

By Senator Garcia

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1 A bill to be entitled
2 An act relating to judicial sales procedures; amending
3 s. 45.031, F.S.; specifying that courts must follow
4 certain provisions when ordering the sale of real or
5 personal property unless the use of other specified
6 procedures is ordered; creating s. 45.0311, F.S.;
7 providing a short title; prohibiting a court from
8 allowing the use of bidding credits or certain other
9 offsets in specified judicial sales or foreclosure
10 sales; requiring the winning bidder to remit the full
11 purchase price within a specified timeframe; requiring
12 that the sale be voided and the property reauctioned
13 under certain circumstances; prohibiting specified
14 persons and entities from bidding on properties in
15 certain sales; requiring that a property be
16 reauctioned if the property does not sell for a
17 specified percentage of the recent assessed property
18 value; requiring that specified sales be held at
19 locations that are open and available to the public;
20 providing construction; prohibiting the courts from
21 allowing certain sales of property unless specified
22 rules and provisions are followed; prohibiting the
23 courts from issuing certain orders for the judicial
24 sale or foreclosure sale of property; providing that
25 specified sales of property are void and the property
26 must be reauctioned if certain conditions are met;
27 creating s. 45.036, F.S.; authorizing courts to order
28 an alternate judicial sales procedure under specified
29 conditions; requiring that such procedure follow

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30 specified notice provisions; requiring that the person
31 conducting a sale hold a specified license unless he
32 or she is a clerk of the court; prohibiting parties to
33 the sale action and their attorneys from conducting
34 such sale; prohibiting the person conducting the sale
35 from directly or indirectly bidding on the property or
36 profiting from the sale, except for receiving a
37 certain fee; prohibiting an alternate judicial sales
38 procedure from authorizing specified preferences or
39 advantages; requiring that funds be held in an escrow
40 or trust account unless the clerk of the court holds
41 those funds; authorizing the court to audit such
42 accounts and issue certain orders; providing that the
43 clerk of the court is entitled to a specified service
44 charge; prohibiting the court from waiving such
45 charge; requiring the person who conducted the sale to
46 file a specified certificate of sale and provide
47 service of such certificate to specified parties;
48 requiring the clerk of the court to file a specified
49 certificate of title and provide service of such
50 certificate to specified parties; prohibiting courts
51 from waiving requirements related to a foreclosure
52 surplus; requiring certain persons to file a specified
53 certificate of disbursement; providing an effective
54 date.

55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Section 45.031, Florida Statutes, is amended to

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59 read:

60 45.031 Judicial sales procedure.—In any sale of real or
61 personal property under an order or judgment, the procedures
62 provided in this section and ss. 45.0315-45.035 must ~~may~~ be
63 followed unless the court orders use of the alternate judicial
64 sales procedure in s. 45.036 or other procedures expressly
65 provided by law ~~as an alternative to any other sale procedure if~~
66 ~~so ordered by the court.~~

67 (1) FINAL JUDGMENT.—

68 (a) In the order or final judgment, the court shall direct
69 the clerk to sell the property at public sale on a specified day
70 that shall be not less than 20 days or more than 35 days after
71 the date thereof, on terms and conditions specified in the order
72 or judgment. A sale may be held more than 35 days after the date
73 of final judgment or order if the plaintiff or plaintiff's
74 attorney consents to such time. The final judgment shall contain
75 the following statement in conspicuous type:

76

77 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
78 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
79 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
80 FINAL JUDGMENT.

81

82 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
83 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE
84 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS
85 UNCLAIMED. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE
86 ENTITLED TO ANY REMAINING FUNDS.

87 (b) If the property being foreclosed on has qualified for

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88 the homestead tax exemption in the most recent approved tax
89 roll, the final judgment shall additionally contain the
90 following statement in conspicuous type:

91
92 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS
93 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER
94 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO
95 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE
96 ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, ... (INSERT
97 INFORMATION FOR APPLICABLE COURT)... WITHIN TEN (10) DAYS AFTER
98 THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE
99 FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE
100 COURT.

101
102 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
103 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
104 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
105 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
106 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
107 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
108 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO
109 PAY AN ATTORNEY, YOU MAY CONTACT ... (INSERT LOCAL OR NEAREST
110 LEGAL AID OFFICE AND TELEPHONE NUMBER)... TO SEE IF YOU QUALIFY
111 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
112 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR
113 SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT ... (NAME OF
114 LOCAL OR NEAREST LEGAL AID OFFICE)... FOR ASSISTANCE, YOU SHOULD
115 DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

116 (c) A copy of the final judgment shall be furnished by the

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117 clerk by first-class mail to the last known address of every
118 party to the action or to the attorney of record for such party.
119 Any irregularity in such mailing, including the failure to
120 include this statement in any final judgment or order, shall not
121 affect the validity or finality of the final judgment or order
122 or any sale held pursuant to the final judgment or order. Any
123 sale held more than 35 days after the final judgment or order
124 shall not affect the validity or finality of the final judgment
125 or order or any sale held pursuant to such judgment or order.

