

By Senator Campbell

32-220A-05

1 A bill to be entitled
2 An act relating to judgment liens; amending s.
3 55.141, F.S.; revising provisions relating to
4 satisfaction of judgments and decrees;
5 eliminating the authority of judges to act
6 under these provisions when there is no clerk
7 of court; revising requirements of the clerk
8 when accepting payment for satisfaction of a
9 judgment and executing and recording a
10 satisfaction of judgment; providing a sample
11 form to be used by a clerk when recording a
12 satisfaction of judgment; revising provisions
13 relating to notification of satisfaction of
14 judgment to a judgment holder; amending s.
15 55.202, F.S.; revising procedures for acquiring
16 a judgment lien; authorizing the court to file
17 a judgment lien certificate before a judgment
18 becomes final under certain circumstances;
19 providing that an improperly filed certificate
20 is of no effect; amending s. 55.204, F.S.;
21 revising provisions relating to the
22 continuation of judgment liens; revising
23 provisions requiring the Department of State to
24 maintain certain files and information;
25 amending s. 55.205, F.S.; deleting a provision
26 authorizing certain creditors to bring certain
27 actions against the property of a debtor;
28 amending ss. 55.602, 55.603, 55.604, 55.605,
29 and 55.606, F.S.; revising provisions relating
30 to foreign judgments to apply only to
31 out-of-country foreign judgments; amending s.

1 56.21, F.S.; revising requirements for notices
2 of a levy and execution sale; amending s.
3 56.27, F.S.; clarifying provisions relating to
4 payment of money received under execution;
5 amending s. 56.29, F.S.; revising requirements
6 regarding supplementary proceedings for
7 unsatisfied judgments; amending s. 77.03, F.S.;
8 deleting the provision that a garnishing
9 creditor must believe that execution would be
10 unavailing; amending s. 77.041, F.S.;
11 increasing the time period during which a
12 garnishing creditor may object to the debtor's
13 claim of exemption and request a hearing;
14 amending s. 222.01, F.S.; revising provisions
15 relating to the designation of homestead
16 property by the owner prior to levy to include
17 foreign judgments; amending s. 319.27, F.S.;
18 correcting a cross-reference; amending s.
19 679.1021, F.S.; redefining the term "lien
20 creditor"; amending s. 701.02, F.S.; providing
21 that chapters 670-680 of the Uniform Commercial
22 Code govern the attachment and perfection of a
23 security interest in a mortgage upon real
24 property and in a promissory note or other
25 right to payment or performance secured by that
26 mortgage; providing that the assignment of such
27 a mortgage need not be recorded under s.
28 701.02, F.S., in order for a security interest
29 in the mortgage to attach or be perfected under
30 the Uniform Commercial Code; providing
31 effective dates.

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

2

3 Section 1. Section 55.141, Florida Statutes, is
4 amended to read:

5 55.141 Satisfaction of judgments and decrees; duties
6 of clerk ~~and judge~~--

7 (1) All judgments and decrees for the payment of money
8 rendered in the courts of this state and which have become
9 final, may be satisfied at any time prior to the actual levy
10 of execution issued thereon by payment of the full amount of
11 such judgment or decree, with interest thereon, plus the costs
12 of the issuance, if any, of execution thereon into the
13 registry of the court where rendered.

14 (2) Upon such payment, the clerk, ~~or the judge if~~
15 ~~there is no clerk,~~ shall execute issue his or her receipt
16 ~~therefor~~ and ~~shall~~ record in the official records a
17 satisfaction of judgment, provided by the judgment holder,
18 upon payment of the recording charge prescribed in s.
19 28.24(12) plus the necessary costs of mailing to the clerk or
20 judge. Upon payment of the amount required in subsection (1)
21 and the recording charge required by this subsection and
22 execution and recordation of the satisfaction by the clerk,
23 any lien created by the judgment is satisfied and discharged.
24 ~~The clerk or judge shall formally notify the owner of record~~
25 ~~of such judgment or decree, if such person and his or her~~
26 ~~address are known to the clerk or judge receiving such~~
27 ~~payment, and, upon request therefor, shall pay over to the~~
28 ~~person entitled, or to his or her order, the full amount of~~
29 ~~the payment so received, less his or her service charge for~~
30 ~~providing a receipt upon the court issuing a writ of execution~~
31 ~~on such judgment or decree, if any has been issued, and less~~

1 ~~his or her service charge for receiving into and paying out of~~
2 ~~the registry of the court such payment, together with the~~
3 ~~service charge of the clerk for receiving into and paying such~~
4 ~~money out of the registry of the court.~~

5 (3) The satisfaction of judgment executed by the clerk
6 must be substantially in the following form:

7
8 Satisfaction of Judgment by Clerk

9
10 The undersigned Clerk acknowledges on this _____ day of
11 (month), (year), receipt from (identity of party making
12 payment) of \$ (total amount received), comprised of \$ _____ face
13 amount of the judgment; \$ _____ interest accruing on the
14 judgment through the date of payment; \$ _____ costs of issuance
15 of any execution; and \$ _____ for recording.

