

Committee Substitute for
Committee Substitute for Senate Bill No. 370

An act relating to procedures for the satisfaction of debts; amending s. 55.141, F.S.; revising provisions relating to satisfaction of judgments and decrees; eliminating the authority of judges to act under these provisions when there is no clerk of court; revising requirements of the clerk when accepting payment for satisfaction of a judgment and executing and recording a satisfaction of judgment; providing a sample form to be used by a clerk when recording a satisfaction of judgment; revising provisions relating to notification of satisfaction of judgment to a judgment holder; amending s. 55.202, F.S.; revising procedures for acquiring a judgment lien; authorizing the court to file a judgment lien certificate before a judgment becomes final under certain circumstances; providing that an improperly filed certificate is of no effect; amending s. 55.204, F.S.; revising provisions relating to the continuation of judgment liens; revising provisions requiring the Department of State to maintain certain files and information; amending s. 55.205, F.S.; deleting a provision authorizing certain creditors to bring certain actions against the property of a debtor; amending ss. 55.602, 55.603, 55.604, 55.605, and 55.606, F.S.; revising provisions relating to foreign judgments to apply only to out-of-country foreign judgments; amending s. 56.21, F.S.; revising requirements for notices of a levy and execution sale; amending s. 56.27, F.S.; clarifying provisions relating to payment of money received under execution; amending s. 56.29, F.S.; revising requirements regarding supplementary proceedings for unsatisfied judgments; amending s. 77.03, F.S.; deleting the provision that a garnishing creditor must believe that execution would be unavailing; amending s. 77.04, F.S.; specifying a time period for a garnishee to serve an answer to a writ; amending s. 77.041, F.S.; increasing the time period during which a garnishing creditor may object to the debtor's claim of exemption and request a hearing; amending s. 77.07, F.S.; providing for automatic dissolution of a writ and discharge of a garnishee of liability under certain circumstances; granting a plaintiff the right to extend a writ for a certain time period; providing procedures; amending s. 222.01, F.S.; revising provisions relating to the designation of homestead property by the owner prior to levy to include foreign judgments; amending s. 319.27, F.S.; correcting a cross-reference; amending s. 679.1021, F.S.; redefining the term "lien creditor"; amending s. 701.02, F.S.; providing that chapters 670-680 of the Uniform Commercial Code govern the attachment and perfection of a security interest in a mortgage upon real property and in a promissory note or other right to payment or performance secured by that mortgage; providing that the assignment of such a mortgage need not be recorded under s. 701.02, F.S., in order for a security interest in the mortgage to attach or be perfected under the Uniform Commercial Code; providing that a creditor or subsequent purchaser of real property or of any interest

therein may rely on a full or partial release, discharge, consent, joinder, subordination, satisfaction, or assignment of a mortgage upon the property which was made by the mortgagee of record, without regard to the filing of certain Uniform Commercial Code financing statements; providing that the filing of such a financing statement does not constitute notice for the purposes of s. 701.02, F.S.; defining the term “mortgagee of record”; providing effective dates.

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

Section 1. Section 55.141, Florida Statutes, is amended to read:

55.141 Satisfaction of judgments and decrees; duties of clerk ~~and judge.~~—

(1) All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

(2) Upon such payment, the clerk, ~~or the judge if there is no clerk,~~ shall ~~execute issue his or her receipt therefor and shall record in the official records a satisfaction of judgment, provided by the judgment holder,~~ upon payment of the recording charge prescribed in s. 28.24(12) ~~plus the necessary costs of mailing to the clerk or judge. Upon payment of the amount required in subsection (1) and the recording charge required by this subsection and execution and recordation of the satisfaction by the clerk, any lien created by the judgment is satisfied and discharged. The clerk or judge shall formally notify the owner of record of such judgment or decree, if such person and his or her address are known to the clerk or judge receiving such payment, and, upon request therefor, shall pay over to the person entitled, or to his or her order, the full amount of the payment so received, less his or her service charge for providing a receipt upon the court issuing a writ of execution on such judgment or decree, if any has been issued, and less his or her service charge for receiving into and paying out of the registry of the court such payment, together with the service charge of the clerk for receiving into and paying such money out of the registry of the court.~~

