

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/CS/SB 48

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Judiciary Committee and Senator Garcia

SUBJECT: Alternative Judicial Procedures

DATE: March 27, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 48 limits a trial court from substantially deviating from the statutory real property foreclosure sales procedures. Any deviation must be clearly requested by a party. A deviation may not favor one bidder over another or give the plaintiff a credit bid in excess of the amount owed. Requirements for public notice, costs and fees of the clerk, the time to object to the sale and the finality of the sale, and treatment of surplus may not be varied.

An auctioneer other than the clerk or the sheriff may be used, but must post bond or have insurance. A private auctioneer must withdraw if a relative or business associate registers to bid.

The bill creates a civil cause of action for anyone harmed by a violation of these requirements.

The bill may generate additional workload for the Clerks of Court and the state court system. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2025.

II. Present Situation:

Foreclosure

Foreclosure is the legal process for forced sale at auction of real property to satisfy, in part or in whole, an unpaid lawful debt owed by the owner of the property. If the winning bidder is a third-party bidder, the proceeds of the sale first pay the costs of the foreclosure, then the rest of the proceeds are applied to the debt owed to the judgment creditor. Some foreclosure auctions yield a surplus because the final bid exceeds the debt. A foreclosure surplus is paid to or for the benefit of the foreclosed former owner.

In most foreclosures, however, there is no surplus after the foreclosure sale. Commonly, the plaintiff is the winning bidder and takes title to the property. Foreclosure is most often used in the context of a mortgage where the property owner has agreed to the debt. Foreclosures also result from construction liens, certain tax liens, association liens, and judgment liens.

Current law does not require a certain sale procedure, a trial judge entering a final judgment in a foreclosure case may use any procedure that conforms to constitutional due process. However, a foreclosure procedure is created by statute¹ and embodied in court-created final judgment forms.² The statutory and rule procedures are followed by most courts in most foreclosure cases.³ Under the default procedures:

- The trial court directs the clerk of court to auction the property on a specific date that is not less than 20 days or more than 35 days after the date of judgment.⁴
- Certain notices regarding the possibility of a foreclosure surplus that may be claimed by the foreclosed owner must be included in the final judgment.⁵
- The clerk must furnish every defendant with a copy of the final judgment setting the sale date.⁶
- Notice of the sale must be published for two consecutive weeks on a publicly available website or once a week for two consecutive weeks in a newspaper of general circulation. The requirements for information that must be in the notice are listed in statute.⁷
- The clerk must be paid a service charge of \$70.⁸
- The sale must be by public auction.⁹ The statute does not specify a time or place; it merely requires that the time and place be in final judgment and in the public notice. Historically, sales were conducted on a porch, patio, or exterior staircase of the courthouse, at a time and

¹ Section 45.031, F.S.

² Form 1.996(a), F.R.C.P.

³ A 2012 appellate decision implies that the statutory procedure should be followed unless there is reason not to. *Royal Palm Corp. Ctr. Ass'n, Ltd. v. PNC Bank, NA*, 89 So. 3d 923, 927 (Fla. 4th DCA 2012). The statute is not a “procedural straightjacket” and a trial court has reasonable discretion to change the procedure in a case. *Id.* at 28, *LR5A–JV v. Little House, LLC*, 50 So. 3d 691 (Fla. 5th DCA 2010).

⁴ Section 45.031(1)(a), F.S.

⁵ Section 45.031(1)(b), F.S.

⁶ Section 45.031(1)(c), F.S. In practice, the foreclosing plaintiff must furnish the copies, addressed envelopes, and postage. The clerk merely certifies that the mailing was completed and that the clerk gave the mailing to the Postal Service.

⁷ Section 45.031(2), F.S.

⁸ Sections 45.031(3) and 45.035, F.S.