16
17 Pursuant to section 55.141, Florida Statutes, said sum is paid
18 to satisfy the lien and to discharge that certain final
19 judgment in favor of (name of judgment holder) whose last
20 known address, if known, is (address if shown on face of
21 judgment or in recorded affidavit pursuant to section
22 55.10(1), Florida Statutes,) against (name of judgment debtor)
23 recorded in Official Records Volume/Book _____, page _____ of the
24 public records of _____ County, Florida.

25
26 Upon the execution of this satisfaction, said judgment is
27 satisfied and discharged.

28
29 If an address for the judgment holder was provided under
30 section 55.10(1), Florida Statutes, I certify that a copy of
31 this notice has been sent to the judgment holder at said

1 address by certified mail with return receipt requested or by
2 registered mail if the notice is to be sent outside the
3 continental United States.

4
5 Clerk of Court

6 (4) If an address for the judgment holder was provided
7 under s. 55.10(1), the clerk shall formally send a copy of the
8 satisfaction to the judgment holder at that address by
9 certified mail with return receipt or by registered mail if
10 the notice is to be sent outside the continental United
11 States. If an address is not provided under s. 55.10(1) or if
12 delivery cannot be effected to such address, the clerk may,
13 but is not obligated to, make reasonable attempts to locate
14 the judgment holder. The discharge of the lien by the issuance
15 of the satisfaction is not dependent upon the delivery of
16 notice by the clerk.

17 (5) Upon application of the judgment holder, the clerk
18 shall pay over to the judgment holder the full amount of the
19 payment received, less the clerk's fees for issuing execution
20 on such judgment, if any has been issued; less the clerk's
21 fees for receiving into and paying out of the registry of the
22 court such payment; less the clerk's fees for recording the
23 satisfaction of judgment; and, if the clerk incurred expenses
24 in locating the judgment holder, less the reasonable expenses
25 so incurred.

26 ~~(3) Full payment of judgments and decrees as in the~~
27 ~~preceding subsections of this section provided shall~~
28 ~~constitute full payment and satisfaction thereof and any lien~~
29 ~~created by such judgment or decree shall thereupon be~~
30 ~~satisfied and discharged.~~

31

1 Section 2. Subsections (2) and (3) of section 55.202,
2 Florida Statutes, are amended to read:

3 55.202 Judgments, orders, and decrees; lien on
4 personal property.--

5 (2) A judgment lien may be acquired on a judgment
6 debtor's interest in all personal property in this state
7 subject to execution under s. 56.061, other than fixtures,
8 money, negotiable instruments, and mortgages.

9 (a) A judgment lien is acquired by filing a judgment
10 lien certificate in accordance with s. 55.203 with the
11 Department of State after the judgment has become final and if
12 the time to move for rehearing has lapsed, no motion for
13 rehearing is pending, and no stay of the judgment or its
14 enforcement is then in effect. A court may authorize, for
15 cause shown, the filing of a judgment lien certificate before
16 a judgment has become final when the court has authorized the
17 issuance of a writ of execution in the same matter. A judgment
18 lien certificate not filed in compliance with this subsection
19 is permanently void and of no effect.

20 (b) For any lien, warrant, assessment, or judgment
21 collected by the Department of Revenue, a judgment lien may be
22 acquired by filing the judgment lien certificate information
23 or warrant with the Department of State in accordance with
24 subsection (5).

25 (c) Except as provided in s. 55.208, the effective
26 date of a judgment lien is the date, including the time of
27 day, of filing. Although no lien attaches to property, and a
28 creditor does not become a lien creditor as to liens under
29 chapter 679, until the debtor acquires an interest in the
30 property, priority among competing judgment liens is
31 determined in order of filing date and time.

1 (d) Except as provided in s. 55.204(3), a judgment
2 creditor may file only one effective judgment lien certificate
3 based upon a particular judgment.

4 (3) Except as otherwise provided in s. 55.208, the
5 priority of a judgment lien acquired in accordance with this
6 section or s. 55.204(3) is established at the date and time
7 the judgment lien certificate is filed.