(3) The satisfaction of judgment executed by the clerk must be substantially in the following form:

Satisfaction of Judgment by Clerk

The undersigned Clerk acknowledges on this ... day of ...(month)...., ...(year)...., receipt from ...(identity of party making payment)... of \$...(total amount received)...., comprised of \$ face amount of the judgment; \$ interest accruing on the judgment through the date of payment; \$.... costs of issuance of any execution; and \$ for recording.

Pursuant to section 55.141, Florida Statutes, said sum is paid to satisfy the lien and to discharge that certain final judgment in favor of ...(name of judgment holder)... whose last known address, if known, is ...(address if shown on face of judgment or in recorded affidavit pursuant to section 55.10(1), Florida Statutes,... against ...(name of judgment debtor)... recorded in Official Records Volume/Book, page of the public records of County, Florida.

Upon the execution of this satisfaction, said judgment is satisfied and discharged.

If an address for the judgment holder was provided under section 55.10(1), Florida Statutes, I certify that a copy of this notice has been sent to the judgment holder at said address by certified mail with return receipt requested or by registered mail if the notice is to be sent outside the continental United States.

Clerk of Court

(4) If an address for the judgment holder was provided under s. 55.10(1), the clerk shall formally send a copy of the satisfaction to the judgment holder at that address by certified mail with return receipt or by registered mail if the notice is to be sent outside the continental United States. If an address is not provided under s. 55.10(1) or if delivery cannot be effected to such address, the clerk may, but is not obligated to, make reasonable attempts to locate the judgment holder. The discharge of the lien by the issuance of the satisfaction is not dependent upon the delivery of notice by the clerk.

(5) Upon application of the judgment holder, the clerk shall pay over to the judgment holder the full amount of the payment received, less the clerk's fees for issuing execution on such judgment, if any has been issued; less the clerk's fees for receiving into and paying out of the registry of the court such payment; less the clerk's fees for recording the satisfaction of judgment; and, if the clerk incurred expenses in locating the judgment holder, less the reasonable expenses so incurred.

~~(3) Full payment of judgments and decrees as in the preceding subsections of this section provided shall constitute full payment and satisfaction thereof and any lien created by such judgment or decree shall thereupon be satisfied and discharged.~~

Section 2. Subsections (2) and (3) of section 55.202, Florida Statutes, are amended to read:

55.202 Judgments, orders, and decrees; lien on personal property.—

(2) A judgment lien may be acquired on a judgment debtor's interest in all personal property in this state subject to execution under s. 56.061, other than fixtures, money, negotiable instruments, and mortgages.

(a) A judgment lien is acquired by filing a judgment lien certificate in accordance with s. 55.203 with the Department of State after the judgment has become final and if the time to move for rehearing has lapsed, no motion for rehearing is pending, and no stay of the judgment or its enforcement is then in effect. A court may authorize, for cause shown, the filing of a judgment lien certificate before a judgment has become final when the court has authorized the issuance of a writ of execution in the same matter. A judgment lien certificate not filed in compliance with this subsection is permanently void and of no effect.

(b) For any lien, warrant, assessment, or judgment collected by the Department of Revenue, a judgment lien may be acquired by filing the judgment lien certificate information or warrant with the Department of State in accordance with subsection (5).

(c) Except as provided in s. 55.208, the effective date of a judgment lien is the date, including the time of day, of filing. Although no lien attaches to property, and a creditor does not become a lien creditor as to liens under chapter 679, until the debtor acquires an interest in the property, priority among competing judgment liens is determined in order of filing date and time.

(d) Except as provided in s. 55.204(3), a judgment creditor may file only one effective judgment lien certificate based upon a particular judgment.

