



Civil Justice Subcommittee

Thursday, January 24, 2013

9:00 PM

404 HOB

Will Weatherford
Speaker

Larry Metz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Thursday, January 24, 2013 09:00 am
End Date and Time: Thursday, January 24, 2013 11:00 am
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 55 Deceptive and Unfair Trade Practices by Gaetz
HB 77 Landlords and Tenants by Porter

Workshop and discussion on foreclosures

NOTICE FINALIZED on 01/17/2013 16:14 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 55 Deceptive and Unfair Trade Practices
SPONSOR(S): Gaetz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JML	Bond YTB
2) Business & Professional Regulation Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law prohibits certain deceptive and unfair trade practices of many different businesses. Current law allows the filing of a suit against an automobile dealer alleging commission of an unfair and deceptive trade act without prior notice to such dealer.

This bill requires that an individual alleging deceptive and unfair trade practices must first give a demand letter to the dealer. If the dealer pays the claim and an additional surcharge within the 30-day allotted time period, the individual may not file suit. This requirement only applies if the dealer provided the customer with notice of the requirement as a part of the transaction.

The bill does not apply to a certified class action or to enforcement by a state attorney or the attorney general.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹ The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs (DLA)², or by a private suit filed by an individual.³ Additionally, there is a separate part of the chapter that applies specifically to motor vehicle dealers.⁴

Effect of Proposed Changes

This bill creates s. 501.98, F.S. This section requires a consumer suing a motor vehicle dealer under either FDUTPA or its motor vehicle part to provide the dealer with a 30-day notice prior to filing suit. The demand letter must include:

- The name, address, and telephone number of the claimant;
- The name, address, and telephone number of the dealer;
- The underlying facts of the claim, including a comprehensive and detailed statement describing each item for which actual damages are claimed; and
- To the extent available, all transaction or other documents upon which the claim is based.

The demand letter must contain sufficient information to adequately put the dealer on notice as to the nature of the claim and the relief sought.

The claimant must send the demand letter by the United States Postal Service or by a nationally recognized carrier, return receipt requested. If the dealer is a corporate entity, the demand letter must be sent to any officer, director, or manager of the dealer as reported in the dealer's most recent annual report to the Secretary of State.

A claimant may not initiate civil litigation against a dealer under either FDUTPA or its motor vehicle counterpart if the dealer pays, within 30 days after receipt of the notice, the amount of claimed actual damages and a 10% surcharge which may not exceed \$500.

The dealer is not required to pay the claimant's attorney fees in any civil litigation initiated under FDUTPA or its motor vehicle counterpart if:

- The dealer responds to the claimant in writing, within 30 days, and if a court agrees that the claim is not supported by the underlying facts or if the claim includes items that are not recoverable under either provision of law; or
- The claimant fails to materially comply with the notice requirements, except that the demand letter will be satisfactory as long as it contains sufficient information to adequately put the dealer on notice as to the nature of the claim and the relief sought.

¹ Section 501.204, F.S.

² Section 501.203(2), F.S.

³ Section 501.211, F.S.

⁴ Section 501.976, F.S.

The bill provides that a dealer's payment of actual damages, or an offer to pay, is not an admission of wrongdoing or liability by the dealer and is inadmissible as evidence under s. 90.408, F.S.⁵ Payment or an offer to pay releases the dealer and its employees, agents, principals, sureties, and insurers from any claim, suit, or action that could be brought arising out of the transaction, event, or occurrence described in the demand letter.

The bill also provides a 30-day tolling period from the date of delivery of the demand letter for a claimant initiating an action under FDUTPA or its motor vehicle counterpart.

The bill provides a notice for the dealer to provide to the purchaser of an automobile. Without including such language, the dealer is not afforded the protections of this bill.

B. SECTION DIRECTORY:

Section 1 amends s. 501.975, F.S., to apply the definitions to the new section created by the bill.

Section 2 creates s. 501.98, F.S., relating to the demand letter.

Section 3 provides an effective date of July 1, 2013.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁵ Section 90.408, F.S., relating to compromise and offers to compromise, provides that "evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value."

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:

Line 133 of the bill contains a drafting error. The bill text reads, "United *State* Postal" while it should read "United *States* Postal".

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to deceptive and unfair trade
3 practices; amending s. 501.975, F.S.; conforming
4 provisions; creating s. 501.98, F.S.; requiring a
5 claimant to provide a demand letter to the motor
6 vehicle dealer as a condition precedent to initiating
7 civil litigation against such dealer under the Florida
8 Deceptive and Unfair Trade Practices Act; providing
9 for the tolling of applicable time limitations for
10 initiating actions; providing an additional
11 opportunity for claimants to comply with specified
12 provisions; providing a condition that constitutes
13 waiver of notice; providing for applicability;
14 requiring that a specified notice be provided to
15 consumers before provisions may apply; providing an
16 effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:
19

20 Section 1. Section 501.975, Florida Statutes, is amended
21 to read:

22 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
23 term ~~following terms shall have the following meanings:~~

- 24 (1) "Customer" includes a customer's designated agent.
- 25 (2) "Dealer" means a motor vehicle dealer as defined in s.
26 320.27, but does not include a motor vehicle auction as defined
27 in s. 320.27(1)(c)4.
- 28 (3) "Replacement item" means a tire, bumper, bumper

29 fascia, glass, in-dashboard equipment, seat or upholstery cover
 30 or trim, exterior illumination unit, grill, sunroof, external
 31 mirror and external body cladding. The replacement of up to
 32 three of these items does not constitute repair of damage if
 33 each item is replaced because of a product defect or damaged due
 34 to vandalism while the new motor vehicle is under the control of
 35 the dealer and the items are replaced with original manufacturer
 36 equipment, unless an item is replaced due to a crash, collision,
 37 or accident.

38 (4) "Threshold amount" means 3 percent of the
 39 manufacturer's suggested retail price of a motor vehicle or
 40 \$650, whichever is less.

41 (5) "Vehicle" means any automobile, truck, bus,
 42 recreational vehicle, or motorcycle required to be licensed
 43 under chapter 320 for operation over the roads of Florida, but
 44 does not include trailers, mobile homes, travel trailers, or
 45 trailer coaches without independent motive power.

46 Section 2. Section 501.98, Florida Statutes, is created to
 47 read:

48 501.98 Demand letter.—

49 (1) As a condition precedent to initiating any civil
 50 litigation arising under this chapter against a motor vehicle
 51 dealer, which may also include its employees, agents,
 52 principals, sureties, and insurers, a claimant must give the
 53 dealer written notice of the claimant's intent to initiate such
 54 litigation at least 30 days before initiating the litigation.

55 (2) The demand letter, which must be completed in good
 56 faith, must:

57 | (a) State the name, address, and telephone number of the
 58 | claimant.

59 | (b) State the name, address, and telephone number of the
 60 | dealer.

61 | (c) Describe the underlying facts of the claim, including
 62 | a comprehensive and detailed statement describing each item for
 63 | which actual damages are claimed.

64 | (d) To the extent available, be accompanied by all
 65 | transaction or other documents upon which the claim is based.

66 |
 67 | In any challenge to the claimant's compliance with this
 68 | subsection, the demand letter shall be deemed satisfactory if it
 69 | contains sufficient information to adequately put the dealer on
 70 | notice of the nature of the claim and the relief sought.

71 | (3) The demand letter must be delivered to the dealer by
 72 | the United States Postal Service or by a nationally recognized
 73 | carrier, return receipt requested. If the dealer is a corporate
 74 | entity, the demand letter must be sent to any officer, director,
 75 | or manager of the dealer as reported in the dealer's most recent
 76 | annual report to the Secretary of State.

77 | (4) Notwithstanding any provision of this chapter:

78 | (a) A claimant may not initiate civil litigation against a
 79 | dealer or its employees, agents, principals, sureties, or
 80 | insurers for a claim arising under this chapter related to, or
 81 | in connection with, the transaction or event described in the
 82 | demand letter if, within 30 business days after receipt of the
 83 | demand letter, the dealer pays the claimant the amount sought in
 84 | the demand letter, plus a surcharge equal to the lesser of \$500,

85 or 10 percent of the amount contained in the demand letter.

86 (b) A dealer and its employees, agents, principals,
 87 sureties, and insurers may not be required to pay the attorney
 88 fees of the claimant in any action brought under this chapter
 89 if:

90 1. The dealer, within 30 business days after receipt of
 91 the demand letter, notifies the claimant in writing, and a court
 92 agrees, that the amount sought in the demand letter is not
 93 supported by the facts of the transaction or event described in
 94 the demand letter or if the demand letter includes items not
 95 properly recoverable under this chapter; or

96 2. The claimant fails to materially comply with this
 97 section; however, to the extent that there is a challenge to the
 98 sufficiency of the demand letter, the demand letter shall be
 99 deemed satisfactory if it contains sufficient information to
 100 adequately put the dealer on notice of the nature of the claim
 101 and the relief sought such that it could appropriately respond.

102 (5) Payment or offer of payment of the damages claimed in
 103 the demand letter as set forth in this section:

104 (a) Does not constitute an admission of any wrongdoing or
 105 liability by the dealer.

106 (b) Is protected under s. 90.408 from introduction as
 107 evidence during any civil litigation.

108 (c) Releases the dealer and its employees, agents,
 109 principals, sureties, and insurers from any claim, suit, action,
 110 or other action that could be brought arising out of, or in
 111 connection with, the specific transaction, event, or occurrence
 112 described in the demand letter.

113 (6) The applicable time limitations for initiating an
 114 action under this chapter are tolled for 30 days after the date
 115 of delivery to the dealer pursuant to subsection (3), or such
 116 other period agreed to by the parties in writing.

117 (7) This section does not apply to any action brought as a
 118 class action that is ultimately certified as a class action or
 119 any action brought by the enforcing authority.

120 (8) This section applies only to civil litigation arising
 121 out of a transaction for which the dealer has provided the
 122 following notice to the consumer:

123
 124 "Section 501.98, Florida Statutes, requires that, at least
 125 30 days before bringing any claim against a motor vehicle
 126 dealer for an unfair or deceptive trade practice, a
 127 consumer must provide the dealer with written notice
 128 stating the name, address, and telephone number of the
 129 consumer; the name and address of the dealer; a description
 130 of the facts that serve as the basis for the claim; the
 131 amount of damages claimed; and copies of any documents in
 132 the possession of the consumer which relate to the claim.
 133 Such notice must be delivered by the United State Postal
 134 Service or any nationally recognized carrier, return
 135 receipt requested. Such notice must be provided to the
 136 dealer, or, if the dealer is a corporate entity, an
 137 officer, director, or manager of the dealer as reported by
 138 the Florida Division of Corporations at: (...insert current
 139 Internet website address of the Division of Corporations of
 140 the Department of State...)."