8 Section 3. Subsections (4) and (6) of section 55.204,
9 Florida Statutes, are amended to read:

10 55.204 Duration and continuation of judgment lien;
11 destruction of records.--

12 (4) A judgment lien continues only as to itemized
13 property for an additional 90 days after lapse of the lien.
14 Such judgment lien will continue only if:

15 (a) The property had been itemized and its location
16 described with sufficient particularity in the instructions
17 for levy to permit the sheriff to act;

18 (b) The instructions for the levy had been delivered
19 to the sheriff prior to the date of lapse of the lien ~~to~~
20 ~~permit the sheriff to act;~~ and

21 (c) The property was located in the county in which
22 the sheriff has jurisdiction at the time of delivery of the
23 instruction for levy. Subsequent removal of the property does
24 not defeat the lien. A court may order continuation of the
25 lien beyond the 90-day period on a showing that extraordinary
26 circumstances have prevented levy.

27 (6) If no second judgment lien is filed, the
28 Department of State shall maintain each judgment lien file and
29 all information contained therein for a minimum of 1 year
30 after the judgment lien lapses in accordance with this
31 section. If a second judgment lien is filed, the department

1 shall maintain both files and all information contained in
2 such files for a minimum of 1 year after the second judgment
3 lien lapses.

4 Section 4. Subsection (1) of section 55.205, Florida
5 Statutes, is amended to read:

6 55.205 Effect of judgment lien.--

7 (1) ~~A valid judgment lien gives the judgment creditor~~
8 ~~the right to proceed against the property of the debtor~~
9 ~~through writ of execution, garnishment, or other judicial~~

10 ~~process.~~ A judgment creditor who has not acquired a judgment
11 lien as provided in s. 55.202 or whose lien has lapsed may
12 nevertheless proceed against the judgment debtor's property
13 through any appropriate ~~other~~ judicial process. Such judgment
14 creditor proceeding by writ of execution acquires a lien as of
15 the time of levy and only on the property levied upon. Except
16 as provided in s. 55.208, such judgment creditor takes subject
17 to the claims and interest of priority judgment creditors.

18 Section 5. Subsection (2) of section 55.602, Florida
19 Statutes, is amended to read:

20 55.602 Definitions.--As used in this act, the term:

21 (2) "Out-of-country foreign judgment" means any
22 judgment of a foreign state granting or denying recovery of a
23 sum of money, other than a judgment for taxes, a fine, or
24 other penalty.

25 Section 6. Section 55.603, Florida Statutes, is
26 amended to read:

27 55.603 Applicability.--This act applies to any
28 out-of-country foreign judgment that is final and conclusive
29 and enforceable where rendered, even though an appeal
30 therefrom is pending or is subject to appeal.

31

1 Section 7. Section 55.604, Florida Statutes, is
2 amended to read:

3 55.604 Recognition and enforcement.--Except as
4 provided in s. 55.605, an out-of-country ~~a~~ foreign judgment
5 meeting the requirements of s. 55.603 is conclusive between
6 the parties to the extent that it grants or denies recovery of
7 a sum of money. Procedures for recognition and enforceability
8 of an out-of-country ~~a~~ foreign judgment shall be as follows:

9 (1) The out-of-country foreign judgment shall be filed
10 with the clerk of the court and recorded in the public records
11 in the county or counties where enforcement is sought.

12 (a) At the time of the recording of an out-of-country
13 ~~a~~ foreign judgment, the judgment creditor shall make and
14 record with the clerk of the circuit court an affidavit
15 setting forth the name, social security number, if known, and
16 last known post-office address of the judgment debtor and of
17 the judgment creditor.

18 (b) Promptly upon the recording of the out-of-country
19 foreign judgment and the affidavit, the clerk shall mail
20 notice of the recording of the out-of-country foreign
21 judgment, by registered mail with return receipt requested, to
22 the judgment debtor at the address given in the affidavit and
23 shall make a note of the mailing in the docket. The notice
24 shall include the name and address of the judgment creditor
25 and of the judgment creditor's attorney, if any, in this
26 state. In addition, the judgment creditor may mail a notice of
27 the recording of the judgment to the judgment debtor and may
28 record proof of mailing with the clerk. The failure of the
29 clerk to mail notice of recording will not affect the
30 enforcement proceedings if proof of mailing by the judgment
31 creditor has been recorded.

1 (2) The judgment debtor shall have 30 days after
2 service of the notice to file a notice of objection with the
3 clerk of the court specifying the grounds for nonrecognition
4 or nonenforceability under this act.

5 (3) Upon the application of any party, and after
6 proper notice, the circuit court shall have jurisdiction to
7 conduct a hearing, determine the issues, and enter an
8 appropriate order granting or denying recognition in
9 accordance with the terms of this act.