(3) Except as otherwise provided in s. 55.208, the priority of a judgment lien acquired in accordance with this section or s. 55.204(3) is established at the date and time the judgment lien certificate is filed.

Section 3. Subsections (4) and (6) of section 55.204, Florida Statutes, are amended to read:

55.204 Duration and continuation of judgment lien; destruction of records.—

(4) A judgment lien continues only as to itemized property for an additional 90 days after lapse of the lien. Such judgment lien will continue only if:

(a) The property had been itemized and its location described with sufficient particularity in the instructions for levy to permit the sheriff to act;

(b) The instructions for the levy had been delivered to the sheriff prior to the date of lapse of the lien ~~to permit the sheriff to act;~~ and

(c) The property was located in the county in which the sheriff has jurisdiction at the time of delivery of the instruction for levy. Subsequent removal of the property does not defeat the lien. A court may order continuation of the lien beyond the 90-day period on a showing that extraordinary circumstances have prevented levy.

(6) If no second judgment lien is filed, the Department of State shall maintain each judgment lien file and all information contained therein for

a minimum of 1 year after the judgment lien lapses in accordance with this section. If a second judgment lien is filed, the department shall maintain both files and all information contained in such files for a minimum of 1 year after the second judgment lien lapses.

Section 4. Subsection (1) of section 55.205, Florida Statutes, is amended to read:

55.205 Effect of judgment lien.—

(1) ~~A valid judgment lien gives the judgment creditor the right to proceed against the property of the debtor through writ of execution, garnishment, or other judicial process.~~ A judgment creditor who has not acquired a judgment lien as provided in s. 55.202 or whose lien has lapsed may nevertheless proceed against the judgment debtor's property through any appropriate ~~other~~ judicial process. Such judgment creditor proceeding by writ of execution acquires a lien as of the time of levy and only on the property levied upon. Except as provided in s. 55.208, such judgment creditor takes subject to the claims and interest of priority judgment creditors.

Section 5. Subsection (2) of section 55.602, Florida Statutes, is amended to read:

55.602 Definitions.—As used in this act, the term:

(2) “Out-of-country foreign judgment” means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty.

Section 6. Section 55.603, Florida Statutes, is amended to read:

55.603 Applicability.—This act applies to any out-of-country foreign judgment that is final and conclusive and enforceable where rendered, even though an appeal therefrom is pending or is subject to appeal.

Section 7. Section 55.604, Florida Statutes, is amended to read:

55.604 Recognition and enforcement.—Except as provided in s. 55.605, an out-of-country a foreign judgment meeting the requirements of s. 55.603 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. Procedures for recognition and enforceability of an out-of-country a foreign judgment shall be as follows:

(1) The out-of-country foreign judgment shall be filed with the clerk of the court and recorded in the public records in the county or counties where enforcement is sought.

(a) At the time of the recording of an out-of-country a foreign judgment, the judgment creditor shall make and record with the clerk of the circuit court an affidavit setting forth the name, social security number, if known, and last known post-office address of the judgment debtor and of the judgment creditor.

(b) Promptly upon the recording of the out-of-country foreign judgment and the affidavit, the clerk shall mail notice of the recording of the out-of-country foreign judgment, by registered mail with return receipt requested, to the judgment debtor at the address given in the affidavit and shall make a note of the mailing in the docket. The notice shall include the name and address of the judgment creditor and of the judgment creditor's attorney, if any, in this state. In addition, the judgment creditor may mail a notice of the recording of the judgment to the judgment debtor and may record proof of mailing with the clerk. The failure of the clerk to mail notice of recording will not affect the enforcement proceedings if proof of mailing by the judgment creditor has been recorded.

(2) The judgment debtor shall have 30 days after service of the notice to file a notice of objection with the clerk of the court specifying the grounds for nonrecognition or nonenforceability under this act.

(3) Upon the application of any party, and after proper notice, the circuit court shall have jurisdiction to conduct a hearing, determine the issues, and enter an appropriate order granting or denying recognition in accordance with the terms of this act.

