

TITLE VI

CIVIL PRACTICE AND PROCEDURE

CHAPTER 45

CIVIL PROCEDURE: GENERAL PROVISIONS

- 45.011 Definitions.
- 45.021 Applicability.
- 45.031 Judicial sales procedure.
- 45.0315 Right of redemption.
- 45.041 Amendment of bonds.
- 45.051 Execution of supersedeas bond when required of the state or its political subdivisions.
- 45.061 Offers of settlement.
- 45.062 Settlements, conditions, or orders when an agency of the executive branch is a party.

45.011 Definitions.—In all statutes about practice and procedure “plaintiff” means any party seeking affirmative relief whether plaintiff, counterclaimant, cross-claimant; or third-party plaintiff, counterclaimant or cross-claimant; “defendant” means any party against whom such relief is sought; “bond with surety” means a bond with two good and sufficient sureties, each with unencumbered property not subject to any exemption afforded by law equal in value to the penal sum of the bond or a bond with a licensed surety company as surety or a cash deposit conditioned as for a bond.

History.—s. 1, ch. 67-254.

45.021 Applicability.—Chapters 45-51, 55-57, 68 and 69 apply to all actions, whether heretofore at law or in chancery, unless specifically provided otherwise in such chapters or parts thereof.

History.—s. 1, ch. 67-254.

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the following procedure may be followed as an alternative to any other sale procedure if so ordered by the court:

(1) **SALE BY CLERK.**—In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff’s attorney consents to such time. Any sale held more than 35 days after the final judgment or order shall not affect the validity or finality of the final judgment or order or any sale held pursuant thereto. Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:

- (a) A description of the property to be sold.
- (b) The time and place of sale.
- (c) A statement that the sale will be made pursuant to the order or final judgment.
- (d) The caption of the action.
- (e) The name of the clerk making the sale.

The clerk shall receive a service charge of \$40 for services in making, recording, and certifying the sale and title that shall be assessed as costs. 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.

(2) **DEPOSIT REQUIRED.**—At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid or \$1,000, whichever is less. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(3) **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 not in default 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 in _____, a newspaper circulated in _____ County, Florida, in the manner shown by the proof of publication attached, and on _____, 19____, the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property 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. WITNESS my hand and the seal of this court on _____, 19____.

(Clerk)
By _____
(Deputy Clerk)

(4) **CERTIFICATE OF TITLE.**—If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party not in default in substantially the following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she executed and filed a certificate of sale in this action on _____, 19____, for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections.

The following property in _____ County, Florida: (description) was sold to

WITNESS my hand and the seal of the court on _____, 19_____.

By _____ (Clerk) (Deputy Clerk)

(5) CONFIRMATION.—When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.

(6) RECORDING.—The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.—On filing a certificate of title the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment, and shall file a report of such disbursements and serve a copy of it on each party not in default, and on the Department of Revenue if it was named as a defendant in the action, in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name	Amount
	Total

WITNESS my hand and the seal of the court on _____, 19_____.

By _____ (Clerk) (Deputy Clerk)

If no objections to the report are served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

(8) VALUE OF PROPERTY.—The amount of the bid for the property at the sale shall be conclusively presumed to be sufficient consideration for the sale. Any party may serve an objection to the amount of the bid within 10 days after the clerk files the certificate of sale. If timely objections to the bid are served, the objections shall be heard by the court. Service of objections to the amount of the bid does not affect or cloud the title of the

purchaser in any manner. If the case is one in which a deficiency judgment may be sought and application is made for a deficiency, the amount bid at the sale may be considered by the court as one of the factors in determining a deficiency under the usual equitable principles.

(9) EXECUTION SALES.—This section shall not apply to property sold under executions.

History.—s. 1, ch. 67-254; s. 13, ch. 70-134; ss. 1-3, ch. 71-5; s. 1, ch. 77-354; s. 1, ch. 78-68; s. 1, ch. 85-267; s. 6, ch. 87-145; s. 1, ch. 93-250; s. 1, ch. 94-353; s. 1355, ch. 95-147.

45.0315 Right of redemption.—At any time before the later of the filing of a certificate of sale by the clerk of the court or the time specified in the judgment, order, or decree of foreclosure, the mortgagor or the holder of any subordinate interest may cure the mortgagor's indebtedness and prevent a foreclosure sale by paying the amount of moneys specified in the judgment, order, or decree of foreclosure, or if no judgment, order, or decree of foreclosure has been rendered, by tendering the performance due under the security agreement, including any amounts due because of the exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor. Otherwise, there is no right of redemption.

History.—s. 2, ch. 93-250.

45.041 Amendment of bonds.—When any bond required or authorized in any action is defective in form or substance, the party giving the bond may give a new bond which is sufficient in form and substance and the new bond is as sufficient as though given in the first instance. The new bond may be given at any time before a motion attacking the sufficiency of the bond is served. Thereafter the new bond may be given by leave of court and on such terms as the court fixes. Leave to file an amended bond shall be freely given when justice so requires. If any amendment is made to a bond, the amended bond relates back to the commencement of the action and affords protection to the person in whose favor it is given from commencement although it was not theretofore binding on the surety.

