to receive an assignment of the lien and shall be subrogated to
350 the rights of the governmental or quasi-governmental entity with
351 respect to the enforcement of the lien. Grantees by quitclaim,
352 ~~heretofore or hereafter made, shall be deemed and held to be~~
353 ~~bona fide purchasers without notice within the meaning of the~~
354 ~~recording acts.~~

355 Section 3. Subsections (1), (2), and (5) of section 695.27,
356 Florida Statutes, are amended to read:

357 695.27 Uniform Real Property Electronic Recording Act.—

358 (1) SHORT TITLE.—This section and s. 695.28 may be cited as
359 the "Uniform Real Property Electronic Recording Act."

360 (2) DEFINITIONS.—As used in this section and s. 695.28:

361 (a) "Document" means information that is:

362 1. Inscribed on a tangible medium or that is stored in an
363 electronic or other medium and is retrievable in perceivable
364 form; and

365 2. Eligible to be recorded in the Official Records, as
366 defined in s. 28.222, and maintained by a county recorder.

367 (b) "Electronic" means relating to technology having
368 electrical, digital, magnetic, wireless, optical,
369 electromagnetic, or similar capabilities.

370 (c) "Electronic document" means a document that is received
371 by a county recorder in an electronic form.

372 (d) "Electronic signature" means an electronic sound,
373 symbol, or process that is executed or adopted by a person with
374 the intent to sign the document and is attached to or logically
375 associated with a document such that, when recorded, it is
376 assigned the same document number or a consecutive page number
377 immediately following such document.

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378 (e) "Person" means an individual, corporation, business
379 trust, estate, trust, partnership, limited liability company,
380 association, joint venture, public corporation, government or
381 governmental subdivision, agency, instrumentality, or any other
382 legal or commercial entity.

383 (f) "State" means a state of the United States, the
384 District of Columbia, Puerto Rico, the United States Virgin
385 Islands, or any territory or insular possession subject to the
386 jurisdiction of the United States.

387 (5) ADMINISTRATION AND STANDARDS.—

388 (a) The Department of State, by rule pursuant to ss.
389 120.536(1) and 120.54, shall prescribe standards to implement
390 this section in consultation with the Electronic Recording
391 Advisory Committee, which is hereby created. The Florida
392 Association of Court Clerks and Comptrollers shall provide
393 administrative support to the committee and technical support to
394 the Department of State and the committee at no charge. The
395 committee shall consist of nine members, as follows:

396 1. Five members appointed by the Florida Association of
397 Court Clerks and Comptrollers, one of whom must be an official
398 from a large urban charter county where the duty to maintain
399 official records exists in a county office other than the clerk
400 of court or comptroller.

401 2. One attorney appointed by the Real Property, Probate and
402 Trust Law Section of The Florida Bar Association.

403 3. Two members appointed by the Florida Land Title
404 Association.

405 4. One member appointed by the Florida Bankers Association.

406 (b) Appointed members shall serve a 1-year term. All

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407 initial terms shall commence on the effective date of this act.
408 Members shall serve until their successors are appointed. An
409 appointing authority may reappoint a member for successive
410 terms. A vacancy on the committee shall be filled in the same
411 manner in which the original appointment was made, and the term
412 shall be for the balance of the unexpired term.

413 (c) The first meeting of the committee shall be within 60
414 days of the effective date of this act. Thereafter, the
415 committee shall meet at the call of the chair, but at least
416 annually.

417 (d) The members of the committee shall serve without
418 compensation and shall not claim per diem and travel expenses
419 from the Secretary of State.

420 (e) To keep the standards and practices of county recorders
421 in this state in harmony with the standards and practices of
422 recording offices in other jurisdictions that enact
423 substantially this section and to keep the technology used by
424 county recorders in this state compatible with technology used
425 by recording offices in other jurisdictions that enact
426 substantially this section, the Department of State, in
427 consultation with the committee, so far as is consistent with
428 the purposes, policies, and provisions of this section, in
429 adopting, amending, and repealing standards, shall consider:

- 430 1. Standards and practices of other jurisdictions.
- 431 2. The most recent standards adopted by national standard-
432 setting bodies, such as the Property Records Industry
433 Association.
- 434 3. The views of interested persons and governmental
435 officials and entities.

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436 4. The needs of counties of varying size, population, and
437 resources.

438 5. Standards requiring adequate information security
439 protection to ensure that electronic documents are accurate,
440 authentic, adequately preserved, and resistant to tampering.

441 (f) The committee shall terminate on July 1, 2013 ~~2010~~.

442 Section 4. Section 695.28, Florida Statutes, is created to
443 read:

444 695.28 Validity of recorded electronic documents.—

445 (1) A document that is otherwise entitled to be recorded
446 and that was or is submitted to the clerk of the court or county
447 recorder by electronic means and accepted for recordation is
448 deemed validly recorded and provides notice to all persons
449 notwithstanding:

450 (a) That the document was received and accepted for
451 recordation before the Department of State adopted standards
452 implementing s. 695.27; or

453 (b) Any defects in, deviations from, or the inability to
454 demonstrate strict compliance with any statute, rule, or
455 procedure to submit or record an electronic document in effect
456 at the time the electronic document was submitted for recording.

457 (2) This section does not alter the duty of the clerk or
458 recorder to comply with s. 695.27 or rules adopted pursuant to
459 that section.

460 Section 5. This act is intended to clarify existing law and
461 applies retroactively.

462 Section 6. Except as otherwise expressly provided in this
463 act, this act shall take effect upon becoming a law.