126 (2) PUBLICATION OF SALE.—Notice of sale shall be published
127 on a publicly accessible website as provided in s. 50.0311 for
128 at least 2 consecutive weeks before the sale or once a week for
129 2 consecutive weeks in a newspaper of general circulation, as
130 provided in chapter 50, published in the county where the sale
131 is to be held. The second publication by newspaper shall be at
132 least 5 days before the sale. The notice shall contain:

133 (a) A description of the property to be sold.

134 (b) The time and place of sale.

135 (c) A statement that the sale will be made pursuant to the
136 order or final judgment.

137 (d) The caption of the action.

138 (e) The name of the clerk making the sale.

139 (f) A statement that any person claiming an interest in the
140 surplus from the sale, if any, other than the property owner as
141 of the date of the lis pendens must file a claim before the
142 clerk reports the surplus as unclaimed.

143

144 The court, in its discretion, may enlarge the time of the sale.

145 Notice of the changed time of sale shall be published as

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146 provided herein.

147 (3) CONDUCT OF SALE; DEPOSIT REQUIRED.—The sale shall be
148 conducted at public auction at the time and place set forth in
149 the final judgment. The clerk shall receive the service charge
150 imposed in s. 45.035 for services in making, recording, and
151 certifying the sale and title that shall be assessed as costs.
152 At the time of the sale, the successful high bidder shall post
153 with the clerk a deposit equal to 5 percent of the final bid.
154 The deposit shall be applied to the sale price at the time of
155 payment. If final payment is not made within the prescribed
156 period, the clerk shall readvertise the sale as provided in this
157 section and pay all costs of the sale from the deposit. Any
158 remaining funds shall be applied toward the judgment.

159 (4) CERTIFICATION OF SALE.—After a sale of the property the
160 clerk shall promptly file a certificate of sale and serve a copy
161 of it on each party in substantially the following form:

162

163 (Caption of Action)

164

165 CERTIFICATE OF SALE

166

167 The undersigned clerk of the court certifies that notice of
168 public sale of the property described in the order or final
169 judgment was published in, a newspaper circulated in
170 County, Florida, in the manner shown by the proof of publication
171 attached, and on, ... (year) ..., the property was offered
172 for public sale to the highest and best bidder for cash. The
173 highest and best bid received for the property in the amount of
174 \$.... was submitted by, to whom the property was sold. The

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175 proceeds of the sale are retained for distribution in accordance
176 with the order or final judgment or law. WITNESS my hand and the
177 seal of this court on, ...(year)....

178 ... (Clerk)...

179 By ... (Deputy Clerk)...

180

181 (5) CERTIFICATE OF TITLE.—If no objections to the sale are
182 filed within 10 days after filing the certificate of sale, the
183 clerk shall file a certificate of title and serve a copy of it
184 on each party in substantially the following form:

185

186 (Caption of Action)

187

188 CERTIFICATE OF TITLE

189

190 The undersigned clerk of the court certifies that he or she
191 executed and filed a certificate of sale in this action on,
192 ...(year)..., for the property described herein and that no
193 objections to the sale have been filed within the time allowed
194 for filing objections.

195 The following property in County, Florida:

196 (description)

197 was sold to

198

199 WITNESS my hand and the seal of the court on, ...(year)....

200 ... (Clerk)...

201 By ... (Deputy Clerk)...

202

203 (6) CONFIRMATION; RECORDING.—When the certificate of title

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204 is filed the sale shall stand confirmed, and title to the
 205 property shall pass to the purchaser named in the certificate
 206 without the necessity of any further proceedings or instruments.
 207 The certificate of title shall be recorded by the clerk.

208 (7) DISBURSEMENTS OF PROCEEDS.—

209 (a) On filing a certificate of title, the clerk shall
 210 disburse the proceeds of the sale in accordance with the order
 211 or final judgment and shall file a report of such disbursements
 212 and serve a copy of it on each party, and on the Department of
 213 Revenue if the department was named as a defendant in the action
 214 or if the Department of Commerce or the former Agency for
 215 Workforce Innovation was named as a defendant while the
 216 Department of Revenue was providing reemployment assistance tax
 217 collection services under contract with the Department of
 218 Commerce or the former Agency for Workforce Innovation through
 219 an interagency agreement pursuant to s. 443.1316.

