

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 779 Rental Agreements

SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Jones, M. and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Bond	Bond
2) Judiciary Committee	18 Y, 0 N, As CS	Bond	Havlicak

SUMMARY ANALYSIS

Tenants are often unaware that they are renting a home in foreclosure, sometimes first discovering the foreclosure when facing a 24 hour notice of eviction. From 2009 through 2014, a federal law required the purchaser at a foreclosure sale to give a bona fide tenant at least 90 days' notice of eviction from a foreclosed home.

This bill provides that a bona fide tenant must be given at least 30 days' notice of eviction from a foreclosed home, provides a form for such notice, prohibits the purchaser at a foreclosure sale from violating the prohibited practices applicable to residential landlords, and allows the purchaser at the foreclosure sale to assume the prior lease.

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

The bill has an effective date of upon becoming law.

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.¹ 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.² Florida courts also post court dockets, providing a means to use an Internet search to determine whether property one intends to lease is in foreclosure. Certain Internet real estate sites also allow one to determine whether a home is in foreclosure.

Good practice would be for a prospective tenant to investigate these resources to determine whether the home he or she rents is not in foreclosure. In practice, most prospective tenants do not know that they should conduct a search. Additionally, many tenants do not have the skills necessary for such investigation. Accordingly, a foreclosure can progress to the point of foreclosure sale without the tenant's knowledge of the pending action. 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.³ A tenant after foreclosure may have as little as 24 hours' notice to vacate the property pursuant to writ of possession.⁴

The matter of tenants being forced out of foreclosed homes on short notice is not unique to Florida. In the recent economic downturn, Congress passed the Protecting Tenants in Foreclosure Act of 2009,⁵ a nationwide law that required the winning bidder at most foreclosure sales to honor an existing bona fide lease or, in the alternative, give the tenant at least 90 days' notice to vacate. The act expired December 31, 2014.

Effect of the Bill

The bill creates s. 83.561, F.S., regarding termination of a rental agreement after foreclosure. If a tenant is occupying residential premises that are the subject of a foreclosure sale, upon issuance of a certificate of title following the sale, the purchaser named in the certificate of title takes title to the residential premises as a landlord, subject to the rights of the tenant created by this bill.

The tenant may remain in possession for up to 30 days following the giving of a written notice to vacate. The form of the notice is created in the bill.

This notice is to be delivered by mail, personal delivery, or, if the tenant is absent, by leaving a copy at the residence.⁶

If the tenant does not vacate at the end of the 30 day period, the purchaser at the sale may apply to the clerk of the court for a writ of possession.

The bill only protects a bona fide tenant. Accordingly, it does not apply if:

¹ s. 28.222, F.S.

² s. 48.23, F.S.

³ Pursuant to s. 702.10, F.S., after foreclosure sale and the expiration of the time to contest the sale (generally the 11th days after sale), upon affidavit that the premises have not been vacated, the "clerk shall issue to the sheriff a writ for possession."

⁴ Section 702.10, F.S., references s. 83.62, F.S., which provides for 24 hours' notice of eviction.

⁵ Title VII of Pub.Law 111-22, enacted May 20, 2009.

⁶ The bill references the procedure at s. 83.56(4), F.S.

- The tenant is the mortgagor in the subject foreclosure or the child, spouse, domestic partner, or parent of the mortgagor in the subject foreclosure.
- The tenant's rental agreement is not the result of an arm's-length transaction.
- The tenant's rental agreement allows the tenant to pay rent that is substantially less than the fair market rent for the premises, unless the rent is reduced or subsidized due to a federal, state, or local subsidy.

The bill provides that a purchaser at a foreclosure sale, when acting as a landlord pursuant to the law created by this bill, is subject to the restrictions of s. 83.67, F.S. By that section, a landlord may not terminate utilities, block access to the unit, discriminate against a servicemember, prohibit display of the United States flag, remove doors or windows as an attempt to drive out the tenant, or remove tenant belongings except in certain circumstances. A landlord violating any of the prohibitions is liable to a tenant for the greater of actual damages or 3 month's rent.

The bill also provides that the purchaser at a foreclosure sale may elect to assume an existing lease, thereby leaving the tenant in place at the existing lease terms and conditions.

B. SECTION DIRECTORY:

Section 1 creates s. 83.561, F.S., regarding termination of rental agreement upon foreclosure.

Section 2 provides an effective date of upon becoming law.

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.

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:

Forcing purchasers at a foreclosure sale to be an involuntary landlord, even for a brief time, may increase the risk assumed when buying a foreclosed property, which may deflate the amount persons will be willing to bid for a foreclosed property.

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 17, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by changing the 90-day notice to 30 days and removing a provision that would have required the purchaser at the foreclosure sale to honor a bona fide lease through its term.

On April 8, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute adopted by the Judiciary Committee conformed the bill to the Senate companion by:

- Adding that s. 83.67, F.S., the statute prohibiting certain actions by a landlord, applies to the 30 day landlord tenant relationship created by the bill;
- Expanded the statutory notice;
- Removed reference to multi-family structures as an exception to the family member exception;
- Added a provision allowing the purchaser at a foreclosure sale to assume the tenant's lease; and
- Changed the effective date to upon becoming law.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.