By Senator Aronberg

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A bill to be entitled

An act relating to mortgage foreclosures; providing a short title; specifying applicability to homestead property and certain foreclosure actions; providing procedural requirements and limitations for plaintiffs, defendants, and courts in certain foreclosure actions; requiring an appraisal; specifying document production requirements; specifying loan negotiation requirements; providing criteria for commercial reasonableness of renegotiated loans; providing for forbearance liens under certain circumstances; providing lien limitations; providing for satisfaction of such liens; requiring mediation; requiring the Supreme Court to determine certain forms; requiring court clerks to provide forms to pro se defendants at no charge; providing for future expiration; creating s. 83.494, F.S.; providing requirements for landlords following commencement of a foreclosure action; providing for security deposits and advance rents to be maintained in interest-earning accounts; providing for disclosure of the foreclosure action to prospective tenants; providing an exception to liability for failure to provide notice; requiring the purchaser in a foreclosure sale to credit the tenant for security deposits and advance rents under certain conditions; creating s. 83.495, F.S.; providing that a purchaser of residential property in foreclosure may terminate a tenant’s residential rental agreement after providing notice to the tenant;

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providing notice requirements; specifying the content of the notice; providing exemptions; authorizing a tenant to terminate the lease upon receiving notice; providing for future expiration; providing an effective date.

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

Section 1. Mortgage renegotiation loans.—

(1) TITLE.—This section may be cited as the "Foreclosure Bill of Rights."

(2) APPLICABILITY.—This section applies to actions to foreclose a mortgage on real estate used and owned as a homestead, as defined in s. 196.012, Florida Statutes, which are initiated on or after July 1, 2010, or in which a final judgment has not been rendered as of July 1, 2010.

(3) NOTICE AND DOCUMENTATION.—In any action to foreclose a mortgage on homestead property, a defendant may invoke the protections provided under this section by filing and serving a notice to invoke the Foreclosure Bill of Rights, which includes a sworn statement that the property in foreclosure is the defendant's homestead property.

(a) The form for the notice shall be provided by the plaintiff to the defendant with the original service of process for the foreclosure action, together with the summons and complaint.

(b) After the protections of this section have been invoked by a defendant, a plaintiff is not entitled to a final judgment against that defendant until all of the requirements of this

section have been satisfied.

(c) If a default is entered against a defendant, the defendant is not entitled to the protections of this section until the default is set aside.

(d) Within 45 days after the filing and service of the notice, the plaintiff shall provide for a new appraisal of the property in foreclosure to determine the current market value of the property.

(e) Within 60 days after filing the notice to invoke, the plaintiff shall provide to the defendant the results of the appraisal conducted pursuant to paragraph (d), together with true copies of all closing documents relating to the mortgage under foreclosure, including, but not limited to:

1. Any loan application used to determine the defendant's creditworthiness.

2. Any settlement statement.

3. The mortgage being foreclosed.

4. Any promissory note related to the mortgage.

5. Any assignments of the mortgage or note.

(f) If any closing document required under paragraph (e) is not in the actual possession of the plaintiff, the plaintiff must make reasonable efforts to obtain the document and, if the documents cannot be obtained, serve an affidavit on the defendant detailing the efforts made to obtain the document, the person or entity in whose possession the documents are believed to be, and the last known address, location, and telephone number of such person or entity. The plaintiff shall file a certificate of compliance with the requirements of paragraph (e) and this paragraph, as applicable.

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(g) Within 30 days after the filing and serving of the certificate of compliance under paragraph (f), the defendant shall provide to the plaintiff a sworn financial affidavit, a copy of the defendant's tax returns for the preceding 3 years, and a copy of the defendant's bank statements for the preceding 3 months. Upon motion, the court may issue protective orders as deemed necessary to protect the privacy rights of the defendant.

(h) By agreement of the parties or with prior court approval, including by administrative order, service of any documents under this section may be made in electronic format or upon such other terms as may be agreed to or ordered in the interests of justice and judicial economy.

(4) RENEGOTIATION OF MORTGAGE LOAN.—

(a) Upon meeting the requirements of subsection (3), as applicable, the plaintiff shall make a good faith effort to negotiate a settlement, which shall include efforts to renegotiate the loan at a principal equivalent to the actual market value of the property as determined under paragraph (3)(d). In determining good faith, the court shall consider:

1. Whether a renegotiated loan is commercially reasonable.

2. Whether the plaintiff has made any offer.

3. The reasonableness of any offer made.

4. Any other factor the court deems relevant.

(b) In determining the commercial reasonableness of a renegotiated loan, the court shall consider:

1. The income, savings, and other assets of the defendants.

2. The reasonableness of the terms of the original loan, including whether issues of fraud are presented in the negotiation and closing of the original loan.