10 (4) If the judgment debtor fails to file a notice of
11 objection within the required time, the clerk of the court
12 shall record a certificate stating that no objection has been
13 filed.

14 (5) Upon entry of an order recognizing the
15 out-of-country foreign judgment, or upon recording of the
16 clerk's certificate set forth above, the out-of-country
17 foreign judgment shall be enforced in the same manner as the
18 judgment of a court of this state.

19 (6) Once an order recognizing the out-of-country
20 foreign judgment has been entered by a court of this state,
21 the order and a copy of the judgment may be recorded in any
22 other county of this state without further notice or
23 proceedings, and shall be enforceable in the same manner as
24 the judgment of a court of this state.

25 (7) A lien on real estate in any county shall be
26 created only when there has been recorded in the official
27 records of the county (a) a certified copy of the judgment,
28 and (b) a copy of the clerk's certificate or the order
29 recognizing the out-of-country foreign judgment. The priority
30 of such lien will be established as of the time the latter of
31 the two recordings has occurred. ~~Such lien may be partially~~

1 ~~released or satisfied by the person designated pursuant to~~
2 ~~paragraph (1).~~

3 (8) A judgment lien on personal property is acquired
4 only when a judgment lien certificate is filed in accordance
5 with s. 55.203 with the Department of State.

6 Section 8. Section 55.605, Florida Statutes, is
7 amended to read:

8 55.605 Grounds for nonrecognition.--

9 (1) An out-of-country ~~A~~ foreign judgment is not
10 conclusive if:

11 (a) The judgment was rendered under a system which
12 does not provide impartial tribunals or procedures compatible
13 with the requirements of due process of law.

14 (b) The foreign court did not have personal
15 jurisdiction over the defendant.

16 (c) The foreign court did not have jurisdiction over
17 the subject matter.

18 (2) An out-of-country ~~A~~ foreign judgment need not be
19 recognized if:

20 (a) The defendant in the proceedings in the foreign
21 court did not receive notice of the proceedings in sufficient
22 time to enable him or her to defend.

23 (b) The judgment was obtained by fraud.

24 (c) The cause of action or claim for relief on which
25 the judgment is based is repugnant to the public policy of
26 this state.

27 (d) The judgment conflicts with another final and
28 conclusive order.

29 (e) The proceeding in the foreign court was contrary
30 to an agreement between the parties under which the dispute in
31

1 question was to be settled otherwise than by proceedings in
2 that court.

3 (f) In the case of jurisdiction based only on personal
4 service, the foreign court was a seriously inconvenient forum
5 for the trial of the action.

6 (g) The foreign jurisdiction where judgment was
7 rendered would not give recognition to a similar judgment
8 rendered in this state.

9 Section 9. Section 55.606, Florida Statutes, is
10 amended to read:

11 55.606 Personal jurisdiction.--The out-of-country
12 foreign judgment shall not be refused recognition for lack of
13 personal jurisdiction if:

14 (1) The defendant was served personally in the foreign
15 state;

16 (2) The defendant voluntarily appeared in the
17 proceedings, other than for the purpose of protecting property
18 seized or threatened with seizure in the proceedings or of
19 contesting the jurisdiction of the court over him or her;

20 (3) The defendant, prior to the commencement of the
21 proceedings, had agreed to submit to the jurisdiction of the
22 foreign court with respect to the subject matter involved;

23 (4) The defendant was domiciled in the foreign state
24 when the proceedings were instituted, or, being a body
25 corporate, had its principal place of business, was
26 incorporated, or had otherwise acquired corporate status, in
27 the foreign state;

28 (5) The defendant had a business office in the foreign
29 state and the proceedings in the foreign court involved a
30 cause of action or a claim for relief arising out of business
31

1 done by the defendant through that office in the foreign
2 state; or

3 (6) The defendant operated a motor vehicle or airplane
4 in the foreign state and the proceedings involved a cause of
5 action or claim for relief arising out of such operation.