HB 55

2013

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Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 77 Landlords and Tenants
SPONSOR(S): Porter
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward <i>JW</i>	Bond <i>TB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill modifies the Act to:

- Make it applicable to lease-purchase agreements for residential properties if the buyer has paid at least one month's rent and paid a deposit of at least 5 percent of the purchase price of the property or at least 12 months' rent.
- Provide that attorney's fees may not be awarded for personal injury actions resulting from maintenance issues between landlord and tenant.
- Provide that certain statutory notice and attorney fee provisions may not be waived in a lease.
- Modify the statutory disclosure regarding deposits to provide specific wording.
- Require landlords to pay regular assessments to an association.
- Clarify eviction notice requirements for a recurrent noncompliance event within 12 months.
- Allow a landlord to accept partial rent without waiving the right to evict.
- Require reciprocal notice by the landlord and tenant of an intent to not renew the lease at the end of the term.
- Provide that a sheriff's notice of eviction is not stayed by weekends or holidays.
- Prohibit a landlord from retaliating against a tenant who lawfully pays a landlord's association dues pursuant to a lawful demand, or a tenant who complains of a fair housing violation.
- Provide that a landlord and a mobile home park owner must be given an opportunity to cure a deficiency in any notice or pleadings prior to dismissal of an eviction action.
- Provide technical and stylistic changes.

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

This bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Part II of ch. 83, F.S., entitled the "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill makes various changes to the Act, and makes a conforming change to landlord-tenant law for mobile home parks.

Exclusions from Application of the "Florida Residential Landlord and Tenant Act"

Part II of the Act does not apply to all residential tenancies.¹ For instance, Part II does not apply to residency or detention in a facility where residence is incidental to certain treatment or services (i.e. medical or religious services). Also, s. 83.42(2), F.S. provides that Part II does not apply to "[o]ccupancy under a contract of sale of a dwelling unit or the property of which it is a part."

In *Pensacola Wine and Spirits Distillers, Inc., v. Gator Distributors, Inc.*, the court held that where the tenant had exercised an option to purchase, the lease was terminated and, therefore, the proper action for the landlord seeking possession was ejectment rather than eviction.² Under current law, it is possible for a tenant to sign a lease-purchase agreement, take possession of the premises, and make no payment, leaving ejectment as the landlord's only remedy - a cause of action that takes more time than eviction.

The bill makes the Act applicable to lease-purchase agreements for residential properties where the buyer has paid at least 12 months' rent, or when the buyer has paid at least one month's rent and a deposit of at least 5 percent of the purchase price of the property.

Attorney Fees

Section 83.48, F.S. governs the award of attorney's fees in a civil action instituted to enforce the rental agreement or provisions of the Act. The bill adds that the right to attorney fees may not be waived in a lease agreement.

Currently, the prevailing party in a civil action to enforce a provision of a rental agreement or the Act may recover reasonable court costs, including attorney's fees from the non-prevailing party. Anecdotal evidence suggests that this provision has been interpreted to award attorney's fees where a tenant files a personal injury action against a landlord alleging a breach of the landlord's maintenance duties under s. 83.51, F.S. In general, attorney's fees are not awarded in personal injury actions. Section 83.48, F.S. is amended, therefore, to codify the holding in *Gilbert v. Jabour*, 527 So.2d 951 (Fla. 3rd DCA 1988), that attorney's fees may not be awarded in a claim for personal injury damages based on a breach of duty in the landlord's obligation to maintain the premises.

Deposit Money or Advance Rent Payments; Disclosures

Section 83.49, F.S. provides that a landlord must notify the tenant in writing of where the landlord will hold any security deposit and advance rent. The purpose of the statute is to assure tenants that their security deposits will be returned expeditiously or, in the alternative, that they will be promptly notified otherwise.³

¹ Section 83.42, F.S.

² 448 So.2d 34 (Fla. 1st DCA 1984).

³ See *Durene v. Alcime*, 448 So.2d 1208, 1210 (Fla. 3d DCA 1984).

Existing law requires that a landlord furnish a copy of subsection (3) of s. 83.49, F.S., which sets out remedies and time limits for claims to the security deposit after the end of the tenancy. This bill deletes the requirement to give a copy of subsection (3), and replaces it with a specifically worded disclosure.

Presently, the landlord must deposit advance rent into a separate account. However, current law is silent as to whether the landlord must give written notice and an opportunity to object before paying advance rent held in the separate account when due. The bill states that advance rent may be withdrawn from the deposit account when due, without further notice.

Current law provides that a tenant has 15 days to object after receipt of a landlord's notice of intention to impose a claim on a security deposit. After that, the landlord may deduct the amount of the claim and remit the balance to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.⁴ Current case law provides that, if a landlord fails to give timely notice of a claim against the deposit, the landlord must return the entire deposit but can file a later action for damages.⁵ The bill codifies the court's holding that the 15 days is not a statute of limitations on all actions, and further provides that a tenant who fails to timely object loses that particular right, but retains the right to pursue any available remedy in a separate cause of action.

Current law requires a landlord to transfer deposits to a new owner of the property. In practice, some landlords, especially ones who have been foreclosed, neglect to transfer the deposit to the new owner. This bill creates a rebuttable presumption that the new owner has received the deposit, but the presumption is limited to one month's rent.

To accommodate landlords who have stocks of preprinted lease forms complying with current law, the bill creates a new section providing that, for leases entered into on or before December 31, 2013, a landlord may elect to comply with the current, statutory disclosure requirements or the new disclosure requirements under the bill.

Outdated Disclosure

Section 83.50(2), F.S., requires that the landlord must disclose to new tenants of a building exceeding three stories whether there is availability of fire protection. Modern building codes require significant fire protection systems in new buildings over three stories tall. The bill deletes the outdated disclosure requirement entirely.

Landlord's Obligation to Maintain Premises and Pay Assessments

Current law provides that a landlord must comply with applicable building, housing and health code requirements.⁶ However, where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair, and the plumbing in reasonable working condition.⁷ The bill removes screens from the list of items a landlord must maintain.

Termination of Rental Agreement - Noncompliance

Section 83.56, F.S., governs instances where either the tenant or landlord may terminate the rental agreement. Tenant eviction may be grounded in either monetary default or non-monetary default. Non-monetary defaults fall into two categories: those that may be not be cured and those that may:

⁴ Section 83.49(3)(b), F.S.

⁵ See *Durene*, 448 So.2d at 1210.

⁶ Section 83.51(1)(a), F.S.

⁷ Section 83.51(1)(b), F.S.

- If the noncompliance is of a nature that the tenant should not be given an opportunity to cure it, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that notice is delivered to vacate the premises.
- If the noncompliance is of a nature that the tenant should be given an opportunity to cure it, the landlord may deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement.⁸

Some tenants have taken the position that a noncompliance with opportunity to cure still requires an additional 7-day notice upon the re-occurrence of the offense before filing for eviction. This bill amends s. 83.56(2)(b), F.S., to clarify that such additional notice is not required. It also adds to the written warning that the tenancy is subject to termination without further warning if the curable conduct is repeated within 12 months.

The bill also provides that the written notices set out in s. 83.56, F.S. for non-compliance of any kind, including non-payment of rent, may not be waived in the lease.

Termination of Rental Agreement - Rent; Waiver

Under current law, if a landlord accepts partial rent from a tenant with full knowledge that such payment is not for the full amount, the landlord waives the right to terminate the rental agreement or to bring a civil action.⁹ The application of this law discourages landlords from negotiating partial payments with a tenant. This bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent. However, where a portion of the rent is subsidized, an action that has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance is waived.

Termination of a Tenancy with a Specific Duration

Current law provides that a rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement. However, such a provision may not require more than 60 days' notice.¹⁰ A rental agreement with a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement. This only occurs if the landlord provides written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. Such written notice must be provided to the tenant within 15 days before the start of the notification period contained in the lease and list all fees, penalties and other possible charges to the tenant.

The bill provides that if a rental agreement has a requirement for tenant notice to the landlord regarding nonrenewal, the rental agreement must provide a reciprocal agreement requiring the landlord to provide the same notice of intent not to renew, using the same notice period.

⁸ Section 83.56(2)(a)-(b), F.S.

⁹ See *In re Sorrento's I, Inc.*, 195 B.R. 502 (Bkrcty. M.D. Fla. 1996) (holding that landlord waived his right to terminate the rental agreement where he accepted two untimely checks for partial payment of the rent and the landlord had full knowledge they were not tendered on time and that they did not represent the full amount of rent for the month).

¹⁰ Section 83.575(1), F.S.

Landlord or Mobile Home Park Owner's Action for Rent or Possession

Sections 83.60 and 723.063, F.S., both relate to defenses a tenant may raise in an action for possession based upon nonpayment of rent. While s. 83.60, F.S., relates to landlords and tenants in a residential rental agreement, s. 723.063, F.S., relates to mobile home park owners and mobile home owners. The language is essentially the same in both sections.

Current law provides that in a landlord's or mobile home park owner's action for possession based on nonpayment of rent or an action seeking to recover unpaid rent, a tenant or mobile home owner may raise various defenses, including material noncompliance or retaliatory conduct pursuant to ss. 83.51(1) and 83.64, F.S., respectively. The bill provides that, before an action for possession based on nonpayment or seeking recovery of unpaid rent may be dismissed, the landlord or mobile home park owner must be given an opportunity to cure the deficiency in any notice or in the pleadings.

Current law provides that if a tenant raises a defense to an eviction proceeding other than payment of rent, the tenant must pay the rent into the court's registry pending outcome of the case. The amendment to s. 83.60(b)(2), F.S. makes clear that such defenses include the defense of a defective 3-day notice.

Restoration of Possession to Landlord Upon Eviction

Current law provides that, in an action for possession, if judgment granting possession to the landlord is entered, the clerk must issue a writ to the sheriff commanding that the landlord shall be given possession after 24 hours' notice is posted on the premises.¹¹ The bill provides that weekends and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

Current law provides that a landlord may not increase a tenant's rent, decrease services to a tenant, or bring or threaten to bring a civil action primarily because the landlord is retaliating against the tenant.¹² A tenant may raise the defense of retaliatory conduct. However, to do so, the tenant must have acted in good faith. The statute sets out a nonexclusive list of examples of conduct for which the landlord may not retaliate (i.e., a tenant has organized, encouraged or participated in a tenants' organization).

The bill adds two examples to the list of conduct for which a landlord may not retaliate. Specifically, a landlord may not retaliate where: 1) the tenant has paid the rent to a condominium, cooperative, or homeowners association after demand from the association in order to pay the landlord's obligation to the association,¹³ or 2) the tenant has exercised legal rights under local, state, or federal fair housing laws.

B. SECTION DIRECTORY:

Section 1 amends s. 83.42, F.S., relating to exclusions from application to Part II.

Section 2 amends s. 83.48, F.S., relating to attorney fees.

¹¹ Section 83.62, F.S.

¹² Section 83.64, F.S.

¹³ See ss. 718.116(11)(a), 719.108(10)(a), 720.3085, F.S., (providing that if a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit or parcel).

Section 3 amends s. 83.49, F.S., relating to deposit money and advance rent.

Section 4 creates an unnumbered section relating to the application date for new disclosure requirements.

