

By Senator Fasano

11-00118-12

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1                   A bill to be entitled  
2           An act relating to foreclosures; providing that the  
3           purchaser of a foreclosed residential dwelling unit  
4           may not take possession until a specified period after  
5           notifying a tenant of the intent to take possession;  
6           requiring the purchaser to submit proof of the notice  
7           to the clerk of court; providing that the tenant may  
8           terminate a lease upon receiving the notice; providing  
9           that the notice requirement does not eliminate certain  
10          requirements to make an occupant of property a party  
11          to a foreclosure action; creating s. 83.495, F.S.;  
12          providing requirements for landlords following  
13          commencement of a foreclosure action; requiring that  
14          the landlord hold the security deposit and advance  
15          rent in an interest-earning account in specified  
16          circumstances; requiring that the landlord disclose in  
17          writing to a prospective tenant a foreclosure action  
18          and its possible effects on the tenancy; providing an  
19          exception to liability for failure to provide notice;  
20          requiring the purchaser in a foreclosure sale to  
21          credit the tenant for security deposits and advance  
22          rents under certain conditions; providing an effective  
23          date.

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

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27           Section 1. Possession of foreclosed residential dwelling  
28 unit; notice to tenant.—

29           (1) A purchaser who receives a certificate of title on a

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30 foreclosed residential dwelling unit may take possession of the  
31 premises that are subject to a rental agreement no earlier than  
32 30 days after the purchaser gives the tenant written notice  
33 stating that the dwelling unit has been sold and that the  
34 purchaser desires to take possession of the dwelling unit. The  
35 purchaser must give notice to each tenant by first-class mail.

36 (2) The clerk of court may not issue a writ of possession  
37 unless the purchaser submits to the clerk a copy of the notice  
38 provided to the tenant as required by subsection (1).

39 (3) Upon receipt of the notice, the tenant may terminate  
40 the lease by giving 7 days' written notice to the purchaser.

41 (4) This section does not eliminate the common-law  
42 requirement to make the occupant of property a party to a  
43 foreclosure action as a condition precedent to the court  
44 authorizing the clerk of court to issue a writ of possession as  
45 part of the foreclosure action.

46 Section 2. Section 83.495, Florida Statutes, is created to  
47 read:

48 83.495 Commencement of mortgage foreclosure; disclosure;  
49 security deposits and advance rents.—After the initial service  
50 of a complaint on a landlord in a mortgage foreclosure  
51 proceeding against a residential dwelling unit:

52 (1) The landlord or the landlord's agent shall hold as  
53 provided under s. 83.49(1)(b) the total amount of money  
54 deposited or advanced by a current or prospective tenant as  
55 security for performance of the rental agreement or as advance  
56 rent for other than the next immediate rental period.

57 (2) (a) The landlord or the landlord's agent must disclose  
58 in writing to a prospective tenant the existence of the pending

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59 foreclosure proceeding before the landlord or the landlord's  
60 agent executes a rental agreement during the pendency of the  
61 foreclosure proceeding. The written disclosure must inform the  
62 prospective tenant that the foreclosure proceeding might affect  
63 the right to possess and reside in the leased dwelling unit and  
64 that the landlord is required to hold the tenant's total amount  
65 of deposit money or advance rent as provided under s.  
66 83.49(1)(b).

67 (b) A person authorized to enter into a rental agreement on  
68 the landlord's behalf is not liable for failure to notify a  
69 prospective tenant of the foreclosure proceeding unless he or  
70 she received notice of the existence of the pending foreclosure  
71 proceeding from the landlord.

72 (3) If the landlord or the landlord's agent does not hold  
73 the deposit money or advance rent as provided under s.  
74 83.49(1)(b) and the property is sold in foreclosure, the  
75 purchaser shall credit the tenant's account for any deposit  
76 money paid by the tenant and shall make claims against the  
77 deposit pursuant to s. 83.49(1)(b) attributable to the tenant.  
78 The purchaser shall also credit the tenant's account for any  
79 advance rent for an unexpired rental period. The tenant must  
80 have documentation demonstrating the payment of the security  
81 deposit or advance rent in order to receive the credit.

82 Section 3. This act shall take effect July 1, 2012.

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