6 Section 10. Effective October 1, 2005, section 56.21,
7 Florida Statutes, is amended to read:

8 56.21 Execution sales; notice.--Notice of all sales
9 under execution shall be given by advertisement once each week
10 for 4 successive weeks in a newspaper published in the county
11 in which the sale is to take place. The time of such notice
12 may be shortened in the discretion of the court from which the
13 execution issued, upon affidavit that the property to be sold
14 is subject to decay and will not sell for its full value if
15 held until date of sale. On or before the date of the first
16 publication or posting of the notice of sale, a copy of the
17 notice of sale shall be furnished by certified mail to the
18 attorney of record of the judgment debtor, or to the judgment
19 debtor at the judgment debtor's last known address if the
20 judgment debtor does not have an attorney of record. Such copy
21 of the notice of sale shall be mailed even though a default
22 judgment was entered. When levying upon personal property, a
23 notice of such levy and execution sale and a copy of the
24 affidavit required by s. 56.27(4) shall be sent by the sheriff
25 ~~made by the levying creditor~~ to the attorneys attorney of
26 record of all the judgment creditors, creditor or to all the
27 judgment creditors who do not have an attorney of record,
28 ~~creditor~~ who have ~~has~~ acquired a judgment lien as provided in
29 s. 55.202 or s. 55.204(3), and whose liens have not lapsed at
30 the time of levy, at the address listed in the judgment lien
31 certificate, or, if amended, in any amendment to the judgment

1 | lien certificate, and to all secured creditors who have filed
2 | financing statements as provided in part V of chapter 679 s-
3 | ~~679.401~~ in the name of the judgment debtor reflecting a
4 | security interest in property of the kind to be sold at the
5 | execution sale at the address listed in the financing
6 | statement, or, if amended, in any amendment to the financing
7 | statement. Such notice shall be made in the same manner as
8 | notice is made to any judgment debtor under this section. When
9 | levying upon real property, notice of such levy and execution
10 | sale shall be made to the property owner of record in the same
11 | manner as notice is made to any judgment debtor pursuant to
12 | this section. When selling real or personal property, the sale
13 | date shall not be earlier than 30 days after the date of the
14 | first advertisement.

15 | Section 11. Subsections (1), (2), and (4) of section
16 | 56.27, Florida Statutes, are amended to read:

17 | 56.27 Executions; payment of money collected.--

18 | (1) All money received under executions shall be paid,
19 | in the order prescribed, to the following: the sheriff, for
20 | costs; the levying creditor in the amount of \$500 as
21 | liquidated expenses; if the levy is upon real property, the
22 | first priority lienholder under s. 55.10; and if the levy is
23 | upon personal property, and the first priority lienholder
24 | under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth
25 | in an affidavit required by subsection (4), or his or her
26 | attorney, in satisfaction of the judgment lien, provided that
27 | the judgment lien has not lapsed at the time of the levy. The
28 | receipt of the attorney shall be a release of the officer
29 | paying the money to him or her. When the name of more than one
30 | attorney appears in the court file, the money shall be paid to
31 | the attorney who originally commenced the action or who made

1 the original defense unless the file shows that another
2 attorney has been substituted.

3 (2) When property sold under execution brings more
4 than the amount needed to satisfy the provisions of subsection
5 (1), the surplus shall be paid in the order of priority to any
6 judgment lienholders whose judgment liens have not lapsed.
7 Priority of liens on personal property shall be based on the
8 effective date of the judgment lien acquired under s. 55.202,
9 s. 55.204(3), or s. 55.208(2), as set forth in an affidavit
10 required under subsection (4). If there is a surplus after all
11 valid judgment liens and execution liens have been satisfied,
12 the surplus must be paid to the defendant.

13 (4) ~~On or~~ Before the date of the first publication or
14 posting of the notice of sale provided for under s. 56.21, the
15 levying creditor shall deliver to the sheriff file an
16 affidavit setting forth the following as to the judgment
17 debtor:

18 (a) An attestation that the levying creditor has
19 reviewed the database or judgment lien records established in
20 accordance with ss. 55.201-55.209 and that the information
21 contained in the affidavit based on that review is true and
22 correct;

23 (b) The information required under s. 55.203(1) and
24 (2) for each judgment lien certificate indexed under the name
25 of the judgment debtor as to each judgment creditor; the file
26 number assigned to the record of the original and, if any, the
27 second judgment lien; and the date of filing for each judgment
28 lien certificate under s. 55.202 or s. 55.204(3); and

29 (c) A statement that the levying creditor either does
30 not have any other levy in process or, if another levy is in
31 process, the levying creditor believes in good faith that the

1 total value of the property under execution does not exceed
2 the amount of outstanding judgments.

3 Section 12. Subsection (1) of section 56.29, Florida
4 Statutes, is amended to read:

5 56.29 Proceedings supplementary.--

6 (1) When any person or entity holds an unsatisfied
7 ~~judgment execution and has delivered a writ of execution to~~
8 ~~any sheriff, the judgment holder plaintiff in execution~~ may
9 file an affidavit so stating, identifying the issuing court,
10 the case number, and the unsatisfied amount of the judgment,
11 including accrued costs and interest, and stating that the
12 execution is valid and outstanding, and thereupon the judgment
13 holder is entitled to these proceedings supplementary to
14 execution.