(4) If the judgment debtor fails to file a notice of objection within the required time, the clerk of the court shall record a certificate stating that no objection has been filed.

(5) Upon entry of an order recognizing the out-of-country foreign judgment, or upon recording of the clerk's certificate set forth above, the out-of-country foreign judgment shall be enforced in the same manner as the judgment of a court of this state.

(6) Once an order recognizing the out-of-country foreign judgment has been entered by a court of this state, the order and a copy of the judgment may be recorded in any other county of this state without further notice or proceedings, and shall be enforceable in the same manner as the judgment of a court of this state.

(7) A lien on real estate in any county shall be created only when there has been recorded in the official records of the county (a) a certified copy of the judgment, and (b) a copy of the clerk's certificate or the order recognizing the out-of-country foreign judgment. The priority of such lien will be established as of the time the latter of the two recordings has occurred. ~~Such lien may be partially released or satisfied by the person designated pursuant to paragraph (1).~~

(8) A judgment lien on personal property is acquired only when a judgment lien certificate is filed in accordance with s. 55.203 with the Department of State.

Section 8. Section 55.605, Florida Statutes, is amended to read:

55.605 Grounds for nonrecognition.—

(1) An out-of-country A foreign judgment is not conclusive if:

(a) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(b) The foreign court did not have personal jurisdiction over the defendant.

(c) The foreign court did not have jurisdiction over the subject matter.

(2) An out-of-country A foreign judgment need not be recognized if:

(a) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend.

(b) The judgment was obtained by fraud.

(c) The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state.

(d) The judgment conflicts with another final and conclusive order.

(e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.

(f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(g) The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state.

Section 9. Section 55.606, Florida Statutes, is amended to read:

55.606 Personal jurisdiction.—The ~~out-of-country~~ foreign judgment shall not be refused recognition for lack of personal jurisdiction if:

(1) The defendant was served personally in the foreign state;

(2) The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him or her;

(3) The defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(5) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action or a claim for relief arising out of business done by the defendant through that office in the foreign state; or

(6) The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action or claim for relief arising out of such operation.

Section 10. Effective October 1, 2005, section 56.21, Florida Statutes, is amended to read:

56.21 Execution sales; notice.—Notice of all sales under execution shall be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place. The time of such notice may be shortened in the discretion of the court from which the execution issued, upon affidavit that the property to be sold is subject to decay and will not sell for its full value if held until date of sale. On or before the date of the first publication or posting of the notice of sale, a copy of the notice of sale shall be furnished by certified mail to the attorney of record of the judgment debtor, or to the judgment debtor at the judgment debtor's last known address if the judgment debtor does not have an attorney of record. Such copy of the notice of sale shall be mailed even though a default judgment was entered. When levying upon personal property, a notice of such levy and execution sale and a copy of the affidavit required by s. 56.27(4) shall be sent by the sheriff made by the levying creditor to the attorneys attorney of record of all the judgment creditors, creditor or to all the judgment creditors who do not have an attorney of record, creditor who have has acquired a judgment lien as provided in s. 55.202 or s. 55.204(3), and whose liens have not lapsed at the time of levy, at the address listed in the judgment lien certificate, or, if amended, in any amendment to the judgment lien certificate, and to all secured creditors who have filed financing statements as provided in part V of chapter 679 s. 679.401 in the name of the judgment debtor reflecting a security interest in property of the kind to be sold at the execution sale at the address listed in the financing statement, or, if amended, in any amendment to the financing statement. Such notice shall be made in the same manner as notice is made to any judgment debtor under this section. When levying upon real property, notice of such levy and execution sale shall be made to the property owner of record in the same manner as notice is made to any judgment debtor pursuant to this section. When selling real or personal property, the sale date shall not be earlier than 30 days after the date of the first advertisement.

