

By Senator Garcia

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1 A bill to be entitled
2 An act relating to redemption rights and deeds in lieu
3 of foreclosure; providing a short title; providing a
4 legislative purpose; amending s. 45.0315, F.S.;
5 providing that a defendant, a property owner, or a
6 holder of a subordinate interest in real property may
7 cure a defendant's indebtedness to prevent the sale of
8 such real property; authorizing the court to enter
9 orders confirming that the release of the real
10 property from a satisfied or transferred lien is free
11 and clear of the satisfied or transferred lien;
12 providing that the right of redemption by an owner of
13 real property subject to redemption is not waivable;
14 providing exceptions; providing that redemption rights
15 in personal or real property may be waived after
16 default judgment under certain circumstances;
17 providing that simple consideration or forbearance
18 from exercising rights or remedies by the plaintiff is
19 inadequate consideration; creating s. 45.0316, F.S.;
20 authorizing the transfer of a lien claimed to encumber
21 real or personal property by certain persons;
22 providing the method in which to transfer such a lien
23 claim; requiring that any excess of the security filed
24 over the aggregate of such lien claim be repaid to the
25 party filing the transfer of a lien claim; providing
26 that such payments are subject to certain provisions
27 of law regarding deposits of money paid into court;
28 authorizing a party having an interest in such
29 security or such property from which the lien was

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30 transferred to file a complaint or a motion in the
31 circuit court of the county where such security is
32 deposited seeking specified relief from the court;
33 requiring the court to increase the cash deposit
34 amount or lien transfer bond if it finds the funds are
35 insufficient; providing construction; authorizing the
36 person that deposited the amount or filed the security
37 to seek a court order to release the security under
38 certain circumstances; amending s. 679.612, F.S.;

39 providing a specified timeframe for reasonable
40 disposition of dual collateral of mortgaged property
41 and pledged shares of the entity that owns the
42 mortgaged property; amending s. 697.02, F.S.;

43 prohibiting a mortgagee or its designee from acquiring
44 interest, right to legal title, or right of possession
45 to a mortgagee's property; providing exceptions;

46 amending s. 702.01, F.S.; requiring that properties in
47 a foreclosed mortgage be sold at a judicial sale;

48 providing that a right or remedy of strict foreclosure
49 by contract, forbearance, or other instrument is
50 unenforceable in this state; providing that a
51 mortgagee may only acquire title and ownership of the
52 mortgagor's property by purchasing it at the judicial
53 sale or in full or partial satisfaction of specified
54 obligations; creating s. 702.011, F.S.; providing the
55 circumstances in which a mortgagee or its designee may
56 acquire title and ownership to property that is
57 mortgaged before or after default in full or partial
58 satisfaction; providing that the transfer or

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59 assignment instrument is unenforceable if such
60 circumstances do not exist; providing that transfer or
61 assignment instruments of settlements for certain
62 pending foreclosure proceedings may be held in escrow
63 for a certain timeframe for the mortgagor to cure the
64 amounts owed; providing that the escrow instrument be
65 marked null and void and returned to the mortgagor and
66 the foreclosure proceedings move forward or be
67 dismissed if the mortgagor satisfies the cure amounts;
68 requiring that notice of default be filed if the cure
69 amounts are not satisfied; providing the requirements
70 for notice; requiring that a hearing be held within a
71 specified timeframe for the court to make specific
72 determinations; providing that the transfer or
73 assignment instrument may include contractual terms
74 that provide specified information; authorizing a
75 court to enter orders if the instrument of transfer or
76 assignment complies with specified provisions;
77 providing that the act is remedial; providing an
78 effective date.

79

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

81

82 Section 1. This act may be cited as the "Redemption
83 Procedures Improvement Act."

84 Section 2. The purpose of this act is to:

85 (1) Provide procedures for redemption to preserve and
86 protect a property owner's equity in property and the equity of
87 junior lienors.

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88 (2) Support and foster loan refinancing with requirements
89 and procedures for full or partial tender of payment and
90 transfer of the lien to certain security as substitute
91 collateral.

92 (3) Provide requirements and procedures for waiver of
93 redemption rights and the equity in the property to ensure the
94 property owner makes an informed decision and to protect the
95 property owner from overreach or fraud.

