

Bill No. CS for CS for SB 166

Barcode 935866

CHAMBER ACTION

Senate

House

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The Committee on Justice Appropriations (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.--In any sale of real or personal property under an order or judgment, the ~~procedures provided in ss. 45.031-45.035 following procedure~~ may be followed as an alternative to any other sale procedure if so ordered by the court.±

(1) ~~FINAL JUDGMENT 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

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1 consents to such time. The final judgment shall contain the
2 following statement in conspicuous type:

3
4 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
5 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO
6 ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO
7 THIS FINAL JUDGMENT.

8
9 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
10 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK
11 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A
12 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

13
14 (b) If the property being foreclosed on has qualified for the
15 homestead tax exemption in the most recent approved tax roll,
16 the final judgment shall additionally contain the following
17 statement in conspicuous type:

18
19 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS
20 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER
21 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO
22 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU
23 ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT,
24 [INSERT INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS
25 AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE
26 FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE
27 COURT.

28
29 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
30 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
31 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY

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1 AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP
2 YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND
3 THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN
4 YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT
5 AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR
6 NEAREST LEGAL AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF
7 YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT
8 ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR
9 REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO
10 CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE) FOR
11 ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT
12 OF THIS NOTICE.

13 (c) A copy of the final judgment shall be furnished by
14 the clerk by first class mail to the last known address of
15 every party to the action or to the attorney of record for
16 such party. Any irregularity in such mailing, including the
17 failure to include this statement in any final judgment or
18 order, shall not affect the validity or finality of the final
19 judgment or order or any sale held pursuant to the final
20 judgment or order. Any sale held more than 35 days after the
21 final judgment or order shall not affect the validity or
22 finality of the final judgment or order or any sale held
23 pursuant to such judgment or order thereto.

24 (2) PUBLICATION OF SALE.--Notice of sale shall be
25 published once a week for 2 consecutive weeks in a newspaper
26 of general circulation, as defined in chapter 50, published in
27 the county where the sale is to be held. The second
28 publication shall be at least 5 days before the sale. The
29 notice shall contain:

- 30 (a) A description of the property to be sold.
- 31 (b) The time and place of sale.

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1 (c) A statement that the sale will be made pursuant to
2 the order or final judgment.

3 (d) The caption of the action.

4 (e) The name of the clerk making the sale.

5 (f) A statement that any person claiming an interest
6 in the surplus from the sale, if any, other than the property
7 owner as of the date of the lis pendens must file a claim
8 within 60 days after the sale.

9
10 ~~The clerk shall receive a service charge of up to \$60 for~~
11 ~~services in making, recording, and certifying the sale and~~
12 ~~title that shall be assessed as costs.~~ The court, in its
13 discretion, may enlarge the time of the sale. Notice of the
14 changed time of sale shall be published as provided herein.

15 ~~(3)(2)~~ CONDUCT OF SALE; DEPOSIT REQUIRED.--The sale
16 shall be conducted at public auction at the time and place set
17 forth in the final judgment. The clerk shall receive the
18 service charge imposed in s. 45.035 for services in making,
19 recording, and certifying the sale and title that shall be
20 assessed as costs. At the time of the sale, the successful
21 high bidder shall post with the clerk a deposit equal to 5
22 percent of the final bid. The deposit shall be applied to the
23 sale price at the time of payment. If final payment is not
24 made within the prescribed period, the clerk shall readvertise
25 the sale as provided in this section and pay all costs of the
26 sale from the deposit. Any remaining funds shall be applied
27 toward the judgment.

28 ~~(4)(3)~~ CERTIFICATION OF SALE.--After a sale of the
29 property the clerk shall promptly file a certificate of sale
30 and serve a copy of it on each party ~~not in default in~~
31 substantially the following form:

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(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 _____, (year) , the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property in the amount of \$ _____ 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 or law . WITNESS my hand and the seal of this court on _____, (year) .

(Clerk)

By _____ (Deputy Clerk)

~~(5)(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 _____, (year) , for the property described herein and that no objections to

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(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 <u>disbursements</u> : \$ _____	
<u>Surplus retained by clerk, if any</u> : \$ _____	

IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE SURPLUS.

WITNESS my hand and the seal of the court on _____, (year) .
(Clerk)

By _____ (Deputy Clerk)

(c) 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.

(d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the surplus shall be distributed as provided ss. 45.031-45.035.

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1 (8) VALUE OF PROPERTY.--The amount of the bid for the
2 property at the sale shall be conclusively presumed to be
3 sufficient consideration for the sale. Any party may serve an
4 objection to the amount of the bid within 10 days after the
5 clerk files the certificate of sale. If timely objections to
6 the bid are served, the objections shall be heard by the
7 court. Service of objections to the amount of the bid does not
8 affect or cloud the title of the purchaser in any manner. If
9 the case is one in which a deficiency judgment may be sought
10 and application is made for a deficiency, the amount bid at
11 the sale may be considered by the court as one of the factors
12 in determining a deficiency under the usual equitable
13 principles.

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

16 Section 2. Section 45.032, Florida Statutes, is
17 created to read:

18 45.032 Disbursement of surplus funds after judicial
19 sale.--

20 (1) For purposes of ss. 45.031-45.035, the term:

21 (a) "Owner of record" means the person or persons who
22 appear to be the owner of the property that is the subject of
23 the foreclosure proceeding on the date of the filing of the
24 lis pendens. In determining an owner of record, a person need
25 not perform a title search and examination but may rely on the
26 plaintiff's allegation of ownership in the complaint when
27 determining the owner of record.

