

By Senator Aronberg

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1 A bill to be entitled
2 An act relating to mortgage foreclosures; providing a
3 short title; specifying applicability to homestead
4 property and certain foreclosure actions; providing
5 procedural requirements and limitations for
6 plaintiffs, defendants, and courts in certain
7 foreclosure actions; requiring an appraisal;
8 specifying document production requirements;
9 specifying loan negotiation requirements; providing
10 criteria for commercial reasonableness of renegotiated
11 loans; providing for forbearance liens under certain
12 circumstances; providing lien limitations; providing
13 for satisfaction of such liens; requiring mediation;
14 requiring the Supreme Court to determine certain
15 forms; requiring court clerks to provide forms to pro
16 se defendants at no charge; providing for future
17 expiration; creating s. 83.494, F.S.; providing
18 requirements for landlords following commencement of a
19 foreclosure action; providing for security deposits
20 and advance rents to be maintained in interest-earning
21 accounts; providing for disclosure of the foreclosure
22 action to prospective tenants; providing an exception
23 to liability for failure to provide notice; requiring
24 the purchaser in a foreclosure sale to credit the
25 tenant for security deposits and advance rents under
26 certain conditions; creating s. 83.495, F.S.;
27 providing that a purchaser of residential property in
28 foreclosure may terminate a tenant's residential
29 rental agreement after providing notice to the tenant;

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30 providing notice requirements; specifying the content
31 of the notice; providing exemptions; authorizing a
32 tenant to terminate the lease upon receiving notice;
33 providing for future expiration; providing an
34 effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Mortgage renegotiation loans.—

39 (1) TITLE.—This section may be cited as the “Foreclosure
40 Bill of Rights.”

41 (2) APPLICABILITY.—This section applies to actions to
42 foreclose a mortgage on real estate used and owned as a
43 homestead, as defined in s. 196.012, Florida Statutes, which are
44 initiated on or after July 1, 2010, or in which a final judgment
45 has not been rendered as of July 1, 2010.

46 (3) NOTICE AND DOCUMENTATION.—In any action to foreclose a
47 mortgage on homestead property, a defendant may invoke the
48 protections provided under this section by filing and serving a
49 notice to invoke the Foreclosure Bill of Rights, which includes
50 a sworn statement that the property in foreclosure is the
51 defendant’s homestead property.

52 (a) The form for the notice shall be provided by the
53 plaintiff to the defendant with the original service of process
54 for the foreclosure action, together with the summons and
55 complaint.

56 (b) After the protections of this section have been invoked
57 by a defendant, a plaintiff is not entitled to a final judgment
58 against that defendant until all of the requirements of this

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59 section have been satisfied.

60 (c) If a default is entered against a defendant, the
61 defendant is not entitled to the protections of this section
62 until the default is set aside.

63 (d) Within 45 days after the filing and service of the
64 notice, the plaintiff shall provide for a new appraisal of the
65 property in foreclosure to determine the current market value of
66 the property.

67 (e) Within 60 days after filing the notice to invoke, the
68 plaintiff shall provide to the defendant the results of the
69 appraisal conducted pursuant to paragraph (d), together with
70 true copies of all closing documents relating to the mortgage
71 under foreclosure, including, but not limited to:

72 1. Any loan application used to determine the defendant's
73 creditworthiness.

74 2. Any settlement statement.

75 3. The mortgage being foreclosed.

76 4. Any promissory note related to the mortgage.

77 5. Any assignments of the mortgage or note.

78 (f) If any closing document required under paragraph (e) is
79 not in the actual possession of the plaintiff, the plaintiff
80 must make reasonable efforts to obtain the document and, if the
81 documents cannot be obtained, serve an affidavit on the
82 defendant detailing the efforts made to obtain the document, the
83 person or entity in whose possession the documents are believed
84 to be, and the last known address, location, and telephone
85 number of such person or entity. The plaintiff shall file a
86 certificate of compliance with the requirements of paragraph (e)
87 and this paragraph, as applicable.

