

1 A bill to be entitled
 2 An act relating to website notice of foreclosure
 3 action; creating s. 50.015, F.S.; providing that a
 4 legal publication, advertisement, notice of sale, or
 5 notice relating to a foreclosure proceeding may be
 6 placed on a publicly accessible Internet website
 7 selected by the clerk of court in lieu of publication
 8 in any other form of media; providing criteria for the
 9 publicly accessible Internet website; providing for
 10 user access to the website; providing for access by
 11 clerks of court and chief judges; providing
 12 requirements for the website provider; providing
 13 posting requirements; authorizing the clerk of court
 14 to put out for bids a contract with a publicly
 15 accessible Internet website provider; providing for
 16 terms in the contract; providing definitions; amending
 17 s. 702.035, F.S.; providing for notice of foreclosure
 18 to be posted on a publicly accessible Internet
 19 website; providing an effective date.

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

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 23 Section 1. Section 50.015, Florida Statutes, is created to
 24 read:

25 50.015 Legal publication, advertisement, notice of sale,
 26 or notice relating to foreclosure proceeding; publicly
 27 accessible website.—

28 (1) A legal publication, advertisement, notice of sale as
29 provided in s. 45.031, and notice relating to a foreclosure
30 proceeding as provided in s. 702.035 may be placed on a publicly
31 accessible website pursuant to this section in lieu of
32 publication in any other form of media.

33 (2) The publicly accessible Internet website must:

34 (a) Be approved for legal publication, advertisement,
35 notice of sale, and notice relating to a foreclosure proceeding
36 by the Florida Clerks of Court Operations Corporation.

37 (b)1. Maintain a legal publication, advertisement, notice
38 of sale as provided in s. 45.031, or notice relating to a
39 foreclosure proceeding as provided in s. 702.035 for 90 days
40 following the first day of posting or for as long as provided in
41 paragraph (6) (b) or paragraph (6) (c).

42 2. Maintain a searchable archive of all legal
43 publications, advertisements, notices of sale, and notices
44 relating to foreclosure proceedings previously posted on the
45 publically accessible website as provided in subparagraph 1. for
46 10 years following the first day of posting.

47 (c) A link to the website must be displayed on the
48 homepage of the clerk of court in a conspicuous location with
49 the heading "Electronic Legal Publications and Legal Notices
50 Related to Foreclosures."

51 (d) Maintain a customer support line by the website
52 hosting company with respect to technical issues that may arise
53 with the website, with live electronic communication and
54 telephone support provided by the website provider between the

55 hours of 8 a.m. and 6 p.m., E.S.T., Monday through Friday,
56 excluding legal holidays.

57 (e) Post information other than the legal publication,
58 advertisement, notice of sale, or notice relating to a
59 foreclosure proceeding in English and Spanish.

60 (f) Post online tutorials for users.

61 (g) Be maintained on a data center that is compliant with
62 the Statement on Auditing Standards No. 70. The website provider
63 shall provide a certificate of compliance to the Florida Clerks
64 of Court Operations Corporation.

65 (3) A user may not be required to register with the
66 website and may not be charged for access to active or archived
67 postings of legal publications, advertisements, notices of sale,
68 or notices relating to foreclosure proceedings that are posted
69 as provided in subparagraphs (2) (b)1. and 2.

70 (4) (a) Each clerk of court and deputy clerk shall have 24-
71 hour access at no charge to all records relevant to the legal
72 publications, advertisements, notices of sale, and notices
73 relating to foreclosure proceedings in the county of that clerk
74 of court through a fully secure portal accessed by a distinct
75 user name and password.

76 (b) Each circuit judge, appellate judge, and their staff,
77 shall have access at no charge to all documents published or
78 maintained on the website.

79 (5) The website provider shall develop and maintain on
80 file, and provide to the clerk of court and the chief judge of
81 the judicial circuit, a disaster recovery plan for the website.

82 (6) (a) The website provider shall publish its affidavits
83 electronically in substantial conformity with ss. 50.041 and
84 50.051, and may use an electronic notary seal.

85 (b) Legal publications to effect constructive service of
86 process under chapter 49 shall be posted within 3 business days,
87 excluding court holidays, after issuance of a notice of action
88 by the clerk of court or judge and shall continue for at least
89 90 consecutive days.