220 (b) The certificate of disbursements shall be in
 221 substantially the following form:

222
 223 (Caption of Action)

224
 225 CERTIFICATE OF DISBURSEMENTS

226
 227 The undersigned clerk of the court certifies that he or she
 228 disbursed the proceeds received from the sale of the property as
 229 provided in the order or final judgment to the persons and in
 230 the amounts as follows:

231	Name	Amount
232		

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233 Total disbursements: \$....
 234 Surplus retained by clerk, if any: \$....
 235

236 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
 237 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
 238 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL
 239 TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING
 240 FUNDS. AFTER THE FUNDS ARE REPORTED AS UNCLAIMED, ONLY THE OWNER
 241 OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE
 242 SURPLUS.
 243

244 WITNESS my hand and the seal of the court on, ...(year)....
 245(Clerk)..
 246 By ...(Deputy Clerk)..
 247

248 (c) If no objections to the report are served within 10
 249 days after it is filed, the disbursements by the clerk shall
 250 stand approved as reported. If timely objections to the report
 251 are served, they shall be heard by the court. Service of
 252 objections to the report does not affect or cloud the title of
 253 the purchaser of the property in any manner.

254 (d) If there are funds remaining after payment of all
 255 disbursements required by the final judgment of foreclosure and
 256 shown on the certificate of disbursements, the surplus shall be
 257 distributed as provided in this section and ss. 45.0315-45.035.

258 (8) VALUE OF PROPERTY.—The amount of the bid for the
 259 property at the sale shall be conclusively presumed to be
 260 sufficient consideration for the sale. Any party may serve an
 261 objection to the amount of the bid within 10 days after the

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262 clerk files the certificate of sale. If timely objections to the
263 bid are served, the objections shall be heard by the court.
264 Service of objections to the amount of the bid does not affect
265 or cloud the title of the purchaser in any manner. If the case
266 is one in which a deficiency judgment may be sought and
267 application is made for a deficiency, the amount bid at the sale
268 may be considered by the court as one of the factors in
269 determining a deficiency under the usual equitable principles.

270 (9) EXECUTION SALES.—This section shall not apply to
271 property sold under executions.

272 (10) ELECTRONIC SALES.—The clerk may conduct the sale of
273 real or personal property under an order or judgment pursuant to
274 this section by electronic means. Such electronic sales shall
275 comply with the procedures provided in this chapter, except that
276 electronic proxy bidding shall be allowed and the clerk may
277 require bidders to advance sufficient funds to pay the deposit
278 required by subsection (3). The clerk shall provide access to
279 the electronic sale by computer terminals open to the public at
280 a designated location and shall accept an advance credit proxy
281 bid from the plaintiff of any amount up to the maximum allowable
282 credit bid of the plaintiff. A clerk who conducts such
283 electronic sales may receive electronic deposits and payments
284 related to the sale.

285 Section 2. Section 45.0311, Florida Statutes, is created to
286 read:

287 45.0311 Transparency in judicial sales and foreclosure
288 sales.—

289 (1) This section may be cited as the "Transparency in
290 Judicial Sales and Foreclosure Sales Act."

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291 (2) Notwithstanding s. 45.031 or any other law to the
292 contrary:

293 (a) A court of competent jurisdiction presiding over a
294 judicial sale or other foreclosure sale conducted in this state
295 or pursuant to the laws of this state may not allow the use of
296 bidding credits or other offsets in excess of 10 percent of the
297 most recent assessed value of the property, as determined by the
298 property appraiser in the county where the property is located.

299 (b) If the winning bidder of a judicial sale or other
300 foreclosure sale conducted in this state or pursuant to the laws
301 of this state does not remit the full purchase price within 30
302 days after the sale, or cause the full purchase price to be
303 remitted to the seller within 30 days after the sale, the sale
304 is voided and the property must be reauctioned.

305 (c) If a judicial sale or other foreclosure sale conducted
306 in this state or pursuant to the laws of this state is
307 orchestrated or facilitated by an attorney, a parent, a child, a
308 brother, a sister, a grandparent, or a grandchild of that
309 attorney may not bid on the property. A current or former client
310 of such attorney may not bid on the property. For the purposes
311 of this paragraph, a legal entity wholly or predominantly owned
312 by a parent, a child, a brother, a sister, a grandparent, or a
313 grandchild of such attorney or a current or former client of
314 such attorney, may not bid on the property.

315 (d) If a property sold pursuant to a judicial sale or other
316 foreclosure sale conducted in this state or pursuant to the laws
317 of this state is not sold for at least 75 percent of the most
318 recent assessed value of the property, as determined by the
319 property appraiser in the county where the property is located,

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320 such property must be reauctioned.

321 (e) Any judicial sale or other foreclosure sale conducted
322 in this state or pursuant to the laws of this state must be held
323 at a location that is open and available to the public, and the
324 public must be provided reasonable notice of such sale. For the
325 purposes of this paragraph, an area of a building or property
326 which is normally accessible only by a security card, key card,
327 key fob, or other similar means is not open and available to the
328 public.

