

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 48

INTRODUCER: Senator Garcia

SUBJECT: Judicial Sales Procedures

DATE: February 10, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 48 specifies minimum requirements for all judicial sales including real property foreclosure sales and allows specified alternate judicial sales procedures to be used when appropriate.

The minimum requirements applicable to all judicial sales:

- Prohibit bidding credits or offsets that exceed 10 percent of the tax appraised value of the property;
- Allow 30 days for the winning bidder to tender the full amount of the bid;
- Provide that if the auctioneer is an attorney, certain relatives or related person may not bid;
- Require a new auction if the high bid does not exceed 75 percent of the tax appraised value of the property; and
- Require that a sale be held at a location that is open to the public.

These requirements, which are applicable to all judicial sales, may not be waived by the trial court. A sale that does not comply with the requirements is void and a new sale must be conducted. A 7 year limitations period applies.

Existing law grants courts some discretion to order the use of alternate judicial sales procedures which deviate from the standard procedures. Under the bill, if a court orders the use of alternate judicial sales procedures, the procedures must:

- Require that all notices of sale include basic information (namely date, time, description of the property, and case information) together with a notice regarding claims to surplus;
- Provide that a private auctioneer must be a state licensed auctioneer, real estate broker, or attorney other than one related to the case;
- Provide that a private auctioneer may not bid or profit from the sale;
- Prohibit bidding or auction preferences; and
- Must limit who can hold funds to certain professionals if funds are not held by the clerk.

The bill appears to have an indeterminate positive fiscal impact on state revenues. The bill does not appear to have a fiscal impact on local governments.

The bill is effective July 1, 2025.

## II. Present Situation:

### Judicial Sales

The term “judicial sales” is not defined by statute. In practice, it generally refers to the sale of any property sold by court order or legal process, including foreclosure sales, sheriff’s sales of real or personal property seized pursuant to a writ of execution, a sale ordered in a partition action, and certain tax lien sales.

### 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 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 now former owner.

In most foreclosures, however, there is no surplus after the foreclosure sale. Commonly, the plaintiff, a foreclosing lender, 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 statute<sup>1</sup> and embodied in court-created final judgment forms.<sup>2</sup> The statutory and rule procedures are followed by most courts in most foreclosure cases.<sup>3</sup> 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.<sup>4</sup>
- Certain notices regarding the possibility of a foreclosure surplus that may be claimed by foreclosed owner must be included in the final judgment.<sup>5</sup>

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<sup>1</sup> Section 45.031, F.S.

<sup>2</sup> Form 1.996(a), F.R.C.P.

<sup>3</sup> 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. 4<sup>th</sup> 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. 5<sup>th</sup> DCA 2010).

<sup>4</sup> Section 45.031(1)(a), F.S.

<sup>5</sup> Section 45.031(1)(b), F.S.

- The clerk must furnish every defendant with a copy of the final judgment setting the sale date.<sup>6</sup>
- Notice of the sale must be published for 2 consecutive weeks on a publicly available website or once a week for 2 consecutive weeks in a newspaper of general circulation. The requirements for information that must be in the notice are listed in statute.<sup>7</sup>
- The clerk must be paid a service charge of \$70.<sup>8</sup>  
The sale must be by public auction.<sup>9</sup> 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 place set locally by longstanding tradition.<sup>10</sup> Currently, most foreclosure sales are conducted through an internet-based auction system selected by the clerk.<sup>11</sup>
- At a traditional auction sale, custom and practice is that the foreclosing plaintiff makes the first bid at \$100.<sup>12</sup> 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."<sup>13</sup> 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 5 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.<sup>14</sup> 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 8 counties showed that half required full payment on the day of the sale and the latest deadline required full payment by 4:00 pm on the day after the auction.<sup>15</sup>
- 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

<sup>6</sup> 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.

<sup>7</sup> Section 45.031(2), F.S.

<sup>8</sup> Sections 45.031(3) and 45.035, F.S.

<sup>9</sup> Section 45.031(3), F.S.

<sup>10</sup> 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.

<sup>11</sup> Section 45.031(10), F.S.

<sup>12</sup> 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.

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

<sup>14</sup> Section 45.031(3), F.S.

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

Certificate of Title to the winning bidder,<sup>16</sup> and the person named in the certificate is deemed the owner free and clear of any real property interest foreclosed.<sup>17</sup> 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.<sup>18</sup>

- The clerk of court may retain a vendor to conduct foreclosure auctions through the internet.<sup>19</sup> It appears that most of the clerks use this option.<sup>20</sup>

### **Current Concerns related to Foreclosure and Judicial 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.<sup>21</sup> Examples of questionable differences include:

- An auctioneer other than a clerk or the clerk's selected electronic 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 where all others would drop out. Later, the sham bidder would not pay, leaving the plaintiff to be deemed the winning bidder.<sup>22</sup>
- 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:**

SB 48 makes statutory procedures for foreclosure sales and prohibits certain practices related to all forms of judicial sales.