Section 5 amends s. 83.50, F.S., relating to disclosure.

Section 6 amends s. 83.51, F.S., relating to a landlord's obligation to maintain premises and pay assessments.

Section 7 amends s. 83.56, F.S., relating to termination of rental agreement.

Section 8 amends s. 83.575, F.S., relating to termination of tenancy with specific duration.

Section 9 amends s. 83.58, F.S., relating to remedies; tenant holding over.

Section 10 amends s. 83.59, F.S., relating to right of action for possession.

Section 11 amends s. 83.60, F.S., relating to defenses to action for rent or possession.

Section 12 amends 83.62, F.S., relating to restoration of possession to landlord.

Section 13 amends 83.63, F.S., relating to casualty damage.

Section 14 amends s. 83.64, F.S., relating to retaliatory conduct.

Section 15 amends s. 723.063, F.S., relating to defenses to action for rent or possession; procedure.

Section 16 provides an effective date of July 1, 2013.

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:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to landlords and tenants; amending s.
 3 83.42, F.S.; revising exclusions from applicability of
 4 the Florida Residential Landlord and Tenant Act;
 5 amending s. 83.48, F.S.; providing that the right to
 6 attorney fees may not be waived in a lease agreement;
 7 providing that attorney fees may not be awarded in a
 8 claim for personal injury damages based on a breach of
 9 duty of premises maintenance; amending s. 83.49, F.S.;
 10 revising and providing landlord disclosure
 11 requirements with respect to security deposits and
 12 advance rent; providing requirements for the
 13 disbursement of advance rents; providing a limited
 14 rebuttable presumption of receipt of security
 15 deposits; providing for applicability of changes made
 16 by the act to certain disclosure requirements;
 17 amending s. 83.50, F.S.; removing certain landlord
 18 disclosure requirements relating to fire protection;
 19 amending s. 83.51, F.S.; revising a landlord's
 20 obligation to maintain a premises with respect to
 21 screens; amending s. 83.56, F.S.; revising procedures
 22 for the termination of a rental agreement by a
 23 landlord; revising notice procedures; providing that a
 24 landlord does not waive the right to terminate the
 25 rental agreement or to bring a civil action for
 26 noncompliance by accepting partial rent, subject to
 27 certain notice; providing that the period to institute
 28 an action before an exemption involving rent subsidies

29 is waived begins upon actual knowledge; amending s.
 30 83.575, F.S.; revising requirements for the
 31 termination of a tenancy having a specific duration to
 32 provide for reciprocal notice provisions in rental
 33 agreements; amending ss. 83.58 and 83.59, F.S.;
 34 conforming cross-references; amending s. 83.60, F.S.;
 35 providing that a landlord must be given an opportunity
 36 to cure a deficiency in any notice or pleadings before
 37 dismissal of an eviction action; making technical
 38 changes; amending s. 83.62, F.S.; revising procedures
 39 for the restoration of possession to a landlord to
 40 provide that weekends and holidays do not stay the
 41 applicable notice period; amending s. 83.63, F.S.;
 42 conforming a cross-reference; amending s. 83.64, F.S.;
 43 providing examples of conduct for which the landlord
 44 may not retaliate; amending s. 723.063, F.S.;
 45 providing that a mobile home park owner must be given
 46 an opportunity to cure a deficiency in any notice or
 47 pleadings before dismissal of an eviction action;
 48 providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Subsection (2) of section 83.42, Florida
 53 Statutes, is amended to read:

54 83.42 Exclusions from application of part.—This part does
 55 not apply to:

56 (2) Occupancy under a contract of sale of a dwelling unit

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57 | or the property of which it is a part in which the buyer has
 58 | paid at least 12 months' rent or in which the buyer has paid at
 59 | least 1 month's rent and a deposit of at least 5 percent of the
 60 | purchase price of the property.

61 | Section 2. Section 83.48, Florida Statutes, is amended to
 62 | read:

63 | 83.48 Attorney ~~Attorney's~~ fees.—In any civil action
 64 | brought to enforce the provisions of the rental agreement or
 65 | this part, the party in whose favor a judgment or decree has
 66 | been rendered may recover reasonable attorney fees and court
 67 | costs, ~~including attorney's fees,~~ from the nonprevailing party.
 68 | The right to attorney fees in this section may not be waived in
 69 | a lease agreement. However, attorney fees may not be awarded
 70 | under this section in a claim for personal injury damages based
 71 | on a breach of duty under s. 83.51.

72 | Section 3. Subsections (2), (3), and (7) of section 83.49,
 73 | Florida Statutes, are amended to read:

74 | 83.49 Deposit money or advance rent; duty of landlord and
 75 | tenant.—

76 | (2) The landlord shall, in the lease agreement or within
 77 | 30 days after ~~of~~ receipt of advance rent or a security deposit,
 78 | give written notice to notify the tenant which includes
 79 | disclosure of in writing of the manner in which the landlord is
 80 | ~~holding~~ the advance rent or security deposit ~~and the rate of~~
 81 | ~~interest, if any, which the tenant is to receive and the time of~~
 82 | ~~interest payments to the tenant. Such written notice shall:~~

83 | ~~(a) Be given in person or by mail to the tenant.~~

84 | ~~(b) State the name and address of the depository where the~~

85 ~~advance rent or security deposit is being held, whether the~~
 86 ~~advance rent or security deposit is being held in a separate~~
 87 ~~account for the benefit of the tenant or is commingled with~~
 88 ~~other funds of the landlord, and, if commingled, whether such~~
 89 ~~funds are deposited in an interest-bearing account in a Florida~~
 90 ~~banking institution.~~

91 ~~(c) Include a copy of the provisions of subsection (3).~~
 92 Subsequent to providing such written notice, if the landlord
 93 changes the manner or location in which he or she is holding the
 94 advance rent or security deposit, he or she must ~~shall~~ notify
 95 the tenant within 30 days after ~~of~~ the change as provided in
 96 paragraphs (a)-(d). The landlord is not required to give new or
 97 additional notice solely because the depository has merged with
 98 another financial institution, changed its name, or transferred
 99 ownership to a different financial institution according to the
 100 ~~provisions herein set forth.~~ This subsection does not apply to
 101 any landlord who rents fewer than five individual dwelling
 102 units. Failure to give ~~provide~~ this notice is ~~shall~~ not be a
 103 defense to the payment of rent when due. The written notice
 104 must:

- 105 (a) Be given in person or by mail to the tenant.
- 106 (b) State the name and address of the depository where the
 107 advance rent or security deposit is being held or state that the
 108 landlord has posted a surety bond as provided by law.
- 109 (c) State whether the tenant is entitled to interest on
 110 the deposit.
- 111 (d) Contain the following disclosure:

113 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
 114 LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S
 115 ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU
 116 MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS
 117 SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING
 118 YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE,
 119 WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S
 120 INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU
 121 DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO
 122 THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE
 123 LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM
 124 AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF
 125 YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT
 126 AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A
 127 LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.

128
 129 IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE
 130 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A
 131 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY
 132 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE
 133 DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A
 134 REFUND.

135
 136 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE
 137 BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE
 138 FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND
 139 ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

140

141 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
 142 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
 143 RIGHTS AND OBLIGATIONS.

144
 145 (3) The landlord or the landlord's agent may disburse
 146 advance rents from the deposit account to the landlord's benefit
 147 when the advance rental period commences and without notice to
 148 the tenant. For all other deposits:

149 (a) Upon the vacating of the premises for termination of
 150 the lease, if the landlord does not intend to impose a claim on
 151 the security deposit, the landlord shall have 15 days to return
 152 the security deposit together with interest if otherwise
 153 required, or the landlord shall have 30 days to give the tenant
 154 written notice by certified mail to the tenant's last known
 155 mailing address of his or her intention to impose a claim on the
 156 deposit and the reason for imposing the claim. The notice shall
 157 contain a statement in substantially the following form:

158
 159 This is a notice of my intention to impose a claim for
 160 damages in the amount of upon your security deposit, due to
 161 It is sent to you as required by s. 83.49(3), Florida
 162 Statutes. You are hereby notified that you must object in
 163 writing to this deduction from your security deposit within 15
 164 days from the time you receive this notice or I will be
 165 authorized to deduct my claim from your security deposit. Your
 166 objection must be sent to ...(landlord's address)....

167
 168 If the landlord fails to give the required notice within the 30-

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169 day period, he or she forfeits the right to impose a claim upon
 170 the security deposit and may not seek a setoff against the
 171 deposit but may file an action for damages after return of the
 172 deposit.

173 (b) Unless the tenant objects to the imposition of the
 174 landlord's claim or the amount thereof within 15 days after
 175 receipt of the landlord's notice of intention to impose a claim,
 176 the landlord may then deduct the amount of his or her claim and
 177 shall remit the balance of the deposit to the tenant within 30
 178 days after the date of the notice of intention to impose a claim
 179 for damages. The failure of the tenant to make a timely
 180 objection does not waive any rights of the tenant to seek
 181 damages in a separate action.

182 (c) If either party institutes an action in a court of
 183 competent jurisdiction to adjudicate the party's right to the
 184 security deposit, the prevailing party is entitled to receive
 185 his or her court costs plus a reasonable fee for his or her
 186 attorney. The court shall advance the cause on the calendar.

187 (d) Compliance with this section by an individual or
 188 business entity authorized to conduct business in this state,
 189 including Florida-licensed real estate brokers and sales
 190 associates, constitutes ~~shall constitute~~ compliance with all
 191 other relevant Florida Statutes pertaining to security deposits
 192 held pursuant to a rental agreement or other landlord-tenant
 193 relationship. Enforcement personnel shall look solely to this
 194 section to determine compliance. This section prevails over any
 195 conflicting provisions in chapter 475 and in other sections of
 196 the Florida Statutes, and shall operate to permit licensed real

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197 estate brokers to disburse security deposits and deposit money
 198 without having to comply with the notice and settlement
 199 procedures contained in s. 475.25(1)(d).

200 (7) Upon the sale or transfer of title of the rental
 201 property from one owner to another, or upon a change in the
 202 designated rental agent, any and all security deposits or
 203 advance rents being held for the benefit of the tenants shall be
 204 transferred to the new owner or agent, together with any earned
 205 interest and with an accurate accounting showing the amounts to
 206 be credited to each tenant account. Upon the transfer of such
 207 funds and records to the new owner or agent as stated herein,
 208 and upon transmittal of a written receipt therefor, the
 209 transferor is ~~shall be~~ free from the obligation imposed in
 210 subsection (1) to hold such moneys on behalf of the tenant.
 211 There is a rebuttable presumption that any new owner or agent
 212 received the security deposit from the previous owner or agent;
 213 however, this presumption is limited to 1 month's rent. This
 214 subsection does not ~~However, nothing herein shall~~ excuse the
 215 landlord or agent for a violation of other ~~the~~ provisions of
 216 this section while in possession of such deposits.