96 (4) Provide requirements and procedures for a mortgagee's
97 acceptance of a borrower's real property in lieu of judicial
98 foreclosure sale in full or partial satisfaction of an
99 obligation to ensure the property owner makes an informed
100 decision and to protect the property owner from overreach or
101 fraud.

102 Section 3. Section 45.0315, Florida Statutes, is amended to
103 read:

104 45.0315 Right of redemption.—

105 (1) At any time before the later of the filing of a
106 certificate of sale pursuant to s. 45.031 or s. 45.0316 by the
107 clerk of the court or the time specified in the judgment, order,
108 or decree of foreclosure, the defendant, the property owner,
109 ~~mortgager~~ or the holder of any subordinate interest may:

110 (a) Cure the defendant's ~~mortgager's~~ indebtedness and
111 prevent a ~~foreclosure~~ sale of the real or personal property by
112 paying the amount of moneys specified in the judgment, order, or
113 decree of foreclosure, or if no judgment, order, or decree of
114 foreclosure has been rendered, by tendering the performance due
115 under the contract or security agreement, including any amounts
116 due because of the exercise of a right to accelerate, plus the

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117 reasonable expenses of proceeding to sale ~~foreclosure~~ incurred
118 to the time of tender, including reasonable attorney ~~attorney's~~
119 fees of the plaintiff or creditor;

120 (b) Transfer the lien to certain substitute security in
121 accordance with s. 45.0316; or

122 (c) Tender partial payment of the redemption amount to the
123 plaintiff or lien claimant and transfer the lien for the unpaid
124 redemption amount it secures to substitute security in
125 accordance with s. 45.0316.

126

127 Otherwise, there is no right of redemption.

128 (2) For real or personal property redeemed under this
129 section, including by transfer to substitute security in
130 accordance with s. 45.0316, the court may enter orders
131 confirming the release of the real or personal property from the
132 lien satisfied or transferred and that the property and title to
133 the property is free and clear of the satisfied or transferred
134 lien.

135 (3) The right of redemption by an owner of real or personal
136 property subject to redemption under subsection (1) is not
137 waivable, unless:

138 (a) The waiver is a fully informed and voluntary agreement
139 of the property owner;

140 (b) The waiver is a separate instrument containing no
141 consents, agreements, or disclosures, except the disclosures
142 required in this subsection;

143 (c) The waiver is authorized by the owner of the property
144 in a signed record as defined in s. 679.1021, and if the owner
145 of the property is an entity and if the property and the income

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146 it generates are substantially all of the assets of the entity
147 owner, then waiver is other than in the usual and regular course
148 of business and, notwithstanding s. 605.04074(3), must be
149 authorized in a signed record as defined in s. 679.1021 by at
150 least those members or equity owners owning a majority interest
151 in the property or such greater number of members or equity
152 owners required under s. 605.04074(1)(b) or (2)(c), s. 607.1202,
153 or s. 620.1402(2), as applicable to the waiving entity;

154 (d) The waiver instrument is executed in accordance with
155 ss. 689.01 and 695.03;

156 (e) The waiver instrument is completed with no incomplete
157 sections before approval and signing of the waiver instrument by
158 the owner of the real or personal property and includes all of
159 the following:

160 1. Financial disclosures that specify the assessed value of
161 the property.

162 2. A statement that the assessed value may be lower than
163 the actual value of the property.

164 3. The fair market value of the property if appraised or
165 valued within the previous 6 months or a statement that the
166 property has not been appraised or valued within the previous 6
167 months.

168 4. The amount of any debt encumbering the property.

169 5. The amount of debt owed to the plaintiff or other person
170 requesting the waiver and the daily interest accruing on such
171 obligation.

172 6. The approximate amount of any equity in the property as
173 of the date of signing.

174 7. A statement that the property owner does not need an

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175 attorney.

176 8. A statement that a waiver of redemption rights is a
177 waiver of legal rights under s. 45.0315 to pay the obligation
178 and keep its property or for the property to be sold at judicial
179 sale to the highest bidder for cash or cash consideration.

180 9. A statement specifying the consideration given for the
181 waiver of redemption rights; or

182 (f) The waiver is made only in conjunction with the
183 transfer or assignment of the property to the mortgagee or the
184 mortgagee's designee in accordance with s. 702.011.