15 Section 13. Section 77.03, Florida Statutes, is
16 amended to read:

17 77.03 Issuance of writ after judgment.--After judgment
18 has been obtained against defendant but before the writ of
19 garnishment is issued, the plaintiff, the plaintiff's agent or
20 attorney, shall file a motion (which shall not be verified or
21 negative defendant's exemptions) stating the amount of the
22 judgment ~~and that movant does not believe that defendant has~~
23 ~~in his or her possession visible property on which a levy can~~
24 ~~be made sufficient to satisfy the judgment.~~ The motion may be
25 filed and the writ issued either before or after the return of
26 execution.

27 Section 14. Subsections (1) and (3) of section 77.041,
28 Florida Statutes, are amended to read:

29 77.041 Notice to individual defendant for claim of
30 exemption from garnishment; procedure for hearing.--

31

1 (1) Upon application for a writ of garnishment by a
2 plaintiff, if the defendant is an individual, the clerk of the
3 court shall attach to the writ the following "Notice to
4 Defendant":

5
6 NOTICE TO DEFENDANT OF RIGHT AGAINST
7 GARNISHMENT OF WAGES, MONEY,
8 AND OTHER PROPERTY
9

10 The Writ of Garnishment delivered to you with this
11 Notice means that wages, money, and other property belonging
12 to you have been garnished to pay a court judgment against
13 you. HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES,
14 MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

15 State and federal laws provide that certain wages,
16 money, and property, even if deposited in a bank, savings and
17 loan, or credit union, may not be taken to pay certain types
18 of court judgments. Such wages, money, and property are exempt
19 from garnishment. The major exemptions are listed below on the
20 form for Claim of Exemption and Request for Hearing. This list
21 does not include all possible exemptions. You should consult a
22 lawyer for specific advice.

23 TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY
24 FROM BEING GARNISHED, OR TO GET BACK ANYTHING
25 ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR
26 CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS
27 SET FORTH BELOW AND HAVE THE FORM NOTARIZED.
28 YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE
29 WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS
30 NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU
31 MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM

1 TO THE PLAINTIFF AND THE GARNISHEE AT THE
2 ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

3 If you request a hearing, it will be held as soon as
4 possible after your request is received by the court. The
5 plaintiff must file any objection within 3 ~~2~~ business days if
6 you hand delivered to the plaintiff a copy of the form for
7 Claim of Exemption and Request for Hearing or, alternatively,
8 7 days if you mailed a copy of the form for claim and request
9 to the plaintiff. If the plaintiff files an objection to your
10 Claim of Exemption and Request for Hearing, the clerk will
11 notify you and the other parties of the time and date of the
12 hearing. You may attend the hearing with or without an
13 attorney. If the plaintiff fails to file an objection, no
14 hearing is required, the writ of garnishment will be dissolved
15 and your wages, money, or property will be released.

16 YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION
17 IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR
18 PROPERTY FROM BEING APPLIED TO THE COURT
19 JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL
20 ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD
21 SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE
22 LAWYER, LEGAL SERVICES MAY BE AVAILABLE.
23 CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE
24 CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM
25 IN YOUR AREA.

26
27 CLAIM OF EXEMPTION AND
28 REQUEST FOR HEARING

29
30 I claim exemptions from garnishment under the following
31 categories as checked:

- 1 1. Head of family wages. (You must check a.
2 or b. below.)
3 a. I provide more than one-half of the
4 support for a child or other dependent and
5 have net earnings of \$500 or less per week.
6 b. I provide more than one-half of the
7 support for a child or other dependent, have
8 net earnings of more than \$500 per week, but
9 have not agreed in writing to have my wages
10 garnished.
11 2. Social Security benefits.
12 3. Supplemental Security Income benefits.
13 4. Public assistance (welfare).
14 5. Workers' Compensation.
15 6. Unemployment Compensation.
16 7. Veterans' benefits.
17 8. Retirement or profit-sharing benefits or
18 pension money.
19 9. Life insurance benefits or cash surrender
20 value of a life insurance policy or proceeds
21 of annuity contract.
22 10. Disability income benefits.
23 11. Prepaid College Trust Fund or Medical
24 Savings Account.
25 12. Other exemptions as provided by law.
26 (explain)

27
28 I request a hearing to decide the validity of my claim. Notice
29 of the hearing should be given to me at:

30
31 Address:

1 Telephone number:.....

2

3 The statements made in this request are true to the best of my
4 knowledge and belief.

5

6

7 Defendant's signature

8 Date.....

9

10 STATE OF FLORIDA

11 COUNTY OF

12

13 Sworn and subscribed to before me this day of
14 ...(month and year)..., by ...(name of person making
15 statement)...

