

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 524

INTRODUCER: Rules Committee; Banking and Insurance Committee; and Senator Soto

SUBJECT: Rental Agreements

DATE: April 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 524 allows a purchaser of foreclosed property occupied by a tenant to provide notice to the tenant that has the effect of terminating the rental agreement upon delivery of the notice and terminating the occupancy of the tenant 30 days after the notice is delivered. The bill allows the tenant to remain in possession of the property for 30 days following the receipt of the notice. The new owner may collect rent during the 30 day occupancy and may not engage in prohibited practices under s. 83.67, F.S., such as terminating utilities, or preventing the tenant from having access to the property. However, a lender that forecloses on a residential premises occupied by a tenant does not assume the obligations of a landlord unless the lender and the tenant enter into a new rental agreement.

The bill takes effect upon becoming law.

II. Present Situation:

Foreclosure Crisis

Starting in 2007, the Great Recession fueled a multiple-year foreclosure crisis in the United States. Between 2007 and 2009, lenders initiated approximately 6.4 million home foreclosures.¹

¹ Lauren E. Willis, *Introduction: Why didn't the Courts Stop the Mortgage Crisis?* 43 LOY. L.A. L. REV. 1195, 1195 (2010).

By the end of 2010, more than 5 million homes had been foreclosed upon, representing about 10 percent of all homes having a mortgage.²

The foreclosure crisis took place in three waves. The first wave was triggered by the Great Recession along with defaults on subprime loans.³ The second wave of properties foreclosed upon were due to the increase in interest rates on adjustable-rate mortgages. And the third phase was caused by homeowners who had been keeping current on payments simply walking away from the property due to sustained loss in property values.⁴

Throughout the national foreclosure crisis, Florida consistently remained at the top of the states in numbers of foreclosed properties. As of 2009, Florida had the third highest mortgage delinquency rate, the greatest inventory of foreclosed properties, and the most foreclosure starts of any state.⁵ By 2011, at 23 percent, Florida led the nation in the highest rate of homes either in foreclosure or delinquent on mortgage payments.⁶

Foreclosure cases flooded the courts. In response, the Florida Supreme Court created the “Task Force on Residential Mortgage Foreclosure Cases.”⁷ One of the recommendations of the task force was to require mediation for foreclosure on residential properties.⁸ The Florida Supreme Court ended the mediation program in 2011.⁹ Still, the number of foreclosure cases in the state continues to outpace the nation in both actual number of properties and the highest percentage of mortgages in foreclosure.¹⁰

Protecting Tenants at Foreclosure Act¹¹

In the early years of the foreclosure crisis, tenants were routinely evicted with little or no notice or recourse. In foreclosure proceedings, all subordinate leases and interests, including rental agreements, are extinguished when the court issues a certificate of title in a foreclosure action.¹² The interests in property are extinguished in foreclosure actions because both possession and title to property are at issue and the tenants can be joined as parties.¹³ Thus, after a foreclosure sale, the relationship between the new property owner and the tenant is that of owner and trespasser.¹⁴

In 2009, Congress passed the Protecting Tenants at Foreclosure Act (PTFA), which expired December 31, 2014. The PTFA gave protection to tenants during foreclosure. The PTFA

² Tony S. Guo, *Tenants at Foreclosure: Mitigating Harm to Innocent Victims of the Foreclosure Crisis*, 4 DEPAUL J. FOR SOC. JUST. 215, 216 (2011).

³ Subprime mortgages are mortgages offered to borrowers with less than optimal credit at higher interest rates. *Id.* at 222.

⁴ Kevin F. Jursinski, *The Mortgage Foreclosure Crisis in Florida: a 21st Century Solution*, 84 FLA. B.J. 91, 91 (June 2010).

⁵ *In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, 2009 WL 5227471 (Fla. 2009).

⁶ Tony S. Guo, *supra* note 2, at 216.

