

By Senator Garcia

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A bill to be entitled
An act relating to alternative judicial sales
procedures; amending s. 45.031, F.S.; requiring the
court to direct the clerk of an alternative auctioneer
to sell real or personal property under an order or
final judgment at public sale; creating s. 45.0311,
F.S.; providing legislative findings; defining the
term "relative"; prohibiting the court in a
foreclosure action from approving a request from a
party to substantially deviate from specified judicial
sales procedures unless certain conditions are met;
requiring a party requesting an alternative judicial
sales procedure to make such request clearly and in a
separate motion; specifying requirements for such
motion; prohibiting the court from hearing such
motions under a specified condition; authorizing
specified parties to object to the requested deviation
within a specified timeframe; requiring the clerk to
conduct a sale according to specified provisions under
specified circumstances; requiring the court to set
forth in writing any deviation authorized in the final
judgment of foreclosure or other order; requiring a
trial court to adhere to specified requirements in an
alternative sale; providing that clerks remain
responsible for specified actions; requiring the clerk
to receive a certain service charge; requiring that a
request to authorize someone other than the clerk or
the sheriff to conduct a sale be clearly stated in the
motion requesting deviation; requiring the party

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making such request to identify an alternative
auctioneer; specifying requirements for an alternative
auctioneer; providing that a person willfully harmed
by a certain violation has a cause of action for
damages; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section
45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.—In any sale of real or
personal property under an order or judgment, the procedures
provided in this section and ss. 45.0315-45.035 may be followed
as an alternative to any other sale procedure if so ordered by
the court.

(1) FINAL JUDGMENT.—

(a) In the order or final judgment, the court shall direct
the clerk or the alternative auctioneer authorized under s.
45.0311 to sell the property at public sale on a specified day
that may not ~~shall~~ be ~~not~~ less than 20 days or more than 35 days
after the date thereof, on terms and conditions specified in the
order or judgment. A sale may be held more than 35 days after
the date of final judgment or order if the plaintiff or
plaintiff's attorney consents to such time. The final judgment
must ~~shall~~ contain the following statement in conspicuous type:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY
BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF
PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE

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PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

Section 2. Section 45.0311, Florida Statutes, is created to read:

45.0311 Mandatory requirements for judicial foreclosure sales.-

(1) The Legislature finds that a deviation from the judicial sales procedures under s. 45.031 may be beneficial in certain foreclosure proceedings due to the nature of the real or personal property being sold under an order or a final judgment in order to maximize the potential sales proceeds, including the net proceeds thereof, for the benefit of all parties. The Legislature further finds that transparency is necessary for all alternative judicial sales procedures to prevent overreach by any party, to avoid fraud, and to maximize the sales price while minimizing expenses and delays. The Legislature further finds that a person who facilitates alternative sales or handles deposits or sales proceeds, including surplus proceeds, must be qualified, independent, and not related to any party or an attorney for a party and must be subject to this section and the jurisdiction of the court.

(2) As used in this section, the term "relative" means an

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individual related to another as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(3) In a foreclosure action, the court may not approve a request from a party to deviate substantially from the judicial sales procedures of s. 45.031, except as provided in this section.

(4) A party requesting a deviation must request the relief clearly in a separate motion. If the party requesting the deviation is not the owner of record or the plaintiff, he or she must attach to the motion a separate written consent to the deviation from the plaintiff. The written consent from the plaintiff required by this subsection must be notarized or verified, be contemporaneous to the motion requesting a deviation, and reference the motion in the consent. The court may not hear a motion requesting a deviation which lacks the written consent required by this subsection. If the party requesting the deviation is the plaintiff, the owner of record may object within 10 days after the court's approval of an alternative sale and the clerk must be appointed to conduct the sale in accordance with s. 45.031. If the party requesting the deviation is the owner of record, the plaintiff may object within 10 days after the court's approval of an alternative sale and the clerk must be appointed to conduct the sale in accordance with s. 45.031. Any deviation authorized by the court must be set forth in writing in the final judgment of

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117 foreclosure or other order.

118 (5) A trial court ordering an alternative sale in
119 accordance with this section shall adhere to all of the
120 following requirements:

121 (a) Only one set of bidding procedures may apply to a sale
122 of real or personal property. Each bidder must follow the same
123 procedures and receive the same information relating to the
124 sale. Preferences or advantages may not be given to any party,
125 person, or bidder.

126 (b) The publication of the notice of sale must meet or
127 exceed the requirements of s. 45.031(2).

128 (c) Credit bid rights must be limited to the amount owed to
129 the plaintiff as provided in the order or final judgment that
130 determined such amount. Any bid by the plaintiff in excess of
131 the amount awarded to the plaintiff in the order or final
132 judgment must be paid in cash.

133 (d) The highest bidder, inclusive of both a credit bid and
134 a cash bid, wins the bid. The deadline for payment of the
135 winning bid may not exceed 5 business days.

136 (e) An in-person auction must be conducted in a place that
137 is open to the general public at the time of the auction and
138 that is reasonably accessible and may not be conducted outside
139 of the county where the foreclosure action is pending.