⁹ Section 45.031(3), F.S.

place set locally by longstanding tradition.¹⁰ Currently, most foreclosure sales are conducted through an internet-based auction system selected by the clerk.¹¹

- At a traditional auction sale, custom and practice is that the foreclosing plaintiff makes the first bid at \$100.¹² Often, there is no other bidder. If other bidders participate, the clerk must allow the foreclosing plaintiff a credit bid of any amount up to the amount of the judgment. The plaintiff's credit bid is not specified in statute but was created by custom and use because "no useful purpose [is] served in requiring a bondholder or a mortgagor to pay cash to a court officer conducting a judicial sale when he would be entitled to immediately have it paid back to him under the decree authorizing the sale."¹³ Note that the plaintiff's credit bid is limited to the amount of the judgment. A plaintiff bidding more than the amount of the judgment must pay the overage to the clerk.
- A successful third-party bidder (one other than the foreclosing plaintiff) must immediately post a deposit of five percent of the winning bid. If the winning bidder does not pay the remaining amount of his or her bid plus service charges and taxes by the stated deadline, the deposit is forfeited and is applied against the outstanding judgment.¹⁴ If the winning bidder fails to pay the full bid timely, the case file goes back to the trial court to set a new sale date. The statutory process does not specify the deadline for full payment. It appears that the deadlines are set by local custom. A review of eight counties showed that half required full payment on the day of the sale and the latest deadline required full payment by 4:00 p.m. on the day after the auction.¹⁵
- Whether the winning bidder is the plaintiff or a third-party bidder, the parties to the foreclosure have 10 days to object to the sale. If no timely objection is filed, the clerk issues a Certificate of Title to the winning bidder¹⁶ and the person named in the certificate is deemed the owner free and clear of any real property interest foreclosed.¹⁷ If a third party is the winning bidder and has paid the clerk the winning bid amount, the clerk, after deducting any outstanding costs, service charges, and taxes pays the remaining sum to the plaintiff, up to the amount of the outstanding judgment. If there are funds then remaining, known as a surplus, the clerk disburses the funds accordingly.¹⁸
- The clerk of court may retain a vendor to conduct foreclosure auctions through the internet.¹⁹ It appears that most of the clerks use this option.²⁰

¹⁰ For instance, Leon County historically conducted sales weekdays starting at 11:00 am on the west exterior patio of the courthouse. The west side of the building was still in the shade at that time, summer rainstorms usually did not start until after 2:00 pm., and the midday sale time gave the deputy clerk time before and after the sale to complete paperwork.

¹¹ Forty-four of the state's 67 counties (including the 8 sample counties) use the same vendor. See RealAuction: Our Client site, <https://www.realauction.com/clients/index>.

¹² The customary first bid of \$100 likely comes from the calculation of the documentary stamp tax of \$0.70 for every \$100 or portion thereof, making \$0.70 the minimum tax imposed. The documentary stamp tax is due on all documents transferring title to real property, including the clerk's Certificate of Title.

¹³ *Branch Banking & Tr. Co. v. Tomblin*, 163 So. 3d 1229, 1230 (Fla. 5th DCA 2015), *Grable v. Nunez*, 66 So. 2d 675, 677 (Fla.1953).

¹⁴ Section 45.031(3), F.S.

¹⁵ Surveyed counties were Broward, Duval, Escambia, Hillsborough, Leon, Miami-Dade, Orange, Palm Beach, Pinellas, and Sarasota.

¹⁶ Section 45.031(5), F.S.

¹⁷ Section 45.031(6), F.S.

¹⁸ The distribution of the surplus from a foreclosure sale is not affected by this bill.

¹⁹ Section 45.031(10), F.S.

²⁰ Forty-four of the state's 67 counties (including the 8 sample counties) use the same vendor. See RealAuction: Our Client site, <https://www.realauction.com/clients/index>.