217 Section 4. The Legislature recognizes that landlords may
 218 have stocks of preprinted lease forms that comply with the
 219 notice requirements of current law. Accordingly, for leases
 220 entered into on or before December 31, 2013, a landlord may give
 221 notice that contains the disclosure required in the changes made
 222 by this act to s. 83.49, Florida Statutes, or the former notice
 223 required in s. 83.49, Florida Statutes 2012. The disclosure
 224 required by this act is required for all leases entered into on

225 | or after January 1, 2014.

226 | Section 5. Section 83.50, Florida Statutes, is amended to
227 | read:

228 | 83.50 Disclosure of landlord's address.—

229 | ~~(1)~~ In addition to any other disclosure required by law,
230 | the landlord, or a person authorized to enter into a rental
231 | agreement on the landlord's behalf, shall disclose in writing to
232 | the tenant, at or before the commencement of the tenancy, the
233 | name and address of the landlord or a person authorized to
234 | receive notices and demands in the landlord's behalf. The person
235 | so authorized to receive notices and demands retains authority
236 | until the tenant is notified otherwise. All notices of such
237 | names and addresses or changes thereto shall be delivered to the
238 | tenant's residence or, if specified in writing by the tenant, to
239 | any other address.

240 | ~~(2) The landlord or the landlord's authorized~~
241 | ~~representative, upon completion of construction of a building~~
242 | ~~exceeding three stories in height and containing dwelling units,~~
243 | ~~shall disclose to the tenants initially moving into the building~~
244 | ~~the availability or lack of availability of fire protection.~~

245 | Section 6. Subsection (1) and paragraph (a) of subsection
246 | (2) of section 83.51, Florida Statutes, are amended to read:

247 | 83.51 Landlord's obligation to maintain premises.—

248 | (1) The landlord at all times during the tenancy shall:

249 | (a) Comply with the requirements of applicable building,
250 | housing, and health codes; or

251 | (b) Where there are no applicable building, housing, or
252 | health codes, maintain the roofs, windows, ~~screens,~~ doors,

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253 floors, steps, porches, exterior walls, foundations, and all
 254 other structural components in good repair and capable of
 255 resisting normal forces and loads and the plumbing in reasonable
 256 working condition. ~~However,~~

257
 258 The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile home
 259 or other structure owned by the tenant. The landlord's
 260 obligations under this subsection may be altered or modified in
 261 writing with respect to a single-family home or duplex.

262 (2)(a) Unless otherwise agreed in writing, in addition to
 263 the requirements of subsection (1), the landlord of a dwelling
 264 unit other than a single-family home or duplex shall, at all
 265 times during the tenancy, make reasonable provisions for:

266 1. The extermination of rats, mice, roaches, ants, wood-
 267 destroying organisms, and bedbugs. When vacation of the premises
 268 is required for such extermination, the landlord is ~~shall~~ not ~~be~~
 269 liable for damages but shall abate the rent. The tenant must
 270 ~~shall be required to~~ temporarily vacate the premises for a
 271 period of time not to exceed 4 days, on 7 days' written notice,
 272 if necessary, for extermination pursuant to this subparagraph.

273 2. Locks and keys.

274 3. The clean and safe condition of common areas.

275 4. Garbage removal and outside receptacles therefor.

276 5. Functioning facilities for heat during winter, running
 277 water, and hot water.

278 Section 7. Subsections (2) through (5) of section 83.56,
 279 Florida Statutes, are amended to read:

280 83.56 Termination of rental agreement.—

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281 (2) If the tenant materially fails to comply with s. 83.52
 282 or material provisions of the rental agreement, other than a
 283 failure to pay rent, or reasonable rules or regulations, the
 284 landlord may:

285 (a) If such noncompliance is of a nature that the tenant
 286 should not be given an opportunity to cure it or if the
 287 noncompliance constitutes a subsequent or continuing
 288 noncompliance within 12 months of a written warning by the
 289 landlord of a similar violation, deliver a written notice to the
 290 tenant specifying the noncompliance and the landlord's intent to
 291 terminate the rental agreement by reason thereof. Examples of
 292 noncompliance which are of a nature that the tenant should not
 293 be given an opportunity to cure include, but are not limited to,
 294 destruction, damage, or misuse of the landlord's or other
 295 tenants' property by intentional act or a subsequent or
 296 continued unreasonable disturbance. In such event, the landlord
 297 may terminate the rental agreement, and the tenant shall have 7
 298 days from the date that the notice is delivered to vacate the
 299 premises. The notice shall be ~~adequate if it is~~ in substantially
 300 the following form:

301
 302 You are advised that your lease is terminated effective
 303 immediately. You shall have 7 days from the delivery of this
 304 letter to vacate the premises. This action is taken because
 305 ... (cite the noncompliance)

306
 307 (b) If such noncompliance is of a nature that the tenant
 308 should be given an opportunity to cure it, deliver a written

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309 notice to the tenant specifying the noncompliance, including a
 310 notice that, if the noncompliance is not corrected within 7 days
 311 from the date that the written notice is delivered, the landlord
 312 shall terminate the rental agreement by reason thereof. Examples
 313 of such noncompliance include, but are not limited to,
 314 activities in contravention of the lease or this part ~~and~~ such
 315 as having or permitting unauthorized pets, guests, or vehicles;
 316 parking in an unauthorized manner or permitting such parking; or
 317 failing to keep the premises clean and sanitary. If such
 318 noncompliance recurs within 12 months after notice, an eviction
 319 action may commence without delivering a subsequent notice
 320 pursuant to paragraph (a) or this paragraph. The notice shall be
 321 ~~adequate if it is~~ in substantially the following form:

322
 323 You are hereby notified that ...(cite the
 324 noncompliance).... Demand is hereby made that you remedy the
 325 noncompliance within 7 days of receipt of this notice or your
 326 lease shall be deemed terminated and you shall vacate the
 327 premises upon such termination. If this same conduct or conduct
 328 of a similar nature is repeated within 12 months, your tenancy
 329 is subject to termination without further warning and without
 330 your being given an opportunity to cure the noncompliance.

331
 332 (3) If the tenant fails to pay rent when due and the
 333 default continues for 3 days, excluding Saturday, Sunday, and
 334 legal holidays, after delivery of written demand by the landlord
 335 for payment of the rent or possession of the premises, the
 336 landlord may terminate the rental agreement. Legal holidays for

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337 the purpose of this section shall be court-observed holidays
 338 only. The 3-day notice shall contain a statement in
 339 substantially the following form:

340

341 You are hereby notified that you are indebted to me in the
 342 sum of dollars for the rent and use of the premises
 343 ...(address of leased premises, including county)..., Florida,
 344 now occupied by you and that I demand payment of the rent or
 345 possession of the premises within 3 days (excluding Saturday,
 346 Sunday, and legal holidays) from the date of delivery of this
 347 notice, to wit: on or before the day of, ...(year)....
 348 ...(landlord's name, address and phone number)...

349

350 (4) The delivery of the written notices required by
 351 subsections (1), (2), and (3) shall be by mailing or delivery of
 352 a true copy thereof or, if the tenant is absent from the
 353 premises, by leaving a copy thereof at the residence. The notice
 354 requirements of subsections (1), (2), and (3) may not be waived
 355 in the lease.

356

357 (5) (a) If the landlord accepts rent with actual knowledge
 358 of a noncompliance by the tenant or accepts performance by the
 359 tenant of any other provision of the rental agreement that is at
 360 variance with its provisions, or if the tenant pays rent with
 361 actual knowledge of a noncompliance by the landlord or accepts
 362 performance by the landlord of any other provision of the rental
 363 agreement that is at variance with its provisions, the landlord
 364 or tenant waives his or her right to terminate the rental
 agreement or to bring a civil action for that noncompliance, but

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365 | not for any subsequent or continuing noncompliance. However, a
 366 | landlord does not waive the right to terminate the rental
 367 | agreement or to bring a civil action for that noncompliance by
 368 | accepting partial rent for the period.

369 | **(b)** Any tenant who wishes to defend against an action by
 370 | the landlord for possession of the unit for noncompliance of the
 371 | rental agreement or of relevant statutes must ~~shall~~ comply with
 372 | ~~the provisions in~~ s. 83.60(2). The court may not set a date for
 373 | mediation or trial unless the provisions of s. 83.60(2) have
 374 | been met, but must ~~shall~~ enter a default judgment for removal of
 375 | the tenant with a writ of possession to issue immediately if the
 376 | tenant fails to comply with s. 83.60(2).

377 | **(c)** This subsection does not apply to that portion of rent
 378 | subsidies received from a local, state, or national government
 379 | or an agency of local, state, or national government; however,
 380 | waiver will occur if an action has not been instituted within 45
 381 | days after the landlord obtains actual knowledge of the
 382 | noncompliance.

383 | Section 8. Subsection (1) of section 83.575, Florida
 384 | Statutes, is amended to read:

385 | 83.575 Termination of tenancy with specific duration.—

386 | (1) A rental agreement with a specific duration may
 387 | contain a provision requiring the tenant to notify the landlord
 388 | within a specified period before vacating the premises at the
 389 | end of the rental agreement, if such provision requires the
 390 | landlord to notify the tenant within such notice period if the
 391 | rental agreement will not be renewed; however, a rental
 392 | agreement may not require more than 60 days' notice from either

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393 the tenant or the landlord before vacating the premises.

394 Section 9. Section 83.58, Florida Statutes, is amended to
395 read:

396 83.58 Remedies; tenant holding over.—If the tenant holds
397 over and continues in possession of the dwelling unit or any
398 part thereof after the expiration of the rental agreement
399 without the permission of the landlord, the landlord may recover
400 possession of the dwelling unit in the manner provided for in s.
401 83.59 ~~{F.S. 1973}~~. The landlord may also recover double the
402 amount of rent due on the dwelling unit, or any part thereof,
403 for the period during which the tenant refuses to surrender
404 possession.

405 Section 10. Subsection (2) of section 83.59, Florida
406 Statutes, is amended to read:

407 83.59 Right of action for possession.—

408 (2) A landlord, the landlord's attorney, or the landlord's
409 agent, applying for the removal of a tenant, shall file in the
410 county court of the county where the premises are situated a
411 complaint describing the dwelling unit and stating the facts
412 that authorize its recovery. A landlord's agent is not permitted
413 to take any action other than the initial filing of the
414 complaint, unless the landlord's agent is an attorney. The
415 landlord is entitled to the summary procedure provided in s.
416 51.011 ~~{F.S. 1971}~~, and the court shall advance the cause on the
417 calendar.

418 Section 11. Section 83.60, Florida Statutes, is amended to
419 read:

420 83.60 Defenses to action for rent or possession;

421 procedure.—

422 (1) (a) In an action by the landlord for possession of a
 423 dwelling unit based upon nonpayment of rent or in an action by
 424 the landlord under s. 83.55 seeking to recover unpaid rent, the
 425 tenant may defend upon the ground of a material noncompliance
 426 with s. 83.51(1) ~~{F.S. 1973}~~, or may raise any other defense,
 427 whether legal or equitable, that he or she may have, including
 428 the defense of retaliatory conduct in accordance with s. 83.64.
 429 The landlord must be given an opportunity to cure a deficiency
 430 in a notice or in the pleadings before dismissal of the action.