185 (4) Redemption rights in personal property may be waived
186 after default judgment only in a signed record as that term is
187 defined in s. 679.1021 and provided the waiver instrument
188 includes the disclosures required in paragraph (3) (e).

189 (5) Simple consideration or forbearance from exercising
190 rights or remedies by the plaintiff is inadequate consideration
191 to support a waiver of redemption rights under subsection (3) or
192 subsection (4).

193 Section 4. Section 45.0316, Florida Statutes, is created to
194 read:

195 45.0316 Transfer of liens to substitute security.-

196 (1) Any lien claimed to encumber real or personal property
197 to secure payment of an obligation by a defendant or prospective
198 defendant may be transferred, by any person having an interest
199 in the property upon which the lien is imposed or the contract
200 under which the lien is claimed, from such real or personal
201 property to other security by:

202 (a) Depositing in the clerk's office a specified sum of
203 money; or

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204 (b) Filing in the clerk's office a bond executed as surety
205 by a surety insurer licensed to do business in this state, in an
206 amount equal to the amount required for redemption under s.
207 45.0315, or the balance thereof after partial tender of the
208 redemption amount pursuant to s. 45.0315, plus interest thereon
209 at the contract rate or legal rate for 3 years, whichever is
210 greater, plus \$5,000 or 25 percent of the outstanding redemption
211 amount, whichever is greater, to be applied to any attorney fees
212 and court costs that may be taxed in any proceeding to enforce
213 the lien.

214 (2) Such deposit or bond must be conditioned to pay any
215 judgment or decree that may be rendered for the satisfaction of
216 the lien claimed by the plaintiff or a prospective plaintiff.
217 Upon making such deposit or filing such bond, the clerk shall
218 make and record a certificate, which must include a copy of the
219 deposit or bond showing the transfer of the lien from the real
220 or personal property to the security, and shall mail a copy
221 thereof together with a copy of the deposit or bond by
222 registered or certified mail to the plaintiff or lien claimant
223 named in the lien record so transferred, at the address stated
224 therein. Upon filing or recording of the certificate of transfer
225 in the appropriate office maintaining liens of such type or in
226 the action, the real or personal property is released from the
227 lien claimed by the lienholder and such lien is transferred to
228 the security. The clerk is entitled to a service charge for
229 making and serving the certificate, in an amount of up to \$20,
230 from which the clerk shall remit \$5 to the Department of Revenue
231 for deposit into the General Revenue Fund.

232 (3) If the transaction involves the transfer of multiple

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233 liens, the clerk must charge an additional service charge of up
234 to \$10 for each additional lien, from which the clerk shall
235 remit \$2.50 to the Department of Revenue for deposit into the
236 General Revenue Fund. For recording the certificate and
237 approving the bond, the clerk shall receive her or his usual
238 statutory service charges as prescribed in s. 28.24. Any number
239 of liens may be transferred to one such security.

240 (4) Any excess of the security over the aggregate amount of
241 any judgments or decrees rendered plus costs actually taxed
242 shall be repaid to the party filing the same or her or his
243 successor in interest. Any deposit of money shall be considered
244 as paid into court and is subject to the provisions of law
245 relative to payments of money into court and the disposition of
246 same.

247 (5) Any party having an interest in such security or the
248 property from which the lien was transferred may at any time,
249 and any number of times, file a complaint in equity in the
250 circuit court of the county where such security is deposited, or
251 file a motion in a pending action to enforce a lien, for an
252 order to require additional security, reduction of security,
253 change or substitution of sureties, payment of discharge
254 thereof, or any other matter affecting the security. If the
255 court finds that the amount of the deposit or bond in excess of
256 the amount claimed to redeem the lien is insufficient to pay the
257 lienor's attorney fees and costs incurred in the action to
258 enforce the lien, the court shall increase the amount of the
259 cash deposit or lien transfer bond. This subsection may not be
260 construed to vest exclusive jurisdiction in the circuit courts
261 over transfer bond claims for nonpayment of an amount within the

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262 monetary jurisdiction of the county courts.

263 (6) If it appears that the statute of limitations for
264 enforcement of the lien has expired or the transferred lien has
265 been satisfied of record, the person depositing or filing the
266 security, or the insurer, may seek a court order directing the
267 clerk to release the security subject to motion, notice to the
268 lienholder, and a hearing.

269 Section 5. Section 679.612, Florida Statutes, is amended to
270 read:

271 679.612 Timeliness of notification before disposition of
272 collateral.—

273 (1) Except as otherwise provided in subsection (2) or
274 subsection (3), whether a notification is sent within a
275 reasonable time is a question of fact.

276 (2) Subject to subsection (1), a notification of
277 disposition sent after default and 10 days or more before the
278 earliest time of disposition set forth in the notification is
279 sent within a reasonable time before the disposition.

280 (3) For a disposition of shares or membership interests in
281 an entity pledged to the secured party in addition to the
282 secured party's mortgage on real estate of the entity, if the
283 real property and the income it generates constitutes all or
284 substantially all of the assets of the entity owner, a
285 notification of disposition of such pledged assets sent after
286 default and 120 days or more before the earliest time of
287 disposition set forth in the notification is sent within a
288 reasonable time before the disposition.

289 Section 6. Section 697.02, Florida Statutes, is amended to
290 read:

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291 697.02 Nature of a mortgage.—A mortgage shall be held to be
292 a specific lien on the property therein described, and not a
293 conveyance of the legal title or of the right of possession. A
294 mortgagee or its designee acquires no interest, right to legal
295 title, or right of possession to a mortgagee's property by any
296 contractual terms, remedies, forbearance, escrowed deed, or
297 other instrument except by purchase at a judicial sale in
298 accordance with s. 45.031 or s. 45.0315 or by acquiring title in
299 accordance with s. 702.011.

300 Section 7. Section 702.01, Florida Statutes, is amended to
301 read:

302 702.01 Equity.—All mortgages shall be foreclosed in an
303 action in equity and the property sold at a judicial sale in
304 accordance with s. 45.031 or s. 45.0315. In a mortgage
305 foreclosure action, the court shall sever for separate trial all
306 counterclaims against the foreclosing mortgagee. The foreclosure
307 claim shall, if tried, be tried to the court without a jury. A
308 right or remedy of strict foreclosure by contract, forbearance,
309 or other instrument is unenforceable in this state. A mortgagee
310 may acquire title and ownership of its mortgagor's property only
311 by purchase at judicial sale in accordance with s. 45.031 or s.
312 45.0315 or in full or partial satisfaction of obligations in
313 compliance with s. 702.011.

314 Section 8. Section 702.011, Florida Statutes, is created to
315 read:

316 702.011 Acceptance of mortgaged property in full or partial
317 satisfaction of obligation.—

318 (1) A mortgagee or its designee may acquire title and
319 ownership to property that is mortgaged before or after default

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320 in full or partial satisfaction of the obligation it secures
321 only if:

322 (a) The transfer or assignment is in writing and the
323 instrument to be signed by the parties to it conspicuously
324 specifies:

325 1. That the transfer or assignment instrument is a waiver
326 of legal rights under s. 45.0315 to pay off the debt and keep
327 ownership of the property and a waiver of legal rights under s.
328 45.031 or s. 45.0315 for the property to be sold at judicial
329 sale to the highest bidder for cash or cash consideration to pay
330 the obligations secured by the property;

331 2. A description of the property that is the subject of
332 transfer to the mortgagee or its designee;

333 3. The assessed value of the property;

334 4. That a statement of the assessed value of the property
335 may be lower than the actual value of the property;

336 5. The fair market value of the property, if appraised or
337 valued within the previous 6 months by the mortgagee or its
338 designee, or a statement by the mortgagee or its designee that
339 the property has not been appraised or valued within the
340 previous 6 months;

341 6. The amount owed to the mortgagee which is secured by the
342 property and the amount of interest accruing each day;

343 7. The amount of outstanding ad valorem taxes and other
344 obligations senior to the mortgagee's lien which encumber the
345 property;

346 8. The approximate amount of equity in the property as of
347 the signing date by the obligor and property owner;

348 9. The date by which possession and access to the property

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349 by the mortgagor must be turned over to the mortgagee or its
350 designee no later than 120 days; and

351 10. A statement specifying the consideration given by the
352 mortgagee for the transfer of the property with a statement
353 specifying whether the transfer is in full or partial
354 satisfaction of the obligations owed by the obligor which are
355 secured in whole or part by the property, and if a partial
356 satisfaction, the amount that will be owed by the obligor after
357 credit for the property acquired by the mortgagee or its
358 designee.

359 (b) The obligor and property owner are fully informed in
360 writing of the financial disclosures and requirements in
361 paragraph (a) at least 10 days before the instrument is signed.

362 (c) The transfer of the mortgaged property to the mortgagee
363 or the mortgagee's designee is the voluntary agreement of the
364 obligor and property owner and:

365 1. Is authorized by the owner of the property in a signed
366 record as defined in s. 679.1021(1), and if the owner of the
367 property is an entity and if the property and the income it
368 generates are substantially all of the assets of the entity
369 owner, then the transfer is other than in the usual and regular
370 course of business, and notwithstanding s. 605.04074(3), the
371 transfer must be authorized in a signed record as defined in s.
372 679.1021 by at least those members or equity owners owning a
373 majority interest of the property owner or such greater number
374 of members or equity owners required under s. 605.04074(1)(b) or
375 (2)(c), s. 607.1202, or s. 620.1402(2), as applicable to the
376 transferring entity; and

377 2. The instrument is executed in accordance with ss. 689.02

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378 and 695.03.

379 (d) The transfer or assignment of the property from the
380 obligor to the mortgagee or the mortgagee's designee is
381 contemporaneous with full or partial satisfaction agreed by the
382 parties in the signed transfer or assignment instrument.

383
384 Otherwise, the transfer or assignment instrument is
385 unenforceable and the mortgagee must commence judicial
386 foreclosure proceedings to enforce its lien against the property
387 for the obligations it secures.

388 (2) Subject to the disclosures and requirements in
389 paragraphs (1)(a), (b), and (c), settlement of a pending
390 foreclosure proceeding may include a transfer or assignment
391 instrument to be held in escrow for up to 120 days pending
392 specified cure actions by the mortgagor. If the cure amounts are
393 satisfied, the escrowed instrument must be marked null and void
394 and returned to the mortgagor, and the foreclosure proceeding
395 shall proceed or be dismissed as the parties agreed. If the cure
396 actions are not satisfied, notice of default must be filed,
397 served on counsels of record, and mailed to the borrower's and
398 any obligor's last known address as shown by the records of the
399 mortgagee and, if an e-mail address has been provided, e-mailed
400 to the last address on record. After a hearing on at least 10
401 days' notice, the court will determine the enforceability of the
402 parties' agreement, the enforcement of the terms, a deadline for
403 recording of the escrowed instrument of transfer or assignment,
404 and a deadline for redemption.

405 (3) The transfer or assignment instrument authorized under
406 this section may include contractual terms that provide:

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407 (a) The priority of the lien is unchanged and remains in
408 full force and effect against and to foreclosure subordinate
409 interests;

410 (b) The note, mortgage, or other obligations remain in full
411 force and effect to foreclose subordinate interests without
412 recourse to the mortgagor for the obligations satisfied in full
413 or part;

414 (c) Title and interest of the grantee in the property will
415 not merge with any lien or security in the property created
416 under the mortgage or other instrument; and

417 (d) Such additional terms reasonably required for the
418 issuance of title insurance for the property acquired by the
419 instrument free and clear of the rights or interests of the
420 mortgagor.

421 (4) Provided the instrument of transfer or assignment
422 complies with this section, a court may enter orders confirming
423 the validity and finality of the transfer or assignment and the
424 transfer of title to the property to the mortgagee or
425 mortgagee's designee without the necessity of any further
426 proceedings or instruments.

427 Section 9. The Legislature finds that this act is remedial
428 in nature and applies to all mortgages encumbering real
429 property, all promissory notes secured by a mortgage, and all
430 amendments, supplements, and forbearance agreements in
431 connection therewith, whether executed before, on, or after the
432 effective date of this act; however, s. 702.02, Florida
433 Statutes, as created by this act, applies to instruments of
434 transfer and assignment made after the effective date of this
435 act; s. 702.02(2), Florida Statutes, as created by this act,

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436 applies to settlements of pending foreclosure cases signed and
437 delivered after the effective date of this act; and the
438 amendments to s. 679.612, Florida Statutes, apply to
439 dispositions notice or consummated after the effective date of
440 this act.

441 Section 10. This act shall take effect July 1, 2025.