3. Whether the loan term can be extended.

4. Whether the interest rate can be reduced.

5. Whether the repayment terms can be changed.

6. The creditworthiness of the defendant, other than as affected by the foreclosure and any related nonpayments.

(c) If the loan is refinanced with a reduced principal at the property's current market value, the plaintiff is entitled to a forbearance lien on the property for an amount equal to the difference between the original principal and the new principal. The forbearance lien may not grant any other right to foreclose on the property or otherwise collect the moneys other than as provided in this section.

1. The forbearance lien shall be recorded in the public records of the county in which the property is located.

2. Upon the first resale, refinance, or transfer by operation of law or otherwise, the beneficiary of the forbearance lien is entitled to any proceeds of the resale, refinance, or transfer in excess of the renegotiated loan balance to be applied to satisfaction of the lien.

3. Upon any subsequent resale, refinance, or transfer by operation of law or otherwise, the beneficiary of the forbearance lien may foreclose the lien.

(5) MEDIATION.—All actions to foreclose a mortgage are subject to court-ordered mediation pursuant to s. 44.102, Florida Statutes. The mediation shall be coordinated and scheduled by the parties at least 60 days after completion of all other requirements of this section.

(6) FORMS.—

(a) The Supreme Court shall determine the form and content

of all notices, affidavits, certificates, liens, and other forms required under this section.

(b) The clerks of the circuit courts shall provide all forms, together with instructions in English and Spanish, to a pro se defendant seeking assistance in any foreclosure action. Such forms shall be provided at no cost to the defendant.

(7) EXPIRATION.—This section expires July 1, 2015.

Section 2. Section 83.494, Florida Statutes, is created to read:

83.494 Disclosure of mortgage foreclosure; security deposits and advance rents.—

(1) After the initial service of a complaint is made on a landlord in a mortgage foreclosure proceedings commenced against a residential dwelling unit, the landlord or the landlord's agent:

(a) Shall hold the total amount of money deposited or advanced by a current or prospective tenant as security for performance of the rental agreement or as advance rent as provided under s. 83.49(1)(b); and

(b) Must disclose, in writing, the existence of the pending foreclosure proceedings to a prospective tenant before executing a rental agreement made during the pendency of the proceeding. The written disclosure must inform the prospective tenant that the foreclosure proceedings might affect the right of the tenant to possess and reside in the leased dwelling unit and that the landlord is required to hold the tenant's total amount of deposit money or advance rent in accordance with s. 83.49(1)(b). The landlord's agent is not liable for failure to notify a prospective tenant of the foreclosure proceeding unless he or

she received notice of the pending proceedings from the landlord.

(2) If the landlord or the landlord's agent did not hold the deposit money or advance rent in accordance with s. 83.49(1)(b) and the property is sold in foreclosure, the purchaser shall credit the tenant's account for any deposit money paid by the tenant, and make claims against the deposit pursuant to s. 83.49(1)(b). The purchaser shall also credit the tenant's account for any advance rent for an unexpired rental period. The tenant must have documentation demonstrating the payment of the security deposit or advance rent in order to receive the credit.

Section 3. Section 83.495, Florida Statutes, is created to read:

83.495 Possession of foreclosed residential dwelling unit; notice to tenant.—

(1) Upon receipt of a certificate of title issued pursuant to s. 45.031, a purchaser of a foreclosed residential dwelling unit occupied by a tenant may terminate the rental agreement after providing the tenant with written notice stating that the dwelling unit has been sold and that the purchaser is taking possession of the property and terminating the agreement.

(a) If the agreement is not in writing, the tenant may continue to occupy the premises for up to 90 days after the date the tenant receives notice.

(b) If there is a written rental agreement, the tenant may continue to occupy the premises until the end of the lease term or up to 90 days after the date the tenant receives notice, whichever is greater.

(c) The purchaser of the foreclosed unit must provide such notice before terminating a lease regardless of whether the purchaser intends to retain ownership of the premises or sell the premises to a subsequent purchaser who will occupy the premises.

(2) Notice under this subsection must be delivered in accordance with s. 83.56(4) and must be in substantially the following form:

Dear ...(name of tenant...

You are hereby advised that the premises, ...(address of rental unit)... you are occupying, has been the subject of a foreclosure action and that your rental agreement is terminated effective 90 days after you receive this termination notice, or, if you have a written rental agreement, at the end of the term of your rental agreement or 90 days after you receive this notice, whichever is later. You must vacate the premises by that date. You are still obligated to pay rent in the amount you have been paying prior to this notice during the remaining term of your written rental agreement, or during the 90-day period that you continue to occupy the premises. Rent shall be delivered to:

...[name]...

...[address]....

(3) Notice under this section is not required if:

(a) The mortgager being foreclosed, or the child, spouse,

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or parent of the mortgagor being foreclosed, is occupying the dwelling unit being foreclosed, unless it is a multiunit property and other tenants are occupying dwelling units;

(b) The rental agreement is not an arms-length transaction; or

(c) The rental agreement allows 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.

(4) Upon receipt of the notice, the tenant may terminate the lease by giving 7 days' written notice to the purchaser.

(5) This section expires December 31, 2012.

Section 4. This act shall take effect July 1, 2010.

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