431 (b) The defense of a material noncompliance with s.
 432 83.51(1) ~~{F.S. 1973}~~ may be raised by the tenant if 7 days have
 433 elapsed after the delivery of written notice by the tenant to
 434 the landlord, specifying the noncompliance and indicating the
 435 intention of the tenant not to pay rent by reason thereof. Such
 436 notice by the tenant may be given to the landlord, the
 437 landlord's representative as designated pursuant to s. 83.50~~(1)~~,
 438 a resident manager, or the person or entity who collects the
 439 rent on behalf of the landlord. A material noncompliance with s.
 440 83.51(1) ~~{F.S. 1973}~~ by the landlord is a complete defense to an
 441 action for possession based upon nonpayment of rent, and, upon
 442 hearing, the court or the jury, as the case may be, shall
 443 determine the amount, if any, by which the rent is to be reduced
 444 to reflect the diminution in value of the dwelling unit during
 445 the period of noncompliance with s. 83.51(1) ~~{F.S. 1973}~~. After
 446 consideration of all other relevant issues, the court shall
 447 enter appropriate judgment.

448 (2) In an action by the landlord for possession of a

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449 dwelling unit, if the tenant interposes any defense other than
 450 payment, including, but not limited to, the defense of a
 451 defective 3-day notice, the tenant shall pay into the registry
 452 of the court the accrued rent as alleged in the complaint or as
 453 determined by the court and the rent that ~~which~~ accrues during
 454 the pendency of the proceeding, when due. The clerk shall notify
 455 the tenant of such requirement in the summons. Failure of the
 456 tenant to pay the rent into the registry of the court or to file
 457 a motion to determine the amount of rent to be paid into the
 458 registry within 5 days, excluding Saturdays, Sundays, and legal
 459 holidays, after the date of service of process constitutes an
 460 absolute waiver of the tenant's defenses other than payment, and
 461 the landlord is entitled to an immediate default judgment for
 462 removal of the tenant with a writ of possession to issue without
 463 further notice or hearing thereon. If ~~In the event~~ a motion to
 464 determine rent is filed, documentation in support of the
 465 allegation that the rent as alleged in the complaint is in error
 466 is required. Public housing tenants or tenants receiving rent
 467 subsidies are ~~shall be~~ required to deposit only that portion of
 468 the full rent for which they are ~~the tenant is~~ responsible
 469 pursuant to the federal, state, or local program in which they
 470 are participating.

471 Section 12. Subsection (1) of section 83.62, Florida
 472 Statutes, is amended to read:

473 83.62 Restoration of possession to landlord.—

474 (1) In an action for possession, after entry of judgment
 475 in favor of the landlord, the clerk shall issue a writ to the
 476 sheriff describing the premises and commanding the sheriff to

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477 put the landlord in possession after 24 hours' notice
 478 conspicuously posted on the premises. Saturdays, Sundays, and
 479 legal holidays do not stay the 24-hour notice period.

480 Section 13. Section 83.63, Florida Statutes, is amended to
 481 read:

482 83.63 Casualty damage.—If the premises are damaged or
 483 destroyed other than by the wrongful or negligent acts of the
 484 tenant so that the enjoyment of the premises is substantially
 485 impaired, the tenant may terminate the rental agreement and
 486 immediately vacate the premises. The tenant may vacate the part
 487 of the premises rendered unusable by the casualty, in which case
 488 the tenant's liability for rent shall be reduced by the fair
 489 rental value of that part of the premises damaged or destroyed.
 490 If the rental agreement is terminated, the landlord shall comply
 491 with s. 83.49(3) ~~{F.S. 1973}~~.

492 Section 14. Subsection (1) of section 83.64, Florida
 493 Statutes, is amended to read:

494 83.64 Retaliatory conduct.—

495 (1) It is unlawful for a landlord to discriminatorily
 496 increase a tenant's rent or decrease services to a tenant, or to
 497 bring or threaten to bring an action for possession or other
 498 civil action, primarily because the landlord is retaliating
 499 against the tenant. In order for the tenant to raise the defense
 500 of retaliatory conduct, the tenant must have acted in good
 501 faith. Examples of conduct for which the landlord may not
 502 retaliate include, but are not limited to, situations where:

503 (a) The tenant has complained to a governmental agency
 504 charged with responsibility for enforcement of a building,

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505 housing, or health code of a suspected violation applicable to
 506 the premises;

507 (b) The tenant has organized, encouraged, or participated
 508 in a tenants' organization;

509 (c) The tenant has complained to the landlord pursuant to
 510 s. 83.56(1); ~~or~~

511 (d) The tenant is a servicemember who has terminated a
 512 rental agreement pursuant to s. 83.682;

513 (e) The tenant has paid rent to a condominium,
 514 cooperative, or homeowners' association after demand from the
 515 association in order to pay the landlord's obligation to the
 516 association; or

517 (f) The tenant has exercised his or her rights under
 518 local, state, or federal fair housing laws.

519 Section 15. Subsection (1) of section 723.063, Florida
 520 Statutes, is amended to read:

521 723.063 Defenses to action for rent or possession;
 522 procedure.—

523 (1) (a) In any action based upon nonpayment of rent or
 524 seeking to recover unpaid rent, or a portion thereof, the mobile
 525 home owner may defend upon the ground of a material
 526 noncompliance with any portion of this chapter or may raise any
 527 other defense, whether legal or equitable, which he or she may
 528 have. The mobile home park owner must be given an opportunity to
 529 cure a deficiency in a notice or in the pleadings before
 530 dismissal of the action.

531 (b) The defense of material noncompliance may be raised by
 532 the mobile home owner only if 7 days have elapsed after he or

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533 she has notified the park owner in writing of his or her
 534 intention not to pay rent, or a portion thereof, based upon the
 535 park owner's noncompliance with portions of this chapter,
 536 specifying in reasonable detail the provisions in default. A
 537 material noncompliance with this chapter by the park owner is a
 538 complete defense to an action for possession based upon
 539 nonpayment of rent, or a portion thereof, and, upon hearing, the
 540 court or the jury, as the case may be, shall determine the
 541 amount, if any, by which the rent is to be reduced to reflect
 542 the diminution in value of the lot during the period of
 543 noncompliance with any portion of this chapter. After
 544 consideration of all other relevant issues, the court shall
 545 enter appropriate judgment.

546 Section 16. This act shall take effect July 1, 2013.

Florida: An Overview of Foreclosures

January 24, 2013

Presented by:



The Florida Legislature
Office of Economic and
Demographic Research
850.487.1402
<http://edr.state.fl.us>

Foreclosure Activity Remains Daunting

2012 Calendar Year...

Florida had highest Foreclosure Rate in the US
for the first time since the housing crisis began.
(3.11% of housing units received at least 1 filing)

November 2012, compared to US:

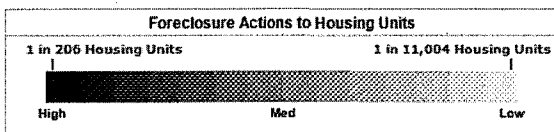
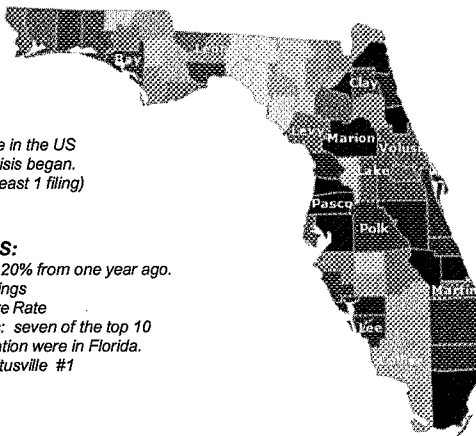
Florida foreclosure starts increased 20% from one year ago.

- 2nd Highest State for # of Filings
- Highest State for Foreclosure Rate
- Among US Metro Area rates: seven of the top 10 highest metro rates in the nation were in Florida.

Palm Bay-Melbourne-Titusville #1

Ocala #2

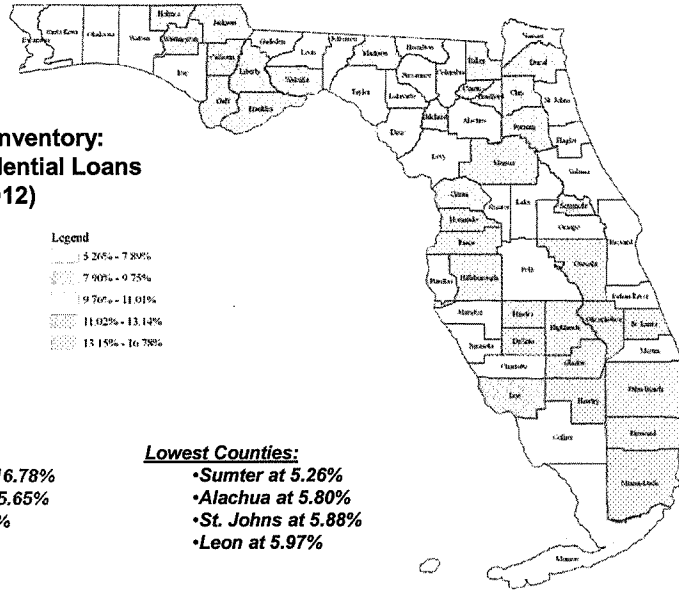
Jacksonville #4



Data from RealtyTrac

Percent of Loans in Foreclosure

Foreclosure Inventory:
11.02% of Residential Loans
(Nov 2012)



Legend
 5.26% - 7.89%
 7.90% - 9.75%
 9.76% - 11.01%
 11.02% - 13.14%
 13.15% - 16.78%

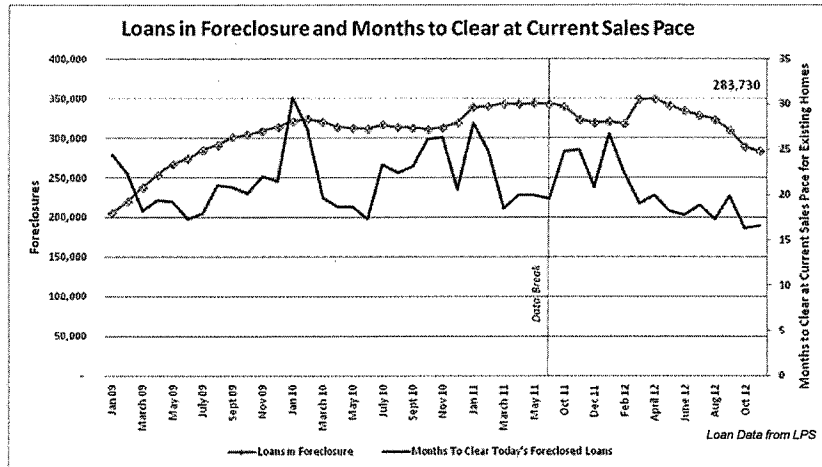
Highest Counties:

- Okeechobee at 16.78%
- Miami-Dade at 15.65%
- DeSoto at 15.36%

Lowest Counties:

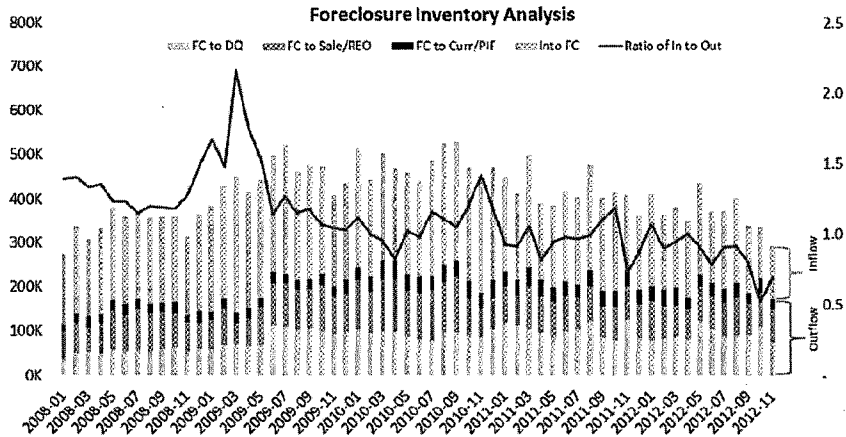
- Sumter at 5.26%
- Alachua at 5.80%
- St. Johns at 5.88%
- Leon at 5.97%

Residential Loans in Foreclosure



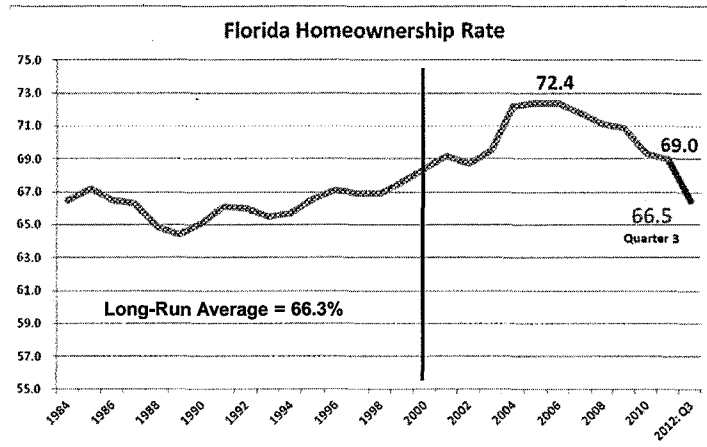
According to RealtyTrac, Florida accounted for the biggest share of foreclosure inventory of any state at the end of the 2012 calendar year with 305,766 properties in some stage of foreclosure or bank owned (20 percent of the national total).

Nationally, Outflow of Foreclosures is Larger than Inflow



Slide Reproduced from LPS Presentation Based on November Data

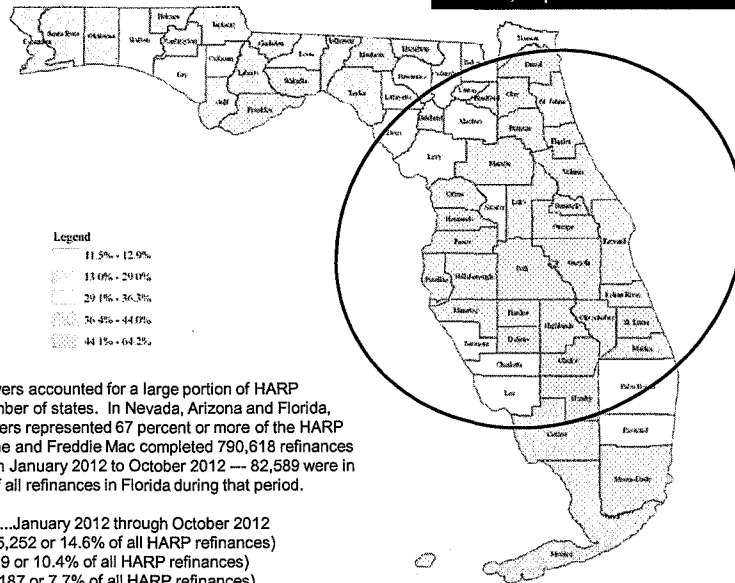
Vulnerability Reduced



The 2011 percentage is the lowest since 2002. So far, calendar year 2012 looks on track to be nearly back to the long-run average homeownership rate.

“Underwater” Homes

In October, underwater homes were down to 38.3% of all homes with residential mortgages in Florida, improved from over 50%.



Underwater borrowers accounted for a large portion of HARP refinances in a number of states. In Nevada, Arizona and Florida, underwater borrowers represented 67 percent or more of the HARP volume. Fannie Mae and Freddie Mac completed 790,618 refinances through HARP from January 2012 to October 2012 — 82,589 were in Florida or 49.5% of all refinances in Florida during that period.

HARP Refinancing...January 2012 through October 2012

1. California (115,252 or 14.6% of all HARP refinances)
2. Florida (82,589 or 10.4% of all HARP refinances)
3. Michigan (61,187 or 7.7% of all HARP refinances)

Upstream from Foreclosure...Better

- **“Exotic” financing practices during the boom.**
 - In 2006, almost 47% of all mortgages in the state were considered to be innovative (interest only and pay option adjustable rate mortgages). A significant number of these have worked out of the system.
- **Still relatively high unemployment—and—high long-term unemployment**
 - Florida’s December unemployment rate of 8.0% was higher than the nation as a whole (7.8%), but down from the highest level in the Great Recession of 11.4% in 2010. In 2012, 50.9% of all FL unemployed were at 27 weeks or more.
- **Underwater Homes (owe more than the home is worth)**
 - In October, underwater homes were down to 38.3% of all residential mortgages in Florida. Hendry County had the highest percentage at 64.2%, followed by Glades County at 56.3%. This data has improved over the past year, but still includes about 750,000 homes.
- **Declining Property Values from Peak**
 - 2012 school taxable value registered a slight decline (-0.88%), but 2013 taxable value is expected to turn positive (+0.75%).
 - Florida’s December median sales price for existing homes was down 40.3% from its peak, but better than the 52.7% seen February 2011.

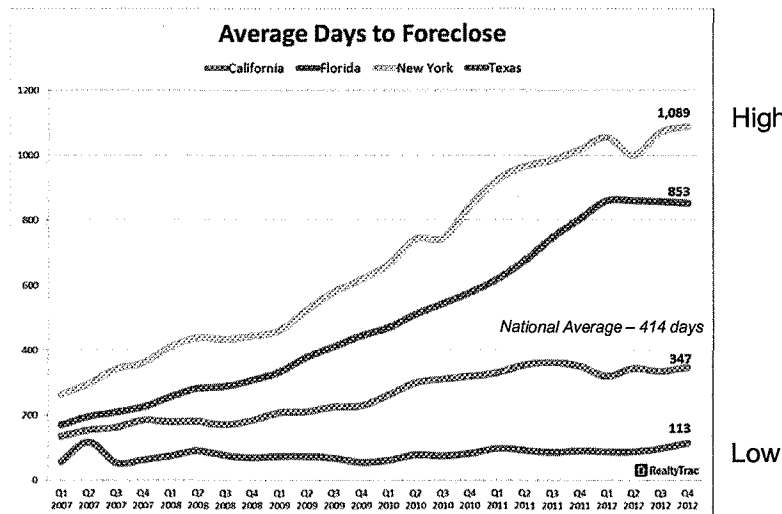
Foreclosure Process Itself is a Factor

- There are 20 states that primarily practice judicial foreclosure --- Florida is one of them.
- The judicial foreclosure process typically begins after a period of delinquency that results in an alleged default, with the lender filing a pending complaint and a Lis Pendens (notice of intent to begin the foreclosure process in court) with the Clerk of the Court.
- Relative to a non-judicial process:
 - Judicial process takes longer--- can be more than twice as long.
 - Judicial process was affected to a greater degree by "Robo-Signing" scandal. In this regard, the foreclosure pipeline in judicial states is still at elevated levels as the backlog continues to be worked off.
 - Seven of the top ten states for total non-current are judicial states.



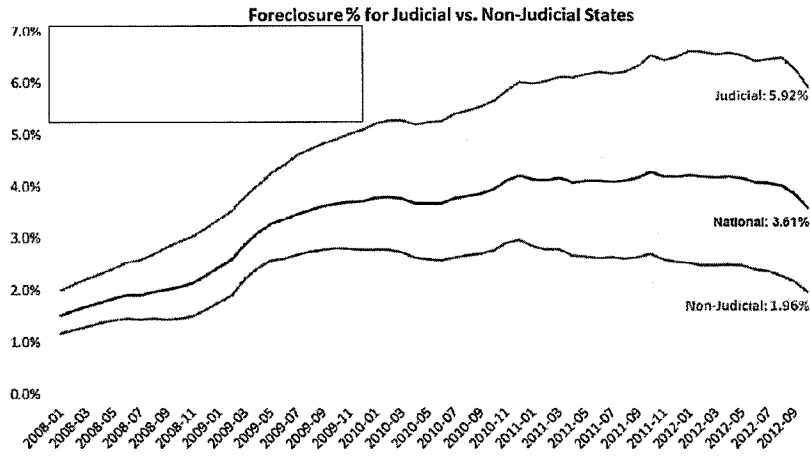
Days to Foreclose →

- Foreclosure Process (once begun)**
- 853 Days – 2.4 yrs – in Florida (3rd Longest Period in Nation in 2012:Q4)
 - At the beginning of 2007, Florida was at 169 days or less than 6 months.



