



Burr Alert: Cure and Reinstatement of Home Mortgages in Chapter 13: Florida's Bright-Line Rule is Not So Bright

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Section 1322(c)(1) of the Bankruptcy Code allows debtors to cure defaults and reinstate a mortgage on their principal residence "until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law." Like many provisions of the Bankruptcy Code, this one appears fairly straightforward at first glance; a debtor has the right to cure and reinstate a home mortgage until the property is sold at a foreclosure sale.

In Florida, however, bankruptcy courts have interpreted section 1322(c)(1) in a way that allows debtors to cure and reinstate a home mortgage even after a foreclosure sale, as long as the petition is filed prior to the clerk's issuance of the certificate of sale under § 45.031, Fla. Stat. (2014). Although certificates of sale are generally issued shortly after the conclusion of a foreclosure sale, and § 45.031(4) requires the clerk to issue them "promptly," for one reason or another there are delays in the process. Whether the delay is a matter of hours, or a matter of days, it gives rise to an extended right to cure and reinstate for an indefinite period of time, resulting in a number of legal and practical problems when a debtor takes advantage of such extended right.

The Hypothetical Case

On July 1, 2014, at 11:00 a.m., the clerk of a Florida state court (the "State Court") conducted a foreclosure sale of a borrower's (the "Borrower") principal residence (the "Property"), which was purchased by a third party at the foreclosure sale. The foreclosure sale was conducted pursuant to a final judgment of foreclosure entered in favor of the mortgagee holding the first mortgage on the Property, and pursuant to § 45.031, Fla. Stat. The purchaser deposited the full cash price of his bid with the clerk, and the sale was otherwise procedurally sound. Pursuant to the foreclosure judgment, the redemption price was \$100,000.00.

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On the same day, at 6:00 p.m. (seven hours after the scheduled time for the foreclosure sale), Borrower files a chapter 13 petition and plan, proposing to cure defaults by paying the arrears, totaling \$10,000.00, over sixty months, in addition to making the regular monthly mortgage payments through maturity in twenty years. Borrower also files a motion in the foreclosure case to vacate the foreclosure sale, citing to her post-sale bankruptcy petition as support for the motion.

The full article can be downloaded [here](#).