Section 11. Subsections (1), (2), and (4) of section 56.27, Florida Statutes, are amended to read:

56.27 Executions; payment of money collected.—

(1) All money received under executions shall be paid, in the order prescribed, to the following: the sheriff, for costs; the levying creditor in the amount of \$500 as liquidated expenses; if the levy is upon real property, the first priority lienholder under s. 55.10; and if the levy is upon personal property, and the first priority lienholder under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an affidavit required by subsection (4), or his or her attorney, in satisfaction of the judgment lien, provided that the judgment lien has not lapsed at the time of the levy. The receipt of the attorney shall be a release of the officer paying the money to him or her. When the name

of more than one attorney appears in the court file, the money shall be paid to the attorney who originally commenced the action or who made the original defense unless the file shows that another attorney has been substituted.

(2) When property sold under execution brings more than the amount needed to satisfy the provisions of subsection (1), the surplus shall be paid in the order of priority to any judgment lienholders whose judgment liens have not lapsed. Priority of liens on personal property shall be based on the effective date of the judgment lien acquired under s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an affidavit required under subsection (4). If there is a surplus after all valid judgment liens and execution liens have been satisfied, the surplus must be paid to the defendant.

(4) ~~On or~~ Before the date of the first publication or posting of the notice of sale provided for under s. 56.21, the levying creditor shall deliver to the sheriff file an affidavit setting forth the following as to the judgment debtor:

(a) An attestation that the levying creditor has reviewed the database or judgment lien records established in accordance with ss. 55.201-55.209 and that the information contained in the affidavit based on that review is true and correct;

(b) The information required under s. 55.203(1) and (2) for each judgment lien certificate indexed under the name of the judgment debtor as to each judgment creditor; the file number assigned to the record of the original and, if any, the second judgment lien; and the date of filing for each judgment lien certificate under s. 55.202 or s. 55.204(3); and

(c) A statement that the levying creditor either does not have any other levy in process or, if another levy is in process, the levying creditor believes in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

Section 12. Subsection (1) of section 56.29, Florida Statutes, is amended to read:

56.29 Proceedings supplementary.—

(1) When any person or entity holds an unsatisfied judgment or judgment lien obtained under chapter 55 execution and has delivered a writ of execution to any sheriff, ~~the judgment holder or judgment lienholder plaintiff in execution~~ may file an affidavit so stating, identifying, if applicable, the issuing court, the case number, and the unsatisfied amount of the judgment or judgment lien, including accrued costs and interest, and stating that the execution is valid and outstanding, and thereupon the judgment holder or judgment lienholder is entitled to these proceedings supplementary to execution.

Section 13. Section 77.03, Florida Statutes, is amended to read:

77.03 Issuance of writ after judgment.—After judgment has been obtained against defendant but before the writ of garnishment is issued, the

plaintiff, the plaintiff's agent or attorney, shall file a motion (which shall not be verified or negative defendant's exemptions) stating the amount of the judgment ~~and that movant does not believe that defendant has in his or her possession visible property on which a levy can be made sufficient to satisfy the judgment.~~ The motion may be filed and the writ issued either before or after the return of execution.

Section 14. Section 77.04, Florida Statutes, is amended to read:

77.04 Writ; form.—The writ shall require the garnishee to serve an answer to it on plaintiff within 20 days after service stating whether he or she is indebted to defendant at the time of the answer, or was indebted at the time of service of the writ, plus sufficient time not to exceed 1 business day for the garnishee to act expeditiously on the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff's motion.