History.—s. 1, ch. 67-254.

45.051 Execution of supersedeas bond when required of the state or its political subdivisions.—

When a supersedeas bond is required by the appellate court under Rule 9.310(b)(2), Florida Rules of Appellate Procedure or an appeal or other proceeding is taken in any court and there is no court rule or statute exempting the parties from giving supersedeas, cost, or other required bond, the parties are authorized to make and execute the required bond with a corporate surety thereon duly licensed to do business in this state. The premium or other cost for the bond may be paid from the general necessary and regular appropriation of the party taking the appeal, in the case of the state or any of its officers, boards, commissioners or other agencies, and from the county general fund, district school general fund, or otherwise as the case may be, in the case of a political subdivision of the state or any of its officers, boards, commissions or other agencies. The officers of the state and its political subdivisions and the executive officers of their boards, commissions, and other agen-

cies aforesaid, are authorized to make and execute the bonds on behalf of the parties.

History.—s. 14, ch. 22854, 1945; s. 4, ch. 71-316; s. 10, ch. 95-280.

Note.—Former s. 59.14(3).

45.061 Offers of settlement.—

(1) At any time more than 60 days after the service of a summons and complaint on a party but not less than 60 days (or 45 days if it is a counteroffer) before trial, any party may serve upon an adverse party a written offer, which offer shall not be filed with the court and shall be denominated as an offer under this section, to settle a claim for the money, property, or relief specified in the offer and to enter into a stipulation dismissing the claim or to allow judgment to be entered accordingly. The offer shall remain open for 45 days unless withdrawn sooner by a writing served on the offeree prior to acceptance by the offeree. An offer that is neither withdrawn nor accepted within 45 days shall be deemed rejected. The fact that an offer is made but not accepted does not preclude the making of a subsequent offer. Evidence of an offer is not admissible except in proceedings to enforce a settlement or to determine sanctions under this section.

(2) If, upon a motion by the offeror within 30 days after the entry of judgment, the court determines that an offer was rejected unreasonably, resulting in unnecessary delay and needless increase in the cost of litigation, it may impose an appropriate sanction upon the offeree. In making this determination the court shall consider all of the relevant circumstances at the time of the rejection, including:

(a) Whether, upon specific request by the offeree, the offeror had unreasonably refused to furnish information which was necessary to evaluate the reasonableness of the offer.

(b) Whether the suit was in the nature of a "test case," presenting questions of far-reaching importance affecting nonparties.

An offer shall be presumed to have been unreasonably rejected by a defendant if the judgment entered is at least 25 percent greater than the offer rejected, and an offer shall be presumed to have been unreasonably rejected by a plaintiff if the judgment entered is at least 25 percent less than the offer rejected. For the purposes of this section, the amount of the judgment shall be the total amount of money damages awarded plus the amount of costs and expenses reasonably incurred by the plaintiff or counter-plaintiff prior to the making of the offer for which recovery is provided by operation of other provisions of Florida law.

(3) In determining the amount of any sanction to be imposed under this section, the court shall award:

(a) The amount of the parties' costs and expenses, including reasonable attorneys' fees, investigative expenses, expert witness fees, and other expenses

which relate to the preparation for trial, incurred after the making of the offer of settlement; and

(b) The statutory rate of interest that could have been earned at the prevailing statutory rate on the amount that a claimant offered to accept to the extent that the interest is not otherwise included in the judgment.

The amount of any sanction imposed under this section against a plaintiff shall be set off against any award to the plaintiff, and if such sanction is in an amount in excess of the award to the plaintiff, judgment shall be entered in favor of the defendant and against the plaintiff in the amount of the excess.

(4) This section shall not apply to any class action or shareholder derivative suit or to matters relating to dissolution of marriage, alimony, nonsupport, eminent domain, or child custody.

(5) Sanctions authorized under this section may be imposed notwithstanding any limitation on recovery of costs or expenses which may be provided by contract or in other provisions of Florida law. This section shall not be construed to waive the limits of sovereign immunity set forth in s. 768.28.

(6) This section does not apply to causes of action that accrue after the effective date of this act.

History.—s. 1, ch. 87-249; s. 22, ch. 90-119.

45.062 Settlements, conditions, or orders when an agency of the executive branch is a party.—

(1) In any civil action in which a state executive branch agency or officer is a party in state or federal court, the officer, agent, official, or attorney who represents or is acting on behalf of such agency or officer may not settle such action, consent to any condition, or agree to any order in connection therewith, if the settlement, condition, or order requires the expenditure of or the obligation to expend any state funds or other state resources, or the establishment of any new program, unless:

(a) The expenditure is provided for by an existing appropriation or program established by law; and

(b) Prior written notification is given within 5 business days of the date the settlement or presettlement agreement or order is to be made final to the President of the Senate, the Speaker of the House of Representatives, the Senate and House minority leaders, and the Attorney General.

(2) The state executive branch agency or officer shall negotiate a closure date as soon as possible for the civil action.

(3) The state executive branch agency or officer may not pledge any current or future action of another branch of state government as a condition for settling the civil action.

History.—s. 2, ch. 87-249; s. 1, ch. 94-181.