

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 169 Residential Tenancies

**SPONSOR(S):** Civil Justice Subcommittee; McGhee; Rogers and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The bill provides that an owner offering property for rent when that property is in foreclosure must give written notice to the tenant of the foreclosure and the possibility that the tenant's occupancy may end earlier than the written lease provides. The notice must be in 12 point type, and must be on a separate page, signed and dated by the tenant.

In the event such notice is not given, and the tenant is evicted as a result of the foreclosure prior to the termination of the lease term, the tenant has a civil cause of action for fraud against the owner, and may recover actual damages, costs, and attorney's fees.

This bill does not appear to have a fiscal impact on state or local governments.

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Foreclosure is the process by which a lender sues the borrower, selling the collateral in an attempt to satisfy the debt. In real property foreclosure, the lien holder adds parties in possession as defendants in the action, to foreclose their interests. A *lis pendens* is generally filed with the foreclosure action, and recorded in the public records,<sup>1</sup> giving notice that the property is in litigation. The *lis pendens* is a notice to the public that the property is subject to litigation, and anyone who takes an interest after its filing is subject to loss of that interest.<sup>2</sup> This includes all occupants.

While good practice indicates that a *lis pendens* should appear in the chain of title when a foreclosure is pending, it may not be filed, or a tenant taking possession after its filing may not check the public records for ownership or encumbrances prior to renting the property. A foreclosure can progress to the point of sale without the tenant's knowledge of the pending action.<sup>3</sup> Once the property is sold in foreclosure, the tenant may be evicted summarily because the tenant's right of occupancy is dependent upon ownership of the property.<sup>4</sup> A tenant after foreclosure may have as little as 24 hours' notice to vacate the property pursuant to writ of possession.<sup>5</sup>

##### **Effect of the Bill**

The bill provides that an owner offering property for rent when that property is in foreclosure must give written notice to the tenant of the proceedings. The notice must be in 12 point type, and must be on a separate page, signed and dated by the tenant. The notice reads:

You are notified that foreclosure proceedings have begun on the property that you are about to lease. If a foreclosure sale occurs it may affect the lease and your ability to remain through the conclusion of the lease term.

In the event such notice is not given, and the tenant is evicted as a result of the foreclosure prior to the termination of the lease term, the tenant has a civil cause of action for fraud against the owner, and may recover actual damages, costs, and attorney's fees. The bill excludes property managers, however. Because a judgment under this section may be argued to be a "willful and malicious injury by the debtor," a judgment rendered under this section may not be dischargeable in bankruptcy.<sup>6</sup>

#### B. SECTION DIRECTORY:

Section 1 creates s. 83.675, F.S., regarding notice to tenant of foreclosure.

Section 2 provides an effective date of July 1, 2013.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

<sup>1</sup> Section 28.222, F.S.

<sup>2</sup> Section 48.23, F.S.

<sup>3</sup> Judicial sales are published in a newspaper of sufficient circulation. See s. 45.031, F.S.

<sup>4</sup> Pursuant to s. 702.10, F.S., after foreclosure sale, and the expiration of the time to contest the sale, upon affidavit that the premises have not been vacated, the "clerk shall issue to the sheriff a writ for possession."

<sup>5</sup> Section 702.10, F.S., references s. 83.62, F.S., which provides for 24 hours' notice for eviction.

<sup>6</sup> See 11 U.S.C. sec. 523(a)(6); *Kawaauhau v. Geiger*, 523 U.S. 57 (1998).

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute primarily differs from the bill as filed by:

- Removing a criminal penalty for an owner who knowingly rents property which is in foreclosure, or for which payments to a mortgage holder are more than 60 days past due;
- Removing a fine of up to \$5,000 for failure to give notice of the foreclosure or 60 days of delinquency;
- Changing disclosure language that must be given to the tenant when property is or may be in foreclosure;
- Removing a provision that a lease transaction which violates the statute is presumed fraudulent; and
- Removing a provision that a lease transaction which violates the statute is voidable at the option of the tenant for up to one year.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.