Section 15. Subsections (1) and (3) of section 77.041, Florida Statutes, are amended to read:

77.041 Notice to individual defendant for claim of exemption from garnishment; procedure for hearing.—

(1) Upon application for a writ of garnishment by a plaintiff, if the defendant is an individual, the clerk of the court shall attach to the writ the following "Notice to Defendant":

NOTICE TO DEFENDANT OF RIGHT AGAINST
GARNISHMENT OF WAGES, MONEY,
AND OTHER PROPERTY

The Writ of Garnishment delivered to you with this Notice means that wages, money, and other property belonging to you have been garnished to pay a court judgment against you. **HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.**

State and federal laws provide that certain wages, money, and property, even if deposited in a bank, savings and loan, or credit union, may not be taken to pay certain types of court judgments. Such wages, money, and property are exempt from garnishment. The major exemptions are listed below on the form for Claim of Exemption and Request for Hearing. This list does not include all possible exemptions. You should consult a lawyer for specific advice.

TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED, OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH BELOW AND

HAVE THE FORM NOTARIZED. YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF AND THE GARNISHEE AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT.

If you request a hearing, it will be held as soon as possible after your request is received by the court. The plaintiff must file any objection within ~~3~~ 2 business days if you hand delivered to the plaintiff a copy of the form for Claim of Exemption and Request for Hearing or, alternatively, 8 business ~~7~~ days if you mailed a copy of the form for claim and request to the plaintiff. If the plaintiff files an objection to your Claim of Exemption and Request for Hearing, the clerk will notify you and the other parties of the time and date of the hearing. You may attend the hearing with or without an attorney. If the plaintiff fails to file an objection, no hearing is required, the writ of garnishment will be dissolved and your wages, money, or property will be released.

YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM IN YOUR AREA.

CLAIM OF EXEMPTION AND REQUEST FOR HEARING

I claim exemptions from garnishment under the following categories as checked:

- 1. Head of family wages. (You must check a. or b. below.)
 - a. I provide more than one-half of the support for a child or other dependent and have net earnings of \$500 or less per week.
 - b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than \$500 per week, but have not agreed in writing to have my wages garnished.
- 2. Social Security benefits.
- 3. Supplemental Security Income benefits.
- 4. Public assistance (welfare).
- 5. Workers' Compensation.
- 6. Unemployment Compensation.
- 7. Veterans' benefits.
- 8. Retirement or profit-sharing benefits or pension money.
- 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.
- 10. Disability income benefits.

- 11. Prepaid College Trust Fund or Medical Savings Account.
- 12. Other exemptions as provided by law.
.....(explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

Address:
Telephone number:.....

The statements made in this request are true to the best of my knowledge and belief.

.....
Defendant's signature
Date.....

STATE OF FLORIDA
COUNTY OF

Sworn and subscribed to before me this day of ...(month and year)..., by ...(name of person making statement)...
Notary Public/Deputy Clerk
Personally KnownOR Produced Identification....
Type of Identification Produced.....

(3) Upon the filing by a defendant of a claim of exemption and request for hearing, a hearing will be held as soon as is practicable to determine the validity of the claimed exemptions. If the plaintiff does not file a sworn written statement that contests the defendant's claim of exemption within 3 ~~2~~ business days after hand delivering the claim and request or, alternatively, 8 ~~7~~ business days, if the claim and request were served by mail, no hearing is required and the clerk must automatically dissolve the writ and notify the parties of the dissolution by mail.

Section 16. Subsection (5) is added to section 77.07, Florida Statutes, to read:

77.07 Dissolution of writ.—

(5) If the plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ shall automatically be dissolved and the garnishee shall be discharged from further liability under the writ. The plaintiff has the right to extend the writ for an additional 6 months by serving the garnishee and the defendant a notice of extension and filing in the underlying proceeding a certification of such service.

Section 17. Subsections (2) and (4) of section 222.01, Florida Statutes, are amended to read:

222.01 Designation of homestead by owner before levy.—

(2) When a certified copy of a judgment has been filed in the public records of a county pursuant to chapter 55 s. 55-10, a person who is entitled to the benefit of the provisions of the State Constitution exempting real property as homestead and who has a contract to sell or a commitment from a lender for a mortgage on the homestead may file a notice of homestead in the public records of the county in which the homestead property is located in substantially the following form:

NOTICE OF HOMESTEAD

To: ...(Name and address of judgment creditor as shown on recorded judgment and name and address of any other person shown in the recorded judgment to receive a copy of the Notice of Homestead)....