16 Notary Public/Deputy Clerk

17 Personally KnownOR Produced Identification....

18 Type of Identification Produced.....

19

20 (3) Upon the filing by a defendant of a claim of
21 exemption and request for hearing, a hearing will be held as
22 soon as is practicable to determine the validity of the
23 claimed exemptions. If the plaintiff does not file a sworn
24 written statement that contests the defendant's claim of
25 exemption within 3 ~~2~~ business days after hand delivering the
26 claim and request or, alternatively, 8 ~~7~~ business days, if the
27 claim and request were served by mail, no hearing is required
28 and the clerk must automatically dissolve the writ and notify
29 the parties of the dissolution by mail.

30 Section 15. Subsections (2) and (4) of section 222.01,
31 Florida Statutes, are amended to read:

1 identification parcel number of this property,
2 and that the undersigned has resided on this
3 property continuously and uninterruptedly from
4 ...(date)... to the date of this Notice of
5 Homestead. Further, the undersigned will either
6 convey or mortgage the above-described property
7 pursuant to the following:

8
9 ...(Describe the contract of sale or loan
10 commitment by date, names of parties, date of
11 anticipated closing, and amount. The name,
12 address, and telephone number of the person
13 conducting the anticipated closing must be set
14 forth.)...

15
16 The undersigned also certifies, under oath,
17 that the judgment lien filed by you on
18 ...(date)... and recorded in Official Records
19 Book, Page, of the Public Records of
20 County, Florida, does not constitute a
21 valid lien on the described property.

22
23 YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION
24 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN
25 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU
26 MUST FILE AN ACTION IN THE CIRCUIT COURT OF
27 COUNTY, FLORIDA, FOR A DECLARATORY
28 JUDGMENT TO DETERMINE THE CONSTITUTIONAL
29 HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO
30 FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY
31 AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS

1 OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED.
 2 YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER
 3 OR LENDER, OR HIS OR HER SUCCESSORS AND
 4 ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF
 5 SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR
 6 OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE
 7 PROPERTY.

8
 9 This day of, 2.....
 10
 11 ...(Signature of Owner)...
 12
 13
 14 ...(Printed Name of Owner)...
 15
 16
 17 ...(Owner's Address)...
 18

19 Sworn to and subscribed before me by
 20 who is personally
 21 known to me or produced
 22 as identification,
 23 this day of, 2.....
 24
 25
 26 Notary Public
 27

28 (4) A lien pursuant to chapter 55 ~~s. 55.10~~ of any
 29 lienor upon whom such notice is served, who fails to institute
 30 an action for a declaratory judgment to determine the
 31 constitutional homestead status of the property described in

1 | the notice of homestead or to file an action to foreclose the
2 | judgment lien, together with the filing of a lis pendens in
3 | the public records of the county in which the homestead is
4 | located, within 45 days after service of such notice shall be
5 | deemed as not attaching to the property by virtue of its
6 | status as homestead property as to the interest of any buyer
7 | or lender, or his or her successors or assigns, who takes
8 | under the contract of sale or loan commitment described above
9 | within 180 days after the filing in the public records of the
10 | notice of homestead. This subsection shall not act to prohibit
11 | a lien from attaching to the real property described in the
12 | notice of homestead at such time as the property loses its
13 | homestead status.

14 | Section 16. Subsection (2) and paragraph (b) of
15 | subsection (3) of section 319.27, Florida Statutes, are
16 | amended to read:

17 | 319.27 Notice of lien on motor vehicles or mobile
18 | homes; notation on certificate; recording of lien.--

19 | (2) No lien for purchase money or as security for a
20 | debt in the form of a security agreement, retain title
21 | contract, conditional bill of sale, chattel mortgage, or other
22 | similar instrument or any other nonpossessory lien, including
23 | a lien for child support, upon a motor vehicle or mobile home
24 | upon which a Florida certificate of title has been issued
25 | shall be enforceable in any of the courts of this state
26 | against creditors or subsequent purchasers for a valuable
27 | consideration and without notice, unless a sworn notice of
28 | such lien has been filed in the department and such lien has
29 | been noted upon the certificate of title of the motor vehicle
30 | or mobile home. Such notice shall be effective as constructive
31 | notice when filed. The ~~No~~ interest of a statutory