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<sup>16</sup> Section 45.035(5), F.S.

<sup>17</sup> Section 45.035(6), F.S.

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

<sup>19</sup> Section 45.031(10), F.S.

<sup>20</sup> 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>.

<sup>21</sup> 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>.

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

## Foreclosure Procedures

The bill makes the statutory foreclosure sales procedure mandatory instead of suggested. The basic statutory procedure remains the same. The bill then gives a trial court limited authority to use alternate procedures if appropriate. An alternate procedure may not contradict a specific statutory requirement and must be intended to minimize expense and delay, avoid fraud, and maximize the sale price. Under the allowable deviations from the standard procedures:

- Notice of a foreclosure sale must, at a minimum, include a description of the property, the time and place of the sale, a statement that the sale is pursuant to judgment or court order, the caption of the case, the name of the clerk making the sale, and a statement that a person claiming an interest in a surplus must file the claim before the clerk of court reports the surplus as unclaimed property.
- An auctioneer other than the clerk of court (or the clerk's electronic sales vendor), must be licensed by the state as an auctioneer, real estate broker, or attorney.<sup>23</sup> Also, the auctioneer may not be a party to the lawsuit, or an attorney representing any party. An auctioneer may not bid on the property or profit from the sale other than through compensation authorized by the court.
- Bidding preferences, credit preferences, or any other advantage to any party are prohibited.
- The winning bidder's funds, if not held by the clerk of court, must be held in a trust account or escrow account under the regulations of the auctioneer's profession<sup>24</sup> or employment as a title insurance agent.

The bill creates suggested forms for use with alternate foreclosure procedures which are substantially similar to the forms specified in current law.

An alternative procedure must still use the surplus trustee program. This program provides for the appointment for a third-party to locate and disburse the surplus from a foreclosure sale to the former property owner.

## Judicial Sales Procedure and Prohibitions

The bill makes the following changes related to all judicial sales, including foreclosure sales:

- A court may not allow a credit bid or other offset in excess of 10 percent of the most recent assessed value of the property. This appears to require the foreclosing plaintiff to, in some circumstances, pay moneys to the clerk to be held for a brief period of time before those same funds, minus service charges, are returned to the foreclosing plaintiff. Such plaintiffs will be charged the clerk's registry fee of 3 percent on the first \$500 plus 1.5 percent of the amount in excess of \$500.<sup>25</sup>
- The winning bidder has 30 days to pay the winning bid.
- If the sale is orchestrated or facilitated by an attorney, then a parent, child, brother, sister, grandparent, grandchild, current client, or former client of the attorney may not bid. The

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<sup>23</sup> Sections 468.385, 475.01(1)(a), and 454.021, F.S.

<sup>24</sup> Auctioneer trust accounts are governed by s. 468.388(1)(a), F.S. Real estate brokers are governed by s. 475.25(1)(d), F.S. Attorney trust accounts are governed by ch. 5 of the Rules Regulating the Florida Bar.

<sup>25</sup> Section 28.24(11), F.S.

prohibition also applies to any legal entity wholly or predominately owned by any of such persons.

- If a property is sold for less than 75 percent of the tax appraised value, the auction is invalid and the property must be set for a new auction.
- A sale must be conducted in a place open and available to the public. The bill provides that areas of a building that are normally accessible by a security card, key card, fob, or other similar restriction, are not considered open and available.

A court may not waive any of these requirements. A sale that violates any of these is considered void and must be reset.

No limitations period is expressed in this new statute. It is unclear what the limitations period for filing an objection to a judicial sale would be under this new section. It appears to be 7 years from the date of the sale, as opposed to the current 10 days to object to the sale.<sup>26</sup> Likewise, the limitations period for objection to a judicial sale of personal property appears to be 4 years.<sup>27</sup>

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.

<sup>26</sup> Sections 45.035(8) and 95.12, F.S.

<sup>27</sup> Section 95.11(3)(o), F.S.

**B. Private Sector Impact:**

In section 2 of the bill, the prohibition on credit bids will likely lead to an undetermined negative fiscal impact on foreclosing lenders who currently benefit from the use of a credit bid.

In section 2 of the bill, the requirement that the winning bid exceed 75 percent of the tax appraised value of the real property may result in an undetermined negative fiscal impact on lenders who will be compelled to pay documentary stamp taxes greater than they currently pay.

Section 2 of the bill creates certain prohibitions related to a foreclosure sale. That section creates a remedy of voiding the sale upon any violation, which would require a new sale. It appears that a 7 year limitations applies. Ownership of a foreclosed property could be challenged for up to 7 years based on facts that are outside of the chain of title. Thus, foreclosed properties would likely be uninsurable for purposes of issuance of title insurance for 7 years, negatively impacting the value of such property.

**C. Government Sector Impact:**

The provision in the bill requiring the winning bid in a foreclosure sale to exceed 75 percent of the tax appraised value of the property will likely lead to an unknown positive fiscal impact on state revenues from the documentary stamp tax.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 45.031 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 45.0311, 45.036

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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