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88 (g) Within 30 days after the filing and serving of the
89 certificate of compliance under paragraph (f), the defendant
90 shall provide to the plaintiff a sworn financial affidavit, a
91 copy of the defendant's tax returns for the preceding 3 years,
92 and a copy of the defendant's bank statements for the preceding
93 3 months. Upon motion, the court may issue protective orders as
94 deemed necessary to protect the privacy rights of the defendant.

95 (h) By agreement of the parties or with prior court
96 approval, including by administrative order, service of any
97 documents under this section may be made in electronic format or
98 upon such other terms as may be agreed to or ordered in the
99 interests of justice and judicial economy.

100 (4) RENEGOTIATION OF MORTGAGE LOAN.—

101 (a) Upon meeting the requirements of subsection (3), as
102 applicable, the plaintiff shall make a good faith effort to
103 negotiate a settlement, which shall include efforts to
104 renegotiate the loan at a principal equivalent to the actual
105 market value of the property as determined under paragraph
106 (3) (d). In determining good faith, the court shall consider:

- 107 1. Whether a renegotiated loan is commercially reasonable.
- 108 2. Whether the plaintiff has made any offer.
- 109 3. The reasonableness of any offer made.
- 110 4. Any other factor the court deems relevant.

111 (b) In determining the commercial reasonableness of a
112 renegotiated loan, the court shall consider:

- 113 1. The income, savings, and other assets of the defendants.
- 114 2. The reasonableness of the terms of the original loan,
115 including whether issues of fraud are presented in the
116 negotiation and closing of the original loan.

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117 3. Whether the loan term can be extended.

118 4. Whether the interest rate can be reduced.

119 5. Whether the repayment terms can be changed.

120 6. The creditworthiness of the defendant, other than as
121 affected by the foreclosure and any related nonpayments.

122 (c) If the loan is refinanced with a reduced principal at
123 the property's current market value, the plaintiff is entitled
124 to a forbearance lien on the property for an amount equal to the
125 difference between the original principal and the new principal.
126 The forbearance lien may not grant any other right to foreclose
127 on the property or otherwise collect the moneys other than as
128 provided in this section.

129 1. The forbearance lien shall be recorded in the public
130 records of the county in which the property is located.

131 2. Upon the first resale, refinance, or transfer by
132 operation of law or otherwise, the beneficiary of the
133 forbearance lien is entitled to any proceeds of the resale,
134 refinance, or transfer in excess of the renegotiated loan
135 balance to be applied to satisfaction of the lien.

136 3. Upon any subsequent resale, refinance, or transfer by
137 operation of law or otherwise, the beneficiary of the
138 forbearance lien may foreclose the lien.

139 (5) MEDIATION.—All actions to foreclose a mortgage are
140 subject to court-ordered mediation pursuant to s. 44.102,
141 Florida Statutes. The mediation shall be coordinated and
142 scheduled by the parties at least 60 days after completion of
143 all other requirements of this section.

144 (6) FORMS.—

145 (a) The Supreme Court shall determine the form and content

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146 of all notices, affidavits, certificates, liens, and other forms
147 required under this section.

148 (b) The clerks of the circuit courts shall provide all
149 forms, together with instructions in English and Spanish, to a
150 pro se defendant seeking assistance in any foreclosure action.
151 Such forms shall be provided at no cost to the defendant.

152 (7) EXPIRATION.—This section expires July 1, 2015.