90 (c) Advertisements or notices of sale as provided in s.
91 45.031, including notices relating to foreclosure proceedings as
92 provided in s. 702.035, shall be posted within 3 business days,
93 excluding court holidays, after the date for the foreclosure
94 sale is set, and shall continue for 10 days after the
95 foreclosure sale or for 90 consecutive days, whichever period is
96 longer. This paragraph does not affect the remaining provisions
97 in s. 45.031 except as provided herein.

98 (d) If the defendant refuses to accept or evades service
99 or if the agent serving process is unable to effect service,
100 legal publication or advertisement shall be posted on the
101 website beginning on the date that the affidavit of nonservice
102 is recorded and shall continue through the conclusion of the
103 action or for 90 consecutive days, whichever period is longer.

104 (7) The legal publication, advertisement, or notice of
105 sale as provided in s. 45.031, including the notice relating to
106 a foreclosure proceeding as provided in s. 702.035, on the
107 website must conform substantially with the requirements of s.
108 50.011, unless inconsistent with this section.

109 (8) Each clerk of the circuit court may contract with a
110 single publicly accessible Internet website provider for legal
111 publication, advertisement, or notice of sale as provided in s.
112 45.031, including notice relating to a foreclosure proceeding as
113 provided in s. 702.035. Each contract shall be for a one year
114 term, and shall provide:

115 (a) That title and ownership of all data is and shall
116 remain in the clerk of the circuit court.

117 (b) For the right of the clerk to inspect the physical
118 plant, books and records of the provider at any time without
119 notice.

120 (c) That the provider will operate in a physical location
121 within the state. However, this requirement shall not preclude
122 the provider from subcontracting with a provider for emergency
123 data backup services maintained in another state.

124 (d) For termination by the clerk without notice upon a
125 finding of material breach of the contract.

126 (e) That the provider is subject to the public records laws
127 of the state.

128 (f) That advertisements shall not exceed 20% of any
129 webpage, shall clearly be indicated as advertisements, shall
130 clearly indicate that such advertisements are not endorsed by
131 the clerk of the court, and that advertisements shall not place
132 a tracking cookie on the computer of a website visitor.

133 (9) The provider shall be chosen by competitive sealed
134 bids. The maximum bid shall be \$100 per advertisement. The
135 clerk shall, from all qualified bidders, determine the lowest
136 bid based on the fees per legal advertisement. The winning bid

137 shall be the lowest offered fee per advertisement. If the two
 138 lowest bidders have identical bids, the clerk shall select the
 139 most responsible bidder. Two or more clerks may conduct a joint
 140 procurement.

141 (10) For purposes of this section, the term:

142 (a) "Website hosting company" means the company that hosts
 143 the web server on which the website of the provider resides.

144 (b) "Website provider" means the company or individual
 145 contracted by the Secretary of State to provide the service of
 146 maintaining the website content.

147 Section 2. Section 702.035, Florida Statutes, is amended
 148 to read:

149 702.035 Legal notice concerning foreclosure proceedings.—
 150 Whenever a legal advertisement, publication, or notice relating
 151 to a foreclosure proceeding is required to be placed in a
 152 newspaper or posted on a publicly accessible Internet website as
 153 provided in s. 50.015, it is the responsibility of the
 154 petitioner or petitioner's attorney to place such advertisement,
 155 publication, or notice. Unless posted on a publicly accessible
 156 Internet website, for counties with more than 1 million total
 157 population as reflected in the 2000 Official Decennial Census of
 158 the United States Census Bureau as shown on the official website
 159 of the United States Census Bureau, any notice of publication
 160 required by this section shall be deemed to have been published
 161 in accordance with the law if the notice is published in a
 162 newspaper that has been entered as a periodical matter at a post
 163 office in the county in which the newspaper is published, is
 164 published a minimum of 5 days a week, exclusive of legal

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165 holidays, and has been in existence and published a minimum of 5
166 days a week, exclusive of legal holidays, for 1 year or is a
167 direct successor to a newspaper that has been in existence for 1
168 year that has been published a minimum of 5 days a week,
169 exclusive of legal holidays. The advertisement, publication, or
170 notice shall be placed directly by the attorney for the
171 petitioner, by the petitioner if acting pro se, or by the clerk
172 of the court. Only the actual costs charged by the newspaper or
173 Internet website provider for the advertisement, publication, or
174 notice may be charged as costs in the action.

175 Section 3. This act shall take effect July 1, 2012.