

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 779	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Civil Justice Subcommittee; Jones, M. and others	114 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 524	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 779 passed the House on April 22, 2015 and subsequently passed the Senate on April 24, 2015. The bill protects tenants caught up in a foreclosure action.

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 before 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 parties to enter into a new lease.

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

The bill was approved by the Governor on June 2, 2015, ch. 2015-96, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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> 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> 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 the landlord's ownership of the property.<sup>3</sup> A tenant after foreclosure may have as little as 24 hours' notice to vacate the property pursuant to writ of possession.<sup>4</sup>

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,<sup>5</sup> 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 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.<sup>6</sup> 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 tenant must pay rent during the 30 day period.

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

- 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.

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

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

<sup>3</sup> 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."

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

<sup>5</sup> Title VII of Pub.Law 111-22, enacted May 20, 2009.

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

- 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 is subject to the restrictions of s. 83.67, F.S. Section 83.67, F.S., provides that 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 does not assume the obligations of a landlord unless the purchaser and the tenant agree to a lease, whether such agreement is assumption of the prior lease or is a new lease between the parties. The effect of this new subsection (4) is that a purchaser at a foreclosure sale is prohibited from retaliatory actions (see above and s. 83.67, F.S.) and must allow occupancy. The purchaser is not liable for other statutory duties of a landlord such as the building maintenance responsibilities of s. 83.51, F.S., or the post-lease notices regarding security deposits at s. 83.49, F.S.

## **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.