1989

**Session Law 89-041**

Florida Senate & House of Representatives

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H 1173 GENERAL BILL/CS/2ND ENG by Judiciary; Ostrov (Compare CS/S 869, S 1277)

Mortgage/Assignment: provides for general exclusion of real estate interests from Uniform Commercial Code—Secured Transactions provisions; requires that assignment of mortgage must be contained in document which indicates assignment in its title to be effectual against certain parties. Amends 701.02; reenacts 679.104(10). Effective Date: 10/01/89.

03/22/89 HOUSE Prefiled
03/24/89 HOUSE Referred to Judiciary
03/30/89 HOUSE Subreferred to Subcommittee on Real Property and Family Law

04/04/89 HOUSE Introduced, referred to Judiciary —HJ 110; Subreferred to Subcommittee on Real Property and Family Law; On subcommittee agenda—Judiciary, 04/05/89, 1:15 pm, 415-HOB

04/05/89 HOUSE Subcommittee Recommendation: Favorable with 3 amendments; On Committee agenda—Judiciary, 04/06/89, 3:30 pm, 413-C—For ratification of referral to subcommittee; On Committee agenda, pending subcommittee action—Judiciary, 04/06/89, 3:30 pm, 413-C

04/06/89 HOUSE Preliminary Committee Action by Judiciary: Favorable as a CS

04/14/89 HOUSE Comm. Report: CS by Judiciary, placed on Calendar —HJ 232; CS read first time —HJ 231

04/25/89 HOUSE Placed on Special Order Calendar; Read second time; Amendment adopted —HJ 270

04/27/89 HOUSE Read third time; CS passed as amended; YEAS 112 NAYS 0 —HJ 283

04/28/89 SENATE In Messages

05/05/89 SENATE Received, referred to Judiciary—Civil —SJ 272

05/10/89 SENATE Withdrawn from Judiciary—Civil; Substituted for CS/SB 859; CS passed as amended; YEAS 35 NAYS 0 —SJ 304; Immediately certified —SJ 304

05/10/89 HOUSE In Messages

05/19/89 HOUSE Concurred; CS passed as further amended; YEAS 114 NAYS 0 —HJ 542

05/19/89 Ordered engrossed, then enrolled

05/25/89 Signed by Officers and presented to Governor —HJ 857

06/02/89 Became Law without Governor's Signature; Chapter No. 89-41 —HJ 1123

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
BILL #:        CS/HB 1173
RELATING TO:  Assignment of Mortgages
SPONSOR(S):   Representative Ostrau
EFFECTIVE DATE: October 1, 1989
COMPANION BILL(S): SB 859
OTHER COMMITTEES OF REFERENCE: (1)
                                      (2)

I. SUMMARY:

A. PRESENT SITUATION:

Presently, s. 701.01, Florida Statutes, makes mortgages freely transferrable to an assignee and any subsequent assignees. A person to whom a mortgage is assigned may lawfully pursue the same remedies which the mortgagee may lawfully have, take, or pursue, for the foreclosure of a mortgage and for the recovery of the money secured thereby. An assignment of a mortgage is not valid against creditors or subsequent purchasers unless the assignment is recorded. Section 701.02, Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

HB 1173 provides that any assignment of a mortgage made after October 1, 1989, shall not be effective against creditors and subsequent purchasers unless contained in a document which indicates the assignment in its title. This change would facilitate the notice of assignments of mortgages and expedite title searches.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (2) of s. 701.01, Florida Statutes, is created to provide that any assignment of mortgage made after October 1, 1989, is not effective against creditors or subsequent purchasers unless contained in a document which indicates the assignment in its title.

Section 2. The act would take effect October 1, 1989.
II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:
   1. Non-recurring or First Year Start-Up Effects:
      none
   2. Recurring or Annualized Continuation Effects:
      none
   3. Long Run Effects Other Than Normal Growth:
      none
   4. Appropriations Consequences:
      none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:
   1. Non-recurring or First Year Start-Up Effects:
      none
   2. Recurring or Annualized Continuation Effects:
      none
   3. Long Run Effects Other Than Normal Growth:
      none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   1. Direct Private Sector Costs:
      This bill increases the administrative costs of assigning the mortgage and recording the assignment, but the costs should not be extensive.
   2. Direct Private Sector Benefits:
      This change will decrease the amount of errors due to overlooked assignments of mortgages in title searches.
   3. Effects on Competition, Private Enterprise, and Employment Markets:
      none

D. FISCAL COMMENTS:
III. LONG RANGE CONSEQUENCES:

The bill does not affect the State Comprehensive Plan.

IV. COMMENTS:

This bill offers a protection that helps to ensure the accuracy of a title search. The search involves an extensive amount of paperwork and the assignment may be a one line sentence within a lengthy mortgage. Because of the relative importance of finding the assignment, this requirement would not seem to be unjustified.

The bill does not directly affect the House Policy Statement or Committee Mission Statement.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:  
Prepared by: Laura Dizney

SECOND COMMITTEE OF REFERENCE:  
Prepared by:

APPROPRIATIONS:  
Prepared by:
I. SUMMARY:

A. Present Situation:

Section 701.02, F.S., provides guidance as to when an assignment of a mortgage is effective against creditors or subsequent purchasers for valuable consideration and without notice. The section requires, in part, that the assignment be recorded according to law.

B. Effect of Proposed Changes:

The bill would add a requirement that the assignment document indicate in its title that it is an assignment of a mortgage.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
The committee substitute provides that the assignment document must indicate in its title that it is an assignment of a mortgage.

Committee on Judiciary-Civil

Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)