1 nonpossessory lienor; the interest of a nonpossessory
2 execution, attachment, or equitable lienor; or the interest of
3 a lien creditor as defined in s. 679.1021(1)(zz) ~~679.301(3)~~,
4 if nonpossessory, shall not be enforceable against creditors
5 or subsequent purchasers for a valuable consideration unless
6 such interest becomes a possessory lien or is noted upon the
7 certificate of title for the subject motor vehicle or mobile
8 home prior to the occurrence of the subsequent transaction.
9 Provided the provisions of this subsection relating to a
10 nonpossessory statutory lienor; a nonpossessory execution,
11 attachment, or equitable lienor; or the interest of a lien
12 creditor as defined in s. 679.1021(1)(zz) ~~679.301(3)~~ shall not
13 apply to liens validly perfected prior to October 1, 1988. The
14 notice of lien shall provide the following information:
15 (a) The date of the lien if a security agreement,
16 retain title contract, conditional bill of sale, chattel
17 mortgage, or other similar instrument was executed prior to
18 the filing of the notice of lien;
19 (b) The name and address of the registered owner;
20 (c) A description of the motor vehicle or mobile home,
21 showing the make, type, and vehicle identification number; and
22 (d) The name and address of the lienholder.
23 (3)
24 (b) As applied to a determination of the respective
25 rights of a secured party under this chapter and a lien
26 creditor as defined by s. 679.1021(1)(zz) ~~679.301(3)~~, or a
27 nonpossessory statutory lienor, a security interest under this
28 chapter shall be perfected upon the filing of the notice of
29 lien with the department, the county tax collector, or their
30 agents. Provided, however, the date of perfection of a
31 security interest of such secured party shall be the same date

1 as the execution of the security agreement or other similar
2 instrument if the notice of lien is filed in accordance with
3 this subsection within 15 days after the debtor receives
4 possession of the motor vehicle or mobile home and executes
5 such security agreement or other similar instrument. The date
6 of filing of the notice of lien shall be the date of its
7 receipt by the department central office in Tallahassee, if
8 first filed there, or otherwise by the office of the county
9 tax collector, or their agents.

10 Section 17. Paragraph (zz) of subsection (1) of
11 section 679.1021, Florida Statutes, is amended to read:

12 679.1021 Definitions and index of definitions.--

13 (1) In this chapter, the term:

14 (zz) "Lien creditor" means:

15 1. A creditor that has acquired a lien on the property
16 involved by attachment, levy, judgment lien certificate, or
17 the like;

18 2. An assignee for benefit of creditors from the time
19 of assignment;

20 3. A trustee in bankruptcy from the date of the filing
21 of the petition; or

22 4. A receiver in equity from the time of appointment.

23 Section 18. Section 701.02, Florida Statutes, is
24 amended to read:

25 701.02 Assignment not effectual against creditors
26 unless recorded and indicated in title of document;
27 applicability.--

28 (1) An ~~No~~ assignment of a mortgage upon real property
29 or of any interest therein, is not ~~shall be~~ good or effectual
30 in law or equity, against creditors or subsequent purchasers,
31 for a valuable consideration, and without notice, unless the

1 assignment is contained in a document that ~~which~~, in its
2 title, indicates an assignment of mortgage and is recorded
3 according to law.

4 (2) This section also applies ~~The provisions of this~~
5 ~~section shall also extend~~ to assignments of mortgages
6 resulting from transfers of all or any part or parts of the
7 debt, note or notes secured by mortgage, and none of same is
8 ~~shall be~~ effectual in law or in equity against creditors or
9 subsequent purchasers for a valuable consideration without
10 notice, unless a duly executed assignment be recorded
11 according to law.

12 (3) Any assignment of a mortgage, duly executed and
13 recorded according to law, purporting to assign the principal
14 of the mortgage debt or the unpaid balance of such principal,
15 shall, as against subsequent purchasers and creditors for
16 value and without notice, be held and deemed to assign any and
17 all accrued and unpaid interest secured by such mortgage,
18 unless such interest is ~~shall be~~ specifically and
19 affirmatively reserved in such an assignment by the assignor,
20 and a no reservation of such interest or any part thereof may
21 not shall be implied.

22 (4) Notwithstanding subsections (1), (2), and (3)
23 governing the assignment of mortgages, chapters 670-680 of the
24 Uniform Commercial Code govern the attachment and perfection
25 of a security interest in a mortgage upon real property and in
26 a promissory note or other right to payment or performance
27 secured by that mortgage. The assignment of such a mortgage
28 need not be recorded under this section for purposes of
29 attachment or perfection of a security interest in the
30 mortgage under the Uniform Commercial Code.

31