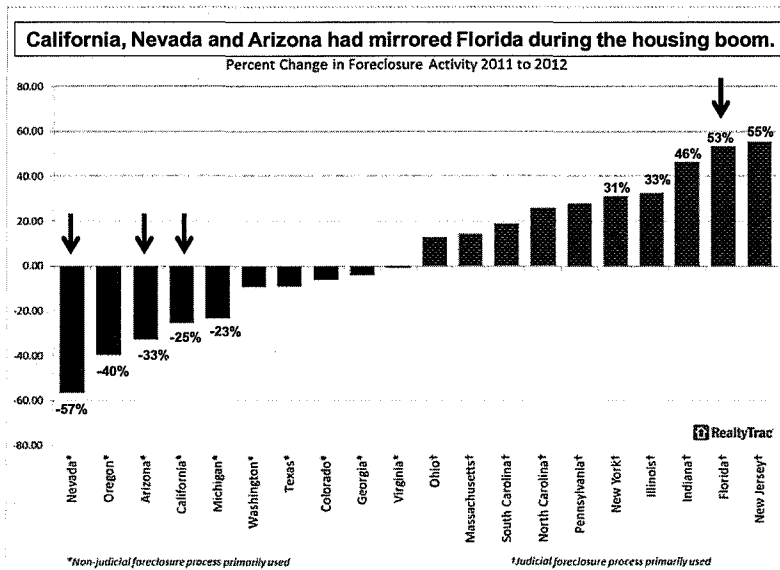
Data from RealtyTrac

Percent of Foreclosures-In-Process Larger in Judicial States



Data from LPS

Activity Still Increasing in Judicial States



Data from RealtyTrac

Foreclosures & Shadow Inventory

State	7.1%	3.5%	10.6%	-11.6%	State	7.1%	3.5%	10.6%	-11.6%	State	7.1%	3.5%	10.6%	-11.6%
National	7.1%	3.5%	10.6%	-11.6%	National	7.1%	3.5%	10.6%	-11.6%	National	7.1%	3.5%	10.6%	-11.6%
FL	7.9%	11.8%	19.7%	-13.2%	HI	5.3%	5.9%	11.2%	-3.9%	NH	6.5%	1.6%	8.1%	-9.0%
NJ	8.7%	8.1%	16.8%	7.1%	AL	9.7%	1.5%	11.1%	-6.2%	KY	6.3%	1.7%	8.0%	-10.5%
MS	13.6%	3.1%	16.7%	-7.3%	SC	7.4%	3.7%	11.1%	-12.4%	CA	6.0%	1.9%	7.9%	-24.8%
NY	9.8%	5.5%	15.1%	-25.0%	TN	9.1%	1.5%	10.6%	-12.5%	UT	6.1%	1.6%	7.7%	-13.3%
RI	7.7%	6.1%	11.8%	3.9%	WV	8.7%	1.7%	10.4%	-9.2%	IA	5.1%	2.6%	7.7%	-8.4%
IL	9.0%	2.8%	11.8%	-1.7%	NC	7.6%	2.4%	10.0%	-12.2%	OR	4.6%	3.1%	7.6%	-8.5%
MD	7.0%	5.7%	11.7%	-12.7%	MA	7.5%	2.4%	9.9%	-4.4%	AZ	5.7%	2.7%	7.5%	-30.8%
LA	8.7%	4.0%	20.7%	-1.5%	OK	6.7%	3.1%	9.9%	-4.8%	ID	4.6%	2.6%	7.2%	-12.0%
CT	9.8%	2.8%	12.0%	-6.7%	NM	5.7%	3.0%	9.3%	-5.9%	VA	5.0%	1.3%	6.9%	-11.0%
ME	7.5%	5.0%	12.5%	0.7%	KY	6.6%	6.3%	6.2%	6.2%	MT	18.1%	18.1%	14.3%	-14.3%
AR	7.0%	5.4%	12.5%	-1.7%	WI	6.3%	6.2%	5.2%	7.2%	ND	17.9%	17.9%	13.2%	-13.2%
AK	9.6%	2.2%	11.8%	2.0%	VA	6.2%	5.2%	7.2%	6.4%	WY	9.3%	9.3%	8.3%	-8.3%
IN	8.1%	3.6%	11.7%	-10.8%	MA	6.2%	5.2%	7.2%	6.4%	MO	7.1%	7.1%	19.2%	-19.2%
GA	9.7%	2.0%	11.7%	-14.6%	MI	7.2%	6.4%	7.0%	7.1%					
OH	7.8%	3.8%	11.5%	-11.1%	DC	6.4%	7.0%	7.1%						
PA	7.7%	3.6%	11.3%	-1.8%	TX	7.0%	7.1%							
DE	8.2%	3.0%	11.3%	-1.4%	MO	7.1%								

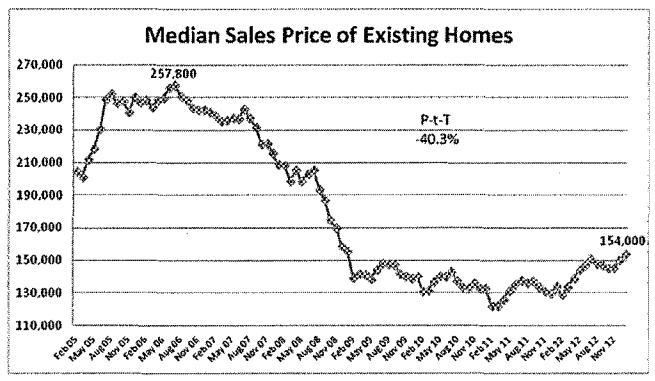
* Indicates Judicial State
LPS Date: December Mortgage Monitor

State	7.1%	3.5%	10.6%
National	7.1%	3.5%	10.6%
FL	7.9%	11.8%	19.7%

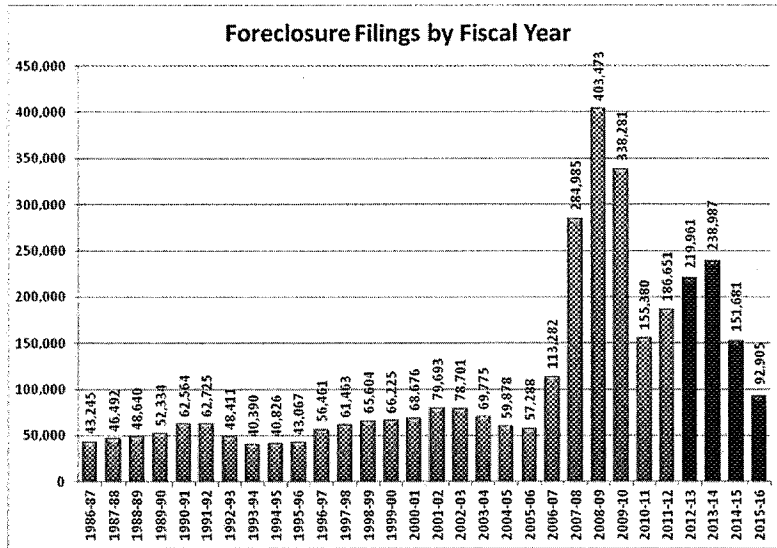
"Optimists point to declining home inventories in relation to sales, but they are looking at an illusion. Those supposed inventories do not include about 5m housing units with delinquent mortgages or those in foreclosure, which will soon be added to the pile. Nor do they include approximately 3m housing units that stand vacant – foreclosed upon but not yet listed for sale, or vacant homes that owners have pulled off the market because they can't get a decent price for them."
Financial Times

Effect on Market...

- All else being equal, foreclosures initially increase the supply of homes for sale and depress prices. After a period of time, the low prices attract buyers. As the inventory reduces, prices rise. However, the entire process can take years.

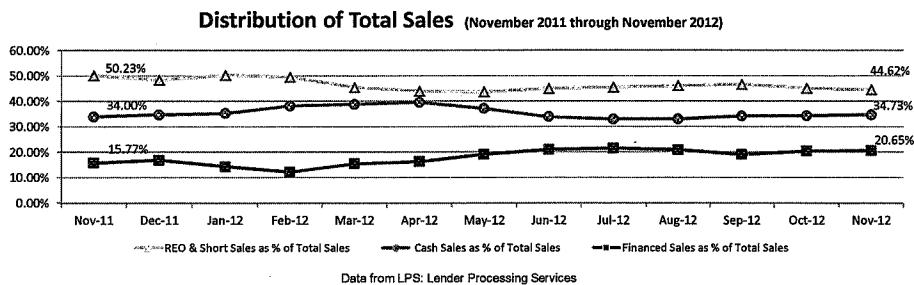


REC Foreclosure Forecast



Sales Mix Points to Lower Prices

REO price running 44% lower than normal price; short sale price running 36% below



- Financed Sales—and to a lesser extent Cash Sales—have been growing as percentages of all sales, but the percentage for REO & Short Sales has been declining.
- While short sales have been increasing in some states, that is not yet the case in Florida. There were 6,075 short sales in November 2011, and only 4,900 in November 2012.
- To the extent short sales increase, the foreclosure pipeline will be reduced.

Credit Conditions Remain Tight

Question to Senior Loan Officers:

Over the past three months, how have your bank's credit standards for approving applications from individuals for **prime residential mortgage loans** to purchase homes changed?

	All Respondents									
	Oct '12 %	July '12 %	Apr '12 %	Jan '12 %	Oct '11 %	July '11 %	Apr '11 %	Jan '11 %	Oct '10 %	
Tightened considerably	0.0%	1.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Tightened somewhat	3.1%	1.6	5.6	0.0	4.2	5.7	3.8	3.7	13.0	
Remained basically unchanged	92.2	93.4	90.7	94.3	91.7	86.8	92.5	94.4	83.3	
Eased somewhat	4.7%	3.3	3.7	5.7	4.2	7.5	2.0	1.9	3.7	
Eased considerably	0.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	

July 2012 Senior Loan Officer Opinion Survey on Bank Lending Practices (Federal Reserve Board)

Banks reported that they were less likely than in 2006, to varying degrees, to originate mortgages to any borrowers apart from those with the strongest credit profiles. Downpayments of 20% also a strong requirement.

Upside Risk for Construction

- The “shadow inventory” of homes that are in foreclosure or carry delinquent or defaulted mortgages may contain a significant number of “ghost” homes that are distressed beyond realistic use, in that they have not been physically maintained or are located in distressed pockets that will not come back in a reasonable timeframe. This means that the supply has become two-tiered – viable homes and seriously distressed homes.
- To the extent that the number of viable homes is limited, new construction may come back quicker than expected.