329 (f) A court of competent jurisdiction in this state may not
330 allow any judicial sale or other foreclosure sale to proceed if
331 such sale is conducted pursuant to rules that contradict this
332 section. A court may not issue an order allowing a property to
333 be sold by way of judicial sale or foreclosure sale which does
334 not comply with the requirements of this section.

335 (g) Any judicial sale or other foreclosure sale conducted
336 in this state or pursuant to the laws of this state in violation
337 of this section is void, upon a successful legal challenge, and
338 the property must be reauctioned pursuant to a valid judicial
339 sale.

340 Section 3. Section 45.036, Florida Statutes, is created to
341 read:

342 45.036 Alternate judicial sales procedure.—A court may
343 order the use of alternate judicial sales procedures in ss.
344 45.031-45.035 if the exceptions are consistent with the
345 requirements of this section and the goals of minimizing
346 expenses and delays, avoiding fraud, and maximizing the sale
347 price.

348 (1) ALTERNATE PUBLICATION OF SALE PROCEDURE.—Any

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349 publication of sale procedure which is not fully consistent with
350 the publication of sale procedures specified in s. 45.031(2)
351 must require notice of all the information specified in that
352 subsection.

353 (2) SALES NOT CONDUCTED BY THE CLERK OF THE COURT.—If the
354 clerk of the court is not conducting the sale, the person
355 conducting the sale:

356 (a) Must be an auctioneer licensed under part VI of chapter
357 468, a real estate broker licensed under chapter 475, or an
358 attorney licensed by The Florida Bar;

359 (b) May not be a party to the action or an attorney
360 representing a party in the action; and

361 (c) May not directly or indirectly bid on the property or
362 profit from the sale of the property by any means other than the
363 fee authorized by the court.

364 (3) PREFERENCES PROHIBITED.—An alternate judicial sales
365 procedure may not authorize any bidding preferences, credit
366 preferences, or other preference or advantage to any party or
367 bidder or other person seeking ownership of the property.

368 (4) POSSESSION OF DEPOSITS AND PAYMENTS.—If the bidder's
369 deposit, the bid amount, or any other funds paid by a bidder or
370 a party are not held by the clerk of the court, the funds must
371 be held in an escrow or trust account pursuant to the laws and
372 rules regulating the license of the person conducting the sale
373 or held in an escrow account of the title insurance agent
374 regulated under part V of chapter 626. The court may audit any
375 such escrow or trust account and may enter an ex parte order at
376 any time requiring the immediate transfer of all related funds
377 to the clerk of the court.

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378 (5) CERTIFICATION OF SALE.—After the sale of a property to
 379 which this section applies:

380 (a) The clerk is entitled to the service charge in s.
 381 45.035(1), which may not be waived by the court; and

382 (b) The clerk of the court or other person who conducted
 383 the sale must promptly file a certificate of sale and serve a
 384 copy on each party in substantially the following form:

385

386 (Caption of Action)

387

388 CERTIFICATE OF JUDICIAL SALE

389

390 The undersigned certifies that notice of public sale
 391 of the property described in the order or final judgment was
 392 furnished by, in the manner shown by the attached, and on
 393, ...(year)...., the property was offered for public sale to
 394 the highest and best bidder for cash. The highest and best bid
 395 received for the property in the amount of \$.... was submitted
 396 by, to whom the property was sold. The proceeds of the sale
 397 are retained for distribution in accordance with the order or
 398 final judgment or law. WITNESS my hand and the seal of this
 399 court on, ...(year)....

400

...(...)

401

By ...(...)

402

403 (6) CERTIFICATE OF TITLE.—If property is sold under the
 404 method authorized by this section and an objection to the sale
 405 is not filed within 10 days after filing the certificate of
 406 sale, or such other time as authorized by the court, the clerk

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407 must file a certificate of title and serve a copy of such title
408 on each party in substantially the following form:

409
410 (Caption of Action)

411
412 CERTIFICATE OF TITLE

413
414 The undersigned clerk of the court certifies that a
415 certificate of sale was filed in this action on,
416 ...(year)..., for the property described herein and that no
417 objections to the sale have been filed within the time allowed
418 for filing objections.

419 The following property in County, Florida:
420 (description)
421 was sold to

422
423 WITNESS my hand and the seal of the court on, ...(year)....
424 ...(Clerk)...
425 By ...(Deputy Clerk)...
426

427 (7) SURPLUS FUNDS.—The requirements related to a
428 foreclosure surplus as provided in ss. 45.031(1), 45.032,
429 45.033, and 45.035(2) may not be waived by the court.

430 (8) DISBURSEMENTS OF PROCEEDS.—If the clerk of the court is
431 not disbursing the proceeds of the sale, the person who
432 conducted the sale, or a title company licensed under part V of
433 chapter 626, must file a certificate of disbursements in
434 substantially the same form as required by s. 45.031(7).

435 Section 4. This act shall take effect July 1, 2025.