28 (b) "Subordinate lienholder" means the holder of a
29 subordinate lien shown on the face of the pleadings as an
30 encumbrance on the property. The lien held by the party filing
31 the foreclosure lawsuit is not a subordinate lien. A

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1 subordinate lienholder includes, but is not limited to, a
2 subordinate mortgage, judgment, assessment lien, or
3 construction lien. However, the holder of a subordinate lien
4 shall not be deemed a subordinate lienholder if the holder was
5 paid in full from the proceeds of the sale.

6 (c) "Surplus funds" or "surplus" means the funds
7 remaining after payment of all disbursements required by the
8 final judgment of foreclosure and shown on the certificate of
9 disbursements.

10 (d) "Surplus trustee" means a person qualifying as a
11 surplus trustee pursuant to s. 45.034.

12 (2) There is established a rebuttable legal
13 presumption that the owner of record on the date of the filing
14 of a lis pendens is the person entitled to surplus funds after
15 payment of subordinate lienholders who have timely filed a
16 claim. A person claiming a legal right to the surplus as an
17 assignee of the rights of the owner of record must prove to
18 the court that such person is entitled to the funds. At any
19 hearing regarding such entitlement, the court shall consider
20 the factors set forth in s. 45.033 in determining whether an
21 assignment is sufficient to overcome the presumption. It is
22 the intent of the Legislature to abrogate the common law rule
23 that surplus proceeds in a foreclosure case are the property
24 of the owner of the property on the date of the foreclosure
25 sale.

26 (3) During the 60 days after the clerk issues a
27 certificate of disbursements, the clerk shall hold the surplus
28 pending a court order.

29 (a) If the owner of record claims the surplus during
30 the 60-day period and there is no subordinate lienholder, the
31 court shall order the clerk to deduct any applicable service

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1 charges from the surplus and pay the remainder to the owner of
 2 record. The clerk may establish a reasonable requirement that
 3 the owner of record prove his or her identity before receiving
 4 the disbursement. The clerk may assist an owner of record in
 5 making a claim. An owner of record may use the following form
 6 in making a claim:

7
8 (Caption of Action)

9 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

10

11 State of _____

12 County of _____

13 Under penalty of perjury, I (we) hereby certify that:

14 1. I was (we were) the owner of the following
 15 described real property in _____ County, Florida, prior to the
 16 foreclosure sale and as of the date of the filing of the lis
 17 pendens:

18

19 (Legal description of real property)

20 2. I (we) do not owe any money on any mortgage on the
 21 property that was foreclosed other than the one that was paid
 22 off by the foreclosure.

23 3. I (we) do not owe any money that is the subject of
 24 an unpaid judgment, condominium lien, cooperative lien, or
 25 homeowners' association.

26 4. I am (we are) not currently in bankruptcy.

27 5. I (we) have not sold or assigned my (our) right to
 28 the mortgage surplus.

29 6. My (our) new address is: _____.

30 7. If there is more than one owner entitled to the
 31 surplus, we have agreed that the surplus should be paid

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1 jointly, or to : _____, at the following address: _____.

2 8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED
3 TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT
4 HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO
5 CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.

6 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN
7 UNDER OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY
8 BE PROSECUTED CRIMINALLY FOR PERJURY.

9
10 (Signatures)

11 Sworn to (or affirmed) and subscribed before me this
12 day of _____, _____ (year), by
13 _____ (name of person making statement) .

14 (Signature of Notary Public - State of Florida)
15 (Print, Type, or Stamp Commissioned Name of Notary
16 Public)

17 Personally Known _____ OR Produced Identification _____
18 Type of Identification Produced _____

19 (b) If any person other than the owner of record
20 claims an interest in the proceeds during the 60-day period or
21 if the owner of record files a claim for the surplus but
22 acknowledges that one or more other persons may be entitled to
23 part or all of the surplus, the court shall set an evidentiary
24 hearing to determine entitlement to the surplus. At the
25 evidentiary hearing, an equity assignee has the burden of
26 proving that he or she is entitled to some or all of the
27 surplus funds. The court may grant summary judgment to a
28 subordinate lienholder prior to or at the evidentiary hearing.
29 The court shall consider the factors in s. 45.033 when hearing
30 a claim that any person other than a subordinate lienholder or
31 the owner of record is entitled to the surplus funds.

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1 (c) If no claim is filed during the 60-day period, the
 2 clerk shall appoint a surplus trustee from a list of qualified
 3 surplus trustees as authorized in s. 45.034. Upon such
 4 appointment, the clerk shall prepare a notice of appointment
 5 of surplus trustee and shall furnish a copy to the surplus
 6 trustee. The form of the notice may be as follows:

7
8 (Caption of Action)

9 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

10 The undersigned clerk of the court certifies that he or
 11 she disbursed the proceeds received from the sale of the
 12 property as provided in the order or final judgment to the
 13 persons named in the certificate of disbursements, and that
 14 surplus funds of \$ _____ remain and are subject to
 15 disbursement to the owner of record. You have been appointed
 16 as surplus trustee for the purpose of finding the owner of
 17 record in order for the clerk to disburse the surplus, after
 18 deducting costs, to the owner of record.

19 WITNESS my hand and the seal of the court on _____,
 20 _____ (year) .

21 (Clerk)

22 By _____ (Deputy Clerk)

23 (4) If the surplus trustee is unable to locate the
 24 owner of record entitled to the surplus within 1 year after
 25 appointment, the appointment shall terminate and the clerk
 26 shall notify the surplus trustee that his or her appointment
 27 was terminated. Thirty days after termination of the
 28 appointment of the surplus trustee, the clerk shall treat the
 29 remaining funds as unclaimed property to be deposited with