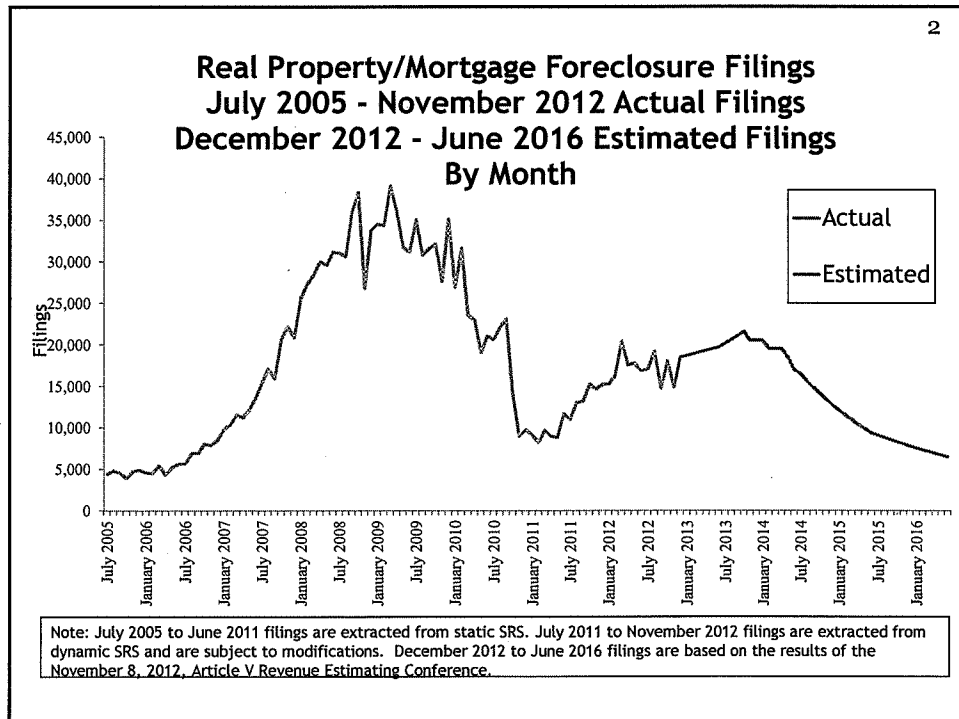


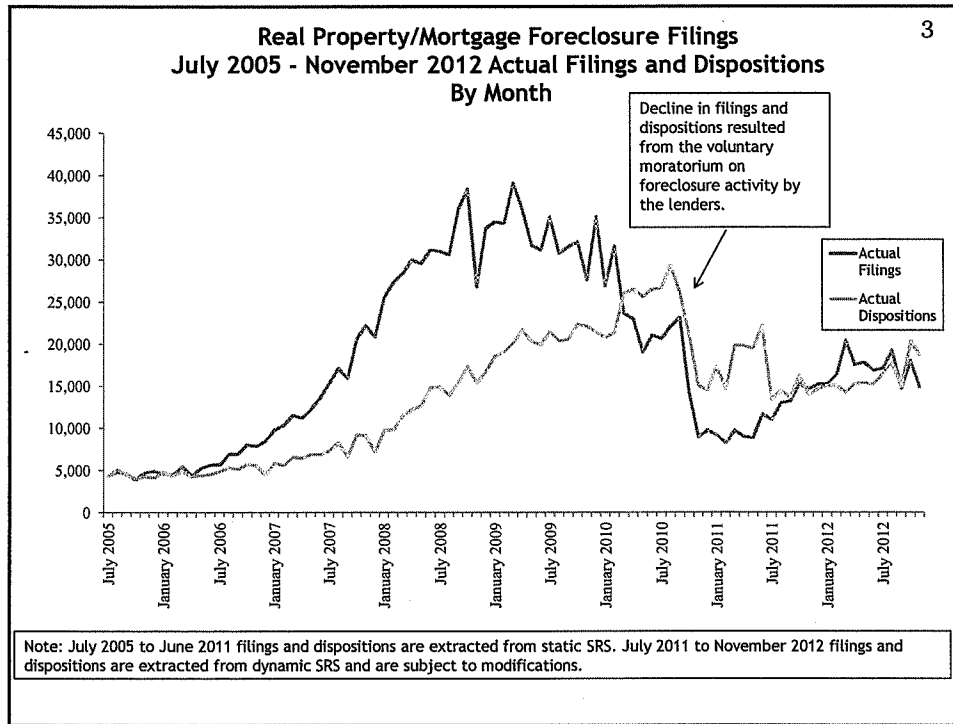
Foreclosures: Court Activities

Robert Roundtree, Chief Judge, 8th Circuit
 Lisa Goodner, State Courts Administrator



Presentation for the House Civil Justice Subcommittee January 24, 2013





FLORIDA STATE COURTS

FY 2012-13 Outlook: Reducing Pending Cases

Pending July 1, 2012	377,707
Pending November 30, 2012	373,375

Average Monthly Dispositions FY 2011-12: 14,360

Average Monthly Dispositions FY 2012-13: 17,662

Increase in Output: 23%

FLORIDA STATE COURTS

Recent Developments Affecting Pending Cases

The U.S. Consumer Financial Protection Bureau announced new rules for mortgage servicers on January 17, 2013, restricting what is known as dual-tracking, in which servicers simultaneously pursue a loan modification and the foreclosure process

- ✓ \$25 Billion National Foreclosure Settlement - March 2012
- ✓ \$8.5 Billion Mortgage Servicers Agreement - January 2013

FLORIDA STATE COURTS

Legislative Support

- \$6 Million in FY 2010-11 GAA for Foreclosure and Economic Recovery Initiative
- \$4 Million in FY 2012-13 GAA for Foreclosure Backlog Reduction Initiative
 - Being used primarily for senior judges and case managers

FLORIDA STATE COURTS

Legislative Support


Approximately \$5 Million from National Mortgage Settlement:

- \$1.3 million for senior judges and case managers
- \$3.7 million for technology

FLORIDA STATE COURTS


FY 2013-14 Action Plan

1. Develop additional funding proposals to further reduce the backlog, for legislative consideration
2. Identify current and potential barriers to case resolution and develop strategies to address those barriers
3. Expand case management practices that are working most effectively



FLORIDA STATE COURTS

- “Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible....” Rule 2.545(a).
- Courts must always ensure that the rights of parties are protected and the integrity of the process is maintained.



FLORIDA STATE COURTS

QUESTIONS?

THE NATIONAL MORTGAGE SERVICING SETTLEMENT

FLORIDA ATTORNEY GENERAL'S OFFICE



1

\$20 Billion in National Consumer Relief

- **\$10 Billion in First and Second Lien principal reductions**
- **\$3 Billion in refinancing for underwater homeowners**
- **\$7 Billion in other consumer relief for:**
 - **Enhanced borrower transition funds paid by servicer for short-sales / deed-in-lieu transactions (>\$1500)**
 - **Servicer payments to unrelated second lien holders for release of lien**
 - **Extended forbearance for unemployed borrowers**
 - **Deficiency waivers**
 - **Anti-Blight activities**

2

Non-Monetary Relief

- **Enhanced Servicing Standards**
304 specific standards aimed at protecting borrowers, including:
 - Single point of contact;
 - Adequate staffing levels and competency;
 - Improved communications with borrower;
 - Appropriate standards for executing foreclosure and bankruptcy documents;
 - Ends many dual-track foreclosures;
 - Loss mitigation program;
 - Servicemember protection;
 - Anti-Blight policies; and
 - Tenant rights.

3

The Settlement also Provides \$5 Billion in Direct Cash Payments Nationally

- **\$1.5 Billion for Borrower Payments for homeowners foreclosed upon between 2008 and 2011**
- **Estimated to be between \$1,500 - \$2,000 per person actual payment depends on claims made.**
- **\$2.5 Billion in Direct Payments to the States**
- **\$1 Billion for the Federal Government:**
 - **HUD, Department of Justice, Agriculture, Veterans Affairs**

4

Eligibility Criteria for Direct Cash Payments to Borrowers

- Loan went to foreclosure sale between January 1, 2008 and December 31, 2011;
- Loan was serviced by one of big five bank servicers;
- Borrower made at least three payments;
- Property was owner-occupied at time of origination;
- Loan secured by one-to-four unit residential property; and
- Unpaid principal of first mortgage was no greater than GSE conforming loan limits.

5

\$2.5 Billion in State Cash Payments

Top Ten States

• California	\$410,576,996
• FLORIDA	\$334,073,974
• Texas	\$134,628,489
• New York	\$107,642,490
• Illinois	\$105,806,405
• Georgia	\$ 99,365,105
• Arizona	\$ 97,784,204
• Michigan	\$ 97,209,465
• Ohio	\$ 92,783,033
• <u>New Jersey</u>	<u>\$ 72,110,727</u>
	\$1,551,985,848

6

SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

I. Higher standards for pleadings and affidavits.

- Factual assertions to be accurate, complete and supported by evidence; and
- Affidavits based on personal knowledge; and
- Affiants shall sign in own hand; and
- Servicer to maintain records of all notarizations of document executed by each notary.

II. Servicer to provide information/notice prior to foreclosure.

- Servicer shall ensure access to loss mitigation status or changes in status to foreclosure attorneys and mediators; and

7

SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

- Servicer shall provide account statement, ownership statement, loss mitigation statement and upon request payment history; and
- Servicer shall notify potentially eligible borrowers of available loss mitigation options prior to referring any loan to a foreclosure attorney; and
- After referral to foreclosure attorney, servicer shall provide post referral letter that explains alternatives to foreclosure and how borrower can request alternatives through loan modification application.

8

SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

III. Restrictions on foreclosure during loan modification process (dual tracking).

- No referral to foreclosure while loan modification application pending, if received within 120th day of delinquency, or is missing only hardship documentation which is received by 130th day;
- Upon receipt of timely completed application, servicer shall offer/deny within 30 days;
- If borrower accepts within 14 days, no referral to foreclosure unless untimely receipt of first trial payment or breach of trial plan;

9

SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

- If loan modification denied, servicer shall not proceed to foreclosure sale until expiration of 30 day appeal; if appeal, no sale until denial, or grant, if granted/mod. offered then 14 days after offer if not accepted; if appeal granted, offer accepted, then no sale until borrower fails to make timely first trial payment or breaches trial plan.

IV. Loan modification during pending foreclosure.

- A. If servicer receives completed loan modification within 30 days post referral to foreclosure, then servicer shall not move for foreclosure judgment or sale, while application under review; and

10

SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

- If servicer offers modification, no motion for judgment or sale;
- If borrower accepts, then no motion for judgment or sale, until untimely first trial payment or breach of trial plan;
- If modification denied, no motion for sale until after disposition of appeal;
- If servicer grants appeal, offers modification, no motion for sale until borrower declines offer, makes untimely first trial payment, or breaches trial plan.

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SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

- B. If servicer receives completed loan modification more than 30 days post referral to foreclosure, but more than 37 days prior to foreclosure sale, servicer shall not move for foreclosure judgment or sale, while application under review; and If servicer offers modification, no sale until 14 days after offer or borrower declines offer;
- If borrower accepts modification, then no sale, until untimely first trial payment or breach of trial plan;
 - If modification denied, and more than 90 days remain before sale, no sale until after disposition of appeal;
 - If servicer grants appeal, offers modification, no motion for sale until borrower declines offer, makes untimely first trial payment, or breaches trial plan.

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SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

- C. If servicer receives completed loan modification more than 30 days post referral to foreclosure, but within 37-15 days prior to foreclosure sale, servicer shall conduct expedited review; and if servicer offers modification, no sale until 14 days after offer or borrower declines offer;
 - If borrower accepts modification, then no sale, until untimely first trial payment or breach of trial plan.
- D. If servicer receives completed loan modification more than 30 days post referral to foreclosure, and less than 15 days before sale, servicer shall notify borrower of decision before sale date, or notify borrower that it is unable to complete review by sale date; and

13

SUMMARY OF SETTLEMENT TERMS THAT MAY AFFECT FORECLOSURE LITIGATION IN FLORIDA

- and if servicer offers modification, no sale until 14 days after offer or borrower declines offer; and
- if borrower accepts modification, then no sale, until untimely first trial payment or breach of trial plan.
- E. Servicers shall not move for judgment or sale if:
 - Borrower is complying with trial modification plan; or
 - Short sale/deed in lieu has been approved by all parties and funds/financing has been provided to servicer.

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**SUMMARY OF SETTLEMENT TERMS THAT MAY
AFFECT FORECLOSURE LITIGATION IN FLORIDA**

V. Post foreclosure judgment, if sale has not occurred; servicer shall provide written notice to borrower prior to sale/eviction if servicer filed a faulty affidavit to support judgment or improperly notarized documents.