

1 A bill to be entitled

2
3 An act relating to judicial sale procedures; amending
4 s. 45.031, F.S.; providing for methods and manner of
5 publication including electronic notice; amending s.
6 50.011 F.S.; providing requirements for electronic
7 publications of sale under s. 45.031 F.S.; amending s.
8 50.041 F.S.; providing for proof of publication;
9 amending s. 50.051 F.S.; providing for proof of
10 publication; amending s. 702.035 F.S. to be consistent
11 with s. 50.011(2) as amended hereby to provide for
12 internet; providing for an effective date.
13

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

15
16 Section 1. Subsections (3), (4), (5), (6), (7), (8), (9)
17 and (10) of section 45.031 Florida Statutes are renumbered as
18 subsections (4), (5), (6), (7), (8), (9), (10) and (11),
19 respectively, subsection (2) of that section is amended and
20 renumbered as subsections (2) and (3), and subsection (4) of
21 that section, is amended to read:
22

23 (2) PUBLICATION OF SALE.— Notice of sale shall be
24 published:

25 a) once a week for 2 consecutive weeks in a newspaper of
26 general circulation, as defined in chapter 50, published in the
27 county where the sale is to be held once a week for 2
28 consecutive weeks, ~~The the~~ second publication shall be at least
29 5 days before the sale; or,

30 b) on the clerk of the court's internet website
31 accessible without charge by a clear and conspicuous hyperlink
32 from the website's home page for at least fourteen days before
33 the sale; or,

34 c) on an internet website accessible without charge by a
35 clear and conspicuous hyperlink from the clerk of court's
36 website's home page for at least fourteen days before the sale.

37 (3) NOTICE OF SALE. - ~~The notice~~ Notice of Sale shall
38 contain:

39 (a) A legal description of the property to be sold, and
40 the property's street address, if any, though any failure to
41 include the correct street address shall not cause the Notice of
42 Sale to be ineffectual.

43 (b) A statement that in the event of any conflict between
44 the legal description of the property to be sold and the street
45 address, the legal description shall control.

46 (c) The time and place of sale.

(d) A statement that the sale will be made pursuant to the order or final judgment.

(e) The caption of the action.

(f) The name of the clerk making the sale.

(g) A statement of the name of the newspaper, or the home page address of the internet website, in or on which the notice is being published.

(h) ~~(f)~~ A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim within 60 days after the sale.

The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

(5)~~(4)~~ CERTIFICATION OF SALE.--After a sale of the property the clerk shall promptly file a certificate of sale and serve a copy of it on each party in substantially the following form:

(Caption of Action)

CERTIFICATE OF SALE

The Undersigned clerk of the court certifies that notice of public sale of the property described in the order or final judgment was published (a) on the clerk of the court's internet website, (b) on an alternative internet website accessible by hyperlink from the clerk of the court's internet website home page, or (c) in _____, a newspaper circulated in _____ County, Florida, in the manner shown by the proof of publication attached, and on _____, (year), the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property in the amount of \$\$ _____ was submitted by _____, to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order or final judgment or law. WITNESS my hand and the seal of this court on _____, (year).

(Clerk)

By (Deputy Clerk)

Section 2. Section 50.011 Florida Statutes, is amended as follows:

50.011 Where and in what language legal notices to be published.—

(1) Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

(2) Electronic publication of Notice of Sale.— Subsection 50.011(1) does not apply to any electronic publication of a Notice of Sale authorized by s. 45.031(2), if the electronic publication is on an internet website having at least 25% of its words in the English language, and the website shall be available for viewing by the general public without registration processes of any sort. The Proof of Publication affidavit shall contain in its heading the common name and the Uniform Resource Locator of the internet website where posting occurred; shall contain a copy of the Notice of Sale; and shall include the dates and times on which posting commenced and terminated.

Section 3. Subsection (1) of Section 50.041, Florida Statutes, is amended as follows:

(1) All affidavits of clerks of courts, internet website providers, or publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

Section 4. Section 50.051, Florida Statutes, is amended to read as follows:

50.051. Proof of publication; form of uniform affidavit

____ The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF NEWSPAPER OR INTERNET WEBSITE

Published (Weekly or Daily)

(Town or City) (County) FLORIDA

STATE OF FLORIDA

COUNTY OF _____:

Before the undersigned authority personally appeared _____, who on oath says that he or she is (a) _____ of the clerk of court for _____ County, (b) _____ of the _____, an internet website accessible by hyperlink from the clerk of the court's internet website home page, or (c) _____ of the _____, a _____ newspaper published at _____ in _____ County, Florida; that the attached copy of advertisement, being a _____ in the matter of _____ in the _____ Court, was published on the clerk of the court's internet website, or on an internet website accessible by hyperlink from the clerk of the court's internet website home page from _____ through _____, or in said newspaper in the issues of _____.

(If by newspaper):

Affiant further says that the said _____ is a newspaper published at _____, in said _____ County, Florida, and that the said newspaper has heretofore been continuously published in said _____ County, Florida, each _____ and has been entered as periodicals matter at the post office in _____, in said _____ County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this _____ day of _____, (year), by _____, who is personally known to me or who has produced (type of identification) as identification.

187 Section 5. Section 702.035, Florida Statutes, is amended to
188 read as follows:

189 702.035 Legal notice concerning foreclosure proceedings. -

190 (1) Whenever a legal advertisement, publication, or notice
191 relating to a foreclosure proceeding is required to be placed in
192 a newspaper or posted on an internet website, it is the
193 responsibility of the petitioner or petitioner's attorney to
194 place such advertisement, publication, or notice. For counties
195 with more than 1 million total population as reflected in the
196 2000 Official Decennial Census of the United States Census
197 Bureau as shown on the official website of the United States
198 Census Bureau, any notice of publication required by this
199 section shall be deemed to have been published in accordance
200 with the law if the notice is published in a newspaper that has
201 been entered as a periodical matter at a post office in the
202 county in which the newspaper is published, is published a
203 minimum of 5 days a week, exclusive of legal holidays, and has
204 been in existence and published a minimum of 5 days a week,
205 exclusive of legal holidays, for 1 year or is a direct successor
206 to a newspaper that has been in existence for 1 year that has
207 been published a minimum of 5 days a week, exclusive of legal
208 holidays.

209 (2) If the advertisement, publication or notice is
210 electronically published, it shall be deemed to have been
211 published in accordance with the law if the requirements of s.
212 50.011(2) have been met. The advertisement, publication, or
213 notice shall be placed directly by the attorney for the
214 petitioner, by the petitioner if acting pro se, or by the clerk
215 of the court.

216 (3) Only the actual costs charged by the newspaper or by
217 the host of the internet website for the advertisement,
218 publication or notice may be charged as costs in the action.

219 Section 6. This act shall take effect July 1, 2011.