⁷ *In re: Task Force on Residential Mortgage Foreclosure Cases*, AOSC09-8 (March 27, 2009).

⁸ *In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases*, AOSC09-54 (December 28, 2009).

⁹ “After the date of this order, no new cases may be referred to mediation pursuant to the statewide managed mediation program.” *In re: Managed Mediation Program for Residential Mortgage Foreclosure Cases*, AOSC11-44 (December 19, 2011).

¹⁰ *Years to Go Before Foreclosures Return to ‘Normal’*, THE FLA. BAR NEWS pg. 11 (March 1, 2015).

¹¹ 12 U.S.C. s. 5220.

¹² Tony S. Guo, *supra* note 2, at 217.

¹³ *Redding v. Stockton, Whatley, Davin & Co.* 488 So. 2d 548, 549 (Fla. 5th DCA 1986).

¹⁴ *Id.*

required the successor in interest of the foreclosed property (typically the purchaser) to give tenants a notice to vacate the residence at least 90 days before the purchaser intends to occupy the residence. In situations in which a lease existed and the purchaser did not intend to occupy the residence, the tenant could stay until the end of the lease.

The Act required notice to be given only to bona fide tenants, which meant:

- The tenant could not be the mortgagor or the child, spouse, or parent of the mortgagor;
- The lease resulted from an arms-length transaction; and
- The rent was not substantially less than the fair market rent for the property unless it was reduced by a federal, state, or local subsidy.

The party seeking foreclosure must join a tenant as a party to extinguish a tenant's lease.¹⁵ Serving tenants is advantageous to the party seeking foreclosure as the writ of possession is granted at the same proceeding, and the purchaser does not need to pursue separate legal action against the tenant.¹⁶ At the foreclosure proceeding in which a lessee is named as a party, courts issue a writ of possession upon a simple showing by the purchaser of ownership in the property.¹⁷ However, sometimes a tenant rents a property subsequent to the start of foreclosure proceedings. In these instances, the tenant may not have advance notice that the property is under foreclosure. Also, the purchaser of the foreclosed property may not have notice of the tenant's occupancy or rental agreement.

The PTFA ensures that an unaware tenant receives notice that the property in which they reside is a foreclosed property. In 2010, the Florida Supreme Court amended Form 1.996(a) to ensure that courts complied with the PTFA:

in order to ensure that the provisions of the form are not contrary to the Protecting Tenants at Foreclosure Act of 2009 ... we delete the sentence from paragraph six of the form stating, "If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title."¹⁸

At least one circuit court in Florida adopted by administrative order language that required the petitioner in a motion for writ of possession to conform to the PTFA:

I HEREBY CERTIFY that there are no tenants in possession of the subject property or, if there are tenants in possession, such tenants have been provided with notice as required by the Federal Protecting Tenants at Foreclosure Act ... and this motion does not seek an order that violates the tenants' right to continued occupancy under the Federal Protecting Tenants at Foreclosure Act.¹⁹

¹⁵ *Dundee Naval Stores Co. v. McDowell*, 61 So. 108 (Fla. 1913); *Commercial Laundries of West Florida, Inc. v. Tiffany Square Investors Ltd. Partnership*, 605 So. 2d 116 (Fla. 5th DCA 1992); *Commercial Laundries, Inc., v. Golf Course Towers Associates*, 568 So.2d 501 (Fla. 3d DCA 1990).

¹⁶ *Redding v. Stockton, Whatley, Davin, & Co.*, 488 So. 2d 548, 549 (Fla. 5th DCA 1986). (Foreclosure is a case in equity, and a writ of possession is ancillary to it.).

¹⁷ *Id.*

¹⁸ *In re: Amendments to Fla.R.Civ.P. Form 1.996*, 51 So. 3d 1140 (Fla. 2010).

¹⁹ Administrative Order 3.307 – 7/09 (Fla. 15th Circ. Ct. 2009).

The PTFA expired December 31, 2014.