You are notified that the undersigned claims as homestead exempt from levy and execution under Section 4, Article X of the State Constitution, the following described property:

...(Legal description)...

The undersigned certifies, under oath, that he or she has applied for and received the homestead tax exemption as to the above-described property, that is the tax identification parcel number of this property, and that the undersigned has resided on this property continuously and uninterruptedly from ...(date)... to the date of this Notice of Homestead. Further, the undersigned will either convey or mortgage the above-described property pursuant to the following:

...(Describe the contract of sale or loan commitment by date, names of parties, date of anticipated closing, and amount. The name, address, and telephone number of the person conducting the anticipated closing must be set forth.)...

The undersigned also certifies, under oath, that the judgment lien filed by you on ...(date)... and recorded in Official Records Book, Page, of the Public Records of County, Florida, does not constitute a valid lien on the described property.

YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU MUST FILE AN ACTION IN THE CIRCUIT COURT OF COUNTY, FLORIDA, FOR A DECLARATORY JUDGMENT TO DETERMINE THE CONSTITUTIONAL HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED. YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER OR LENDER, OR HIS OR HER SUCCESSORS AND ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE PROPERTY.

This day of, 2.....

.....
...(Signature of Owner)...

.....
...(Printed Name of Owner)...

.....
...(Owner's Address)...

Sworn to and subscribed before me by who is personally known to me or produced as identification, this day of, 2.....

.....
Notary Public

(4) A lien pursuant to ~~chapter 55 s. 55.10~~ of any lienor upon whom such notice is served, who fails to institute an action for a declaratory judgment to determine the constitutional homestead status of the property described in the notice of homestead or to file an action to foreclose the judgment lien, together with the filing of a lis pendens in the public records of the county in which the homestead is located, within 45 days after service of such notice shall be deemed as not attaching to the property by virtue of its status as homestead property as to the interest of any buyer or lender, or his or her successors or assigns, who takes under the contract of sale or loan commitment described above within 180 days after the filing in the public records of the notice of homestead. This subsection shall not act to prohibit a lien from attaching to the real property described in the notice of homestead at such time as the property loses its homestead status.

Section 18. Subsection (2) and paragraph (b) of subsection (3) of section 319.27, Florida Statutes, are amended to read:

319.27 Notice of lien on motor vehicles or mobile homes; notation on certificate; recording of lien.—

(2) No lien for purchase money or as security for a debt in the form of a security agreement, retain title contract, conditional bill of sale, chattel mortgage, or other similar instrument or any other nonpossessory lien, including a lien for child support, upon a motor vehicle or mobile home upon which a Florida certificate of title has been issued shall be enforceable in any of the courts of this state against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien has been filed in the department and such lien has been noted upon the certificate of title of the motor vehicle or mobile home. Such notice shall be effective as constructive notice when filed. ~~The No~~ interest of a statutory nonpossessory lienor; the interest of a nonpossessory execution, attachment, or equitable lienor; or the interest of a lien creditor as defined in s. ~~679.1021(1)(zz) 679.301(3)~~, if nonpossessory, shall not be enforceable against creditors or subsequent purchasers for a valuable consideration unless such interest becomes a possessory lien or is noted upon the certificate of title for the subject motor vehicle or mobile home prior to the occurrence of the subsequent transaction. Provided the provisions of this subsection relating to a nonpossessory statutory lienor; a nonpossessory execution,

attachment, or equitable lienor; or the interest of a lien creditor as defined in s. ~~679.1021(1)(zz)~~ ~~679.301(3)~~ shall not apply to liens validly perfected prior to October 1, 1988. The notice of lien shall provide the following information:

(a) The date of the lien if a security agreement, retain title contract, conditional bill of sale, chattel mortgage, or other similar instrument was executed prior to the filing of the notice of lien;

(b) The name and address of the registered owner;

(c) A description of the motor vehicle or mobile home, showing the make, type, and vehicle identification number; and

(d) The name and address of the lienholder.