153 Section 2. Section 83.494, Florida Statutes, is created to
154 read:

155 83.494 Disclosure of mortgage foreclosure; security
156 deposits and advance rents.—

157 (1) After the initial service of a complaint is made on a
158 landlord in a mortgage foreclosure proceedings commenced against
159 a residential dwelling unit, the landlord or the landlord's
160 agent:

161 (a) Shall hold the total amount of money deposited or
162 advanced by a current or prospective tenant as security for
163 performance of the rental agreement or as advance rent as
164 provided under s. 83.49(1)(b); and

165 (b) Must disclose, in writing, the existence of the pending
166 foreclosure proceedings to a prospective tenant before executing
167 a rental agreement made during the pendency of the proceeding.
168 The written disclosure must inform the prospective tenant that
169 the foreclosure proceedings might affect the right of the tenant
170 to possess and reside in the leased dwelling unit and that the
171 landlord is required to hold the tenant's total amount of
172 deposit money or advance rent in accordance with s. 83.49(1)(b).
173 The landlord's agent is not liable for failure to notify a
174 prospective tenant of the foreclosure proceeding unless he or

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175 she received notice of the pending proceedings from the
176 landlord.

177 (2) If the landlord or the landlord's agent did not hold
178 the deposit money or advance rent in accordance with s.
179 83.49(1)(b) and the property is sold in foreclosure, the
180 purchaser shall credit the tenant's account for any deposit
181 money paid by the tenant, and make claims against the deposit
182 pursuant to s. 83.49(1)(b). The purchaser shall also credit the
183 tenant's account for any advance rent for an unexpired rental
184 period. The tenant must have documentation demonstrating the
185 payment of the security deposit or advance rent in order to
186 receive the credit.

187 Section 3. Section 83.495, Florida Statutes, is created to
188 read:

189 83.495 Possession of foreclosed residential dwelling unit;
190 notice to tenant.—

191 (1) Upon receipt of a certificate of title issued pursuant
192 to s. 45.031, a purchaser of a foreclosed residential dwelling
193 unit occupied by a tenant may terminate the rental agreement
194 after providing the tenant with written notice stating that the
195 dwelling unit has been sold and that the purchaser is taking
196 possession of the property and terminating the agreement.

197 (a) If the agreement is not in writing, the tenant may
198 continue to occupy the premises for up to 90 days after the date
199 the tenant receives notice.

200 (b) If there is a written rental agreement, the tenant may
201 continue to occupy the premises until the end of the lease term
202 or up to 90 days after the date the tenant receives notice,
203 whichever is greater.

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204 (c) The purchaser of the foreclosed unit must provide such
205 notice before terminating a lease regardless of whether the
206 purchaser intends to retain ownership of the premises or sell
207 the premises to a subsequent purchaser who will occupy the
208 premises.

209 (2) Notice under this subsection must be delivered in
210 accordance with s. 83.56(4) and must be in substantially the
211 following form:

212 Dear ... (name of tenant...
213 You are hereby advised that the premises, ... (address
214 of rental unit)... you are occupying, has been the
215 subject of a foreclosure action and that your rental
216 agreement is terminated effective 90 days after you
217 receive this termination notice, or, if you have a
218 written rental agreement, at the end of the term of
219 your rental agreement or 90 days after you receive
220 this notice, whichever is later. You must vacate the
221 premises by that date. You are still obligated to pay
222 rent in the amount you have been paying prior to this
223 notice during the remaining term of your written
224 rental agreement, or during the 90-day period that you
225 continue to occupy the premises. Rent shall be
226 delivered to:

227 ... [name] ...
228 ... [address]
229

230
231 (3) Notice under this section is not required if:

232 (a) The mortgager being foreclosed, or the child, spouse,

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233 or parent of the mortgagor being foreclosed, is occupying the
234 dwelling unit being foreclosed, unless it is a multiunit
235 property and other tenants are occupying dwelling units;

236 (b) The rental agreement is not an arms-length transaction;
237 or

238 (c) The rental agreement allows rent that is substantially
239 less than the fair market rent for the premises, unless the rent
240 is reduced or subsidized due to a federal, state, or local
241 subsidy.

242 (4) Upon receipt of the notice, the tenant may terminate
243 the lease by giving 7 days' written notice to the purchaser.

244 (5) This section expires December 31, 2012.

245 Section 4. This act shall take effect July 1, 2010.