III. Effect of Proposed Changes:

This bill allows a purchaser of foreclosed property occupied by a tenant to provide notice to the tenant that has the effect of terminating the rental agreement upon delivery of the notice and terminating the occupancy of the tenant 30 days after the notice is delivered. The bill allows the tenant to remain in possession of the property for 30 days after the receipt of the notice. The bill provides a form for the notice. The notice must be provided by mail or delivery to the residence, as required by s. 83.56(4), F.S. The new owner may collect rent for the time the tenant occupies the property. The bill allows the new owner to file a writ of possession with a court for any tenant who fails to vacate the premises by the 30th day after the notice is given.

The bill provides the tenant the protections of s. 83.67, F.S., which prohibit the new owner from conduct such as interrupting utility services or preventing the tenant from having access to the premise during the 30 days following the delivery of the notice. Once the rental agreement is void, none of the other protections of part II of ch. 83, F.S., the Florida Residential Landlord and Tenant Act apply. Similarly, the bill expressly provides that a foreclosing lender does not assume the obligations of a landlord unless the lender and the tenant enter into a new rental agreement.

The bill allows the new owner the ability to honor the existing rental agreement in which case the owner would become the landlord and part II of ch. 83, F.S., Florida Residential Landlord and Tenant Act, would apply.

As was the case under the federal Protecting Tenants at Foreclosure Act, the notice requirement of the bill does not apply if:

- The tenant is the mortgagor or the child, spouse, or parent of the mortgagor;
- The lease did not result from an arms-length transaction; and
- The rental agreement allowed the tenant to pay rent that was substantially less than the fair market rent for the property unless it was reduced by a federal, state, or local subsidy.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The lack of information about lessees who occupy a property before the issuance of a certificate of title after a foreclosure sale may create uncertainty that affects the selling price at a foreclosure sale. If this lack of information depresses the price of a property at a foreclosure sale, the mortgagor may potentially face a larger deficiency judgment. This uncertainty may also affect the ability of a foreclosing lender to resell a property it acquires at a foreclosure sale. However, a purchaser may be willing to pay more for a property that is occupied by a tenant who has a history of making rental payments on-time.

The new owner of the property will assume all liability during the time the tenant is allowed to remain. The owner may need to purchase an insurance policy that covers liability of an occupied rental in order to insure against such risk.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the guidance provided by the bill will increase the efficiency of the courts. However, OSCA is not able to accurately determine the fiscal impact of the bill because of the unavailability of necessary data.²⁰

VI. Technical Deficiencies:

The notice required by the bill provides notice that the rental agreement is void upon the notice being received. The bill, however, does not contain a provision outside of the notice allowing the rental agreement to be terminated upon proper delivery of the notice.

The form “Notice to Tenant of Termination” provides a blank for the insertion of the “landlord’s name and address.” However, a person who acquires a property at a foreclosure sale does not appear to have a landlord-tenant relationship with a tenant who occupies the foreclosed property. As such, the Legislature may wish to revise the form to refer to the “property owner’s” name and address.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.561 of the Florida Statutes.

²⁰ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 13, 2015).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 15, 2015:

The CS adds a provision to the underlying bill which expressly provides that a foreclosing lender on a residential premises does not assume the obligations of a landlord unless the lender and the occupant enter into a new rental agreement.

CS by Banking and Insurance on April 7, 2015:

The CS makes the following changes:

- Allows a 30 day notice to vacate may be provided to tenants of foreclosed properties that were recently purchased and title had been transferred.
- Voids the original rental agreement at time of notice and specifies only limited sections of part II of ch. 83, F.S., Florida Residential Landlord and Tenant Act shall apply.
- Allows the new owner to file a writ of possession with the courts for any tenant that fails to vacate the premises after the 30th day from when notice was given.
- Allows the new owner to honor the original rental agreement and become the landlord in which case all of part II of ch. 83, F.S., Florida Residential Landlord and Tenant Act shall apply.

- B. **Amendments:**

None.