(3)

(b) As applied to a determination of the respective rights of a secured party under this chapter and a lien creditor as defined by s. ~~679.1021(1)(zz)~~ ~~679.301(3)~~, or a nonpossessory statutory lienor, a security interest under this chapter shall be perfected upon the filing of the notice of lien with the department, the county tax collector, or their agents. Provided, however, the date of perfection of a security interest of such secured party shall be the same date as the execution of the security agreement or other similar instrument if the notice of lien is filed in accordance with this subsection within 15 days after the debtor receives possession of the motor vehicle or mobile home and executes such security agreement or other similar instrument. The date of filing of the notice of lien shall be the date of its receipt by the department central office in Tallahassee, if first filed there, or otherwise by the office of the county tax collector, or their agents.

Section 19. Paragraph (zz) of subsection (1) of section 679.1021, Florida Statutes, is amended to read:

679.1021 Definitions and index of definitions.—

(1) In this chapter, the term:

(zz) “Lien creditor” means:

1. A creditor that has acquired a lien on the property involved by attachment, levy, judgment lien certificate, or the like;

2. An assignee for benefit of creditors from the time of assignment;

3. A trustee in bankruptcy from the date of the filing of the petition; or

4. A receiver in equity from the time of appointment.

Section 20. Section 701.02, Florida Statutes, is amended to read:

701.02 Assignment not effectual against creditors unless recorded and indicated in title of document; applicability.—

(1) ~~An~~ ~~no~~ assignment of a mortgage upon real property or of any interest therein, ~~is not shall be~~ good or effectual in law or equity, against creditors or subsequent purchasers, for a valuable consideration, and without notice, unless the assignment is contained in a document ~~that which~~, in its title, indicates an assignment of mortgage and is recorded according to law.

(2) ~~This section also applies~~ ~~The provisions of this section shall also extend~~ to assignments of mortgages resulting from transfers of all or any part or parts of the debt, note or notes secured by mortgage, and none of same ~~is shall be~~ effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration without notice, unless a duly executed assignment be recorded according to law.

(3) Any assignment of a mortgage, duly executed and recorded according to law, purporting to assign the principal of the mortgage debt or the unpaid balance of such principal, shall, as against subsequent purchasers and creditors for value and without notice, be held and deemed to assign any and all accrued and unpaid interest secured by such mortgage, unless such interest ~~is shall be~~ specifically and affirmatively reserved in such an assignment by the assignor, and a ~~no~~ reservation of such interest or any part thereof ~~may not shall~~ be implied.

(4) Notwithstanding subsections (1), (2), and (3) governing the assignment of mortgages, chapters 670-680 of the Uniform Commercial Code of this state govern the attachment and perfection of a security interest in a mortgage upon real property and in a promissory note or other right to payment or performance secured by that mortgage. The assignment of such a mortgage need not be recorded under this section for purposes of attachment or perfection of a security interest in the mortgage under the Uniform Commercial Code.

(5) Notwithstanding subsection (4), a creditor or subsequent purchaser of real property or any interest therein, for valuable consideration and without notice, is entitled to rely on a full or partial release, discharge, consent, joinder, subordination, satisfaction, or assignment of a mortgage upon such property made by the mortgagee of record, without regard to the filing of any Uniform Commercial Code financing statement that purports to perfect a security interest in the mortgage or in a promissory note or other right to payment or performance secured by the mortgage, and the filing of any such financing statement does not constitute notice for the purposes of this section. For the purposes of this subsection, the term "mortgagee of record" means the person named as the mortgagee in the recorded mortgage or, if an assignment of the mortgage has been recorded in accordance with this section, the term "mortgagee of record" means the assignee named in the recorded assignment.

Section 21. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 17, 2005.

Filed in Office Secretary of State June 17, 2005.