Current Concerns related to Foreclosure Sales

In practice, trial court judges do not prepare ordinary final judgments. Instead, they require the attorney for the prevailing party to prepare the judgment form, subject to the court's supervision. Recently, some attorneys have requested that courts allow procedures that differ from the suggested statutory procedure and trial court judges have allowed those differences.²¹ Examples of questionable differences include:

- An auctioneer other than a clerk or the clerk's selected internet sales vendor is used. In some cases, the auctioneer has been the foreclosing plaintiff's attorney.
- Auctions have been conducted on or near the foreclosed property, sometimes in places with little public access, little to no reasonable parking, or access that might not reasonably accommodate the disabled.
- In some auctions, the final judgment provided that the foreclosing plaintiff would take title should the winning bidder fail to timely pay the bid. A sham bidder would appear and would drive up the bids to where all others would drop out. Later, the sham bidder would not pay, leaving the plaintiff to be deemed the winning bidder.²²
- A bidder for the plaintiff was given an unlimited credit bid (i.e., was allowed to bid in excess of the judgment), but was not required to pay the excess of the bid that should have been paid as surplus to the former owner.

III. Effect of Proposed Changes:

This bill requires the trial court to use the statutory procedure but allows a trial court to vary from the statutory foreclosure procedures within certain limits. The existing statutory procedures are not modified.

A request to use an alternative sales procedure must be made by separate motion and thus cannot be slipped into a proposed final judgment of foreclosure.

The following minimum requirements of the foreclosure sale cannot be modified by the court:

- Bidding procedures must be uniform among all bidders.
- The published notice of sale must include at a minimum the information required in the standard procedures.
- The credit bid of a plaintiff may not exceed the amount set by the final judgment.
- The sale must be in the county and at a place that is open to the public at the time of sale.
- The existing 10-day limit for filing an objection to sale may not be changed, nor can the finality of a sale absent objection be altered.
- Existing statutory fees due to the clerk may not be waived.
- Existing statutory treatment of a surplus must be followed.

²¹ Ben Weider and Brittany Wallman, *RIGGED. Florida lawyer writes rules to win condo auctions for \$100. Judges let him do it.* MIAMI HERALD, April 2, 2024, updated January 23, 2025, <https://www.miamiherald.com/news/business/real-estate-news/article285934076.html>.

²² Motion to Vacate Amended Final Judgment (November 3, 2021), *Emerald Tower Assoc. v. Celano*, Broward County Circuit Court case CACE202112603.

A private auctioneer (one other than the clerk of court or the sheriff, or a deputy thereof) must have insurance or post bond covering the value of the property. A private auctioneer has the duty to recuse if a business partner or relative within the third degree of consanguinity registers to bid or attempts to bid on the property. An attorney in the action may not be appointed as an auctioneer.

Any person other than the clerk or sheriff that holds funds must have insurance or post sufficient bond.

An in-person auction must be conducted in a place that is open to the general public at the time of the auction and that is reasonably accessible.

The bill creates a private cause of action available to any person who has violated the requirements and limits on foreclosure sales.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

The bill may increase the Clerks of Court workload and staffing needs. Additionally, the bill will provide fee predictability to the Clerk by prohibiting the court from waiving the statutory fee in s. 45.035(1), F.S. The bill may also result in a minimal increase in workload to the state court system.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 45.0311 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations Committee on Criminal and Civil Justice on March 26, 2025:

The amendment simplified and shortened the bill, making the following significant changes: removed provisions that would have extended the time limits for conducting a sale; removed specific requirements for a private auctioneer and added a bond requirement; removed prohibition on bidders related to a private auctioneer and added the requirement that a private auctioneer must recuse if a related person bids or registers to bid; simplified requirements related to private escrow to just a requirement to post bond or insurance as set by the court; simplified pleading requirements; removed authority for backup bidders; simplified the civil cause of action; and removed the newly created felony.

CS by Judiciary on February 11, 2025:

The amendment simplifies the bill and makes the following changes: extends the allowable time for conducting a foreclosure sale from between 20 days and 35 days to between 45 and 60 days; removes a provision that would have restricted credit bids to 10 percent of the appraised value of the property; removes a provision that would have extended the time to pay a final bid to 30 days; removes a prohibition on bidding by certain relatives or other related persons; removes a requirement that the final bid in any foreclosure sale exceed 75% of the tax appraised value of the property; adds criteria for deviations from the standard foreclosure procedure; adds a requirement that a request for deviation from the standard foreclosure procedure be made by motion notifying the court of the deviation; and lists sale procedures that may not be modified.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