140 (f) An electronic sale by an alternative auctioneer must be
141 conducted in accordance with s. 45.031(10) and meet the
142 following requirements:

143 1. Any person seeking to bid electronically online must
144 register. To register, a person must provide information
145 relevant for the auction to properly identify the bidder,

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146 contact the bidder, and complete the sale of the property as
147 determined by the alternative auctioneer. If the person
148 registering to bid is an individual, the information required
149 must include at least the individual's name, e-mail address, and
150 telephone number. If the person registering to bid is an entity,
151 the information required must include the entity's legal name,
152 the name of an individual who serves as the contact person for
153 the entity, and his or her e-mail address and telephone number.

154 2. The identity of each online bidder must be verified by
155 the alternative auctioneer before a bid may be placed online.
156 The identification verification process may include verification
157 through a government-issued identification card, biometric
158 identification, or another method of verification as determined
159 by the judge or alternative auctioneer. If the bidder's identity
160 cannot be verified, the bidder may not participate in the online
161 sale.

162 3. The purchaser at sale must submit all of the following
163 information to the alternative auctioneer before the sale is
164 finalized:

165 a. Any information required by the alternative auctioneer,
166 to be checked against the Office of Foreign Assets Control of
167 the United States Department of the Treasury sanction list
168 before finalizing the purchase of the property. The alternative
169 auctioneer shall check the winning purchaser against the
170 sanction list before an order approving such sale may be
171 entered.

172 b. If the purchaser is an individual, the individual's
173 name, physical mailing address, e-mail address, and any other
174 information requested by the alternative auctioneer in order to

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adequately identify and contact the purchaser.

c. If the purchaser is an entity, the entity's legal name, trade name if different from its legal name, state and date of formation, mailing address, proof of business registration with the Department of State, the name of an individual contact person for the entity, and his or her e-mail address and telephone number.

(g) Any person holding funds must have insurance or post sufficient bond to protect the interests of the parties.

(h) Costs, fees, and service charges that are payable to the clerk of the court may not be waived.

(i) The 10-day period to object to the sale as provided in s. 45.031(5), and the confirmation of the sale as provided in s. 45.031(6), may not be altered.

(j) The requirements related to a foreclosure surplus in ss. 45.031(1), 45.032, 45.033, and 45.035(2) may not be waived.

(k) The clerk in the county in which the action is pending remains responsible for filing the certificate of sale in accordance with s. 45.031(4), the certificate of title in accordance with s. 45.031(5), and the disbursement of proceeds in accordance with s. 45.031(7) and for handling surplus funds in accordance with ss. 45.032 and 45.033. The clerk shall receive the allowable service charge as imposed in s. 45.035 for recording, certifying the sale, and handling proceeds that must be assessed as costs.

(6) If a party requests that the court authorize someone other than the clerk of the court or the sheriff to conduct the sale, the request must be clearly stated in the motion requesting deviation. The party requesting deviation must

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204 identify an alternative auctioneer to oversee the sale. An
205 alternative auctioneer shall:

206 (a) Be licensed either as an auctioneer under part IV of
207 chapter 468, or a real estate broker or brokerage licensed under
208 chapter 475 and be in good standing for the preceding 5 years.

209 (b) Have insurance or post a bond filed with and payable to
210 the clerk of court to protect the interests of the parties. The
211 court shall set the amount of the bond as the approximate value
212 of the property to be sold. An attorney in the action may not be
213 the auctioneer. The auctioneer must recuse himself or herself if
214 a business partner or relative within the third degree of
215 consanguinity registers or attempts to bid.

216 (c) Be an independent third party and may not be:

217 1. A party to the action, an attorney representing a party
218 to the action, or an employee of a party or the attorney of a
219 party to the action.

220 2. A relative of a party to the action; an employee, an
221 officer, a director, an affiliate, or a subsidiary thereof; or a
222 relative, an employee, an officer, a director, or an affiliate
223 or associate of an attorney representing a party to the action.

224 3. In any financial relationship to the action, to the real
225 or personal property being sold, or to a party, attorney, or
226 relative other than the payment of the fees for providing the
227 sale services.

228 (d) Require a deposit and final payment from the successful
229 high bidder in accordance with s. 45.031(3).

230 (e) Provide the required sale information and results to
231 the clerk in the county in which the action is pending no later
232 than 2 business days after the conclusion of the sale so that

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the clerk may file the certificate of sale in accordance with s.
45.031(4).

(f) Provide the clerk in the county in which the action is
pending the required sale information so that the clerk may file
and record the certificate of title in accordance with s.
45.031(5) and (6).

(g) Timely provide the proceeds of the sale to the clerk in
the county in which the action is pending so the clerk may
disburse the proceeds in accordance with s. 45.031(7).

(h) Verify information as required by subparagraph (5)(f)2.
for an online sale.

(7) A person harmed by a willful violation of this section
has a cause of action for damages resulting from the violation.

Section 3. This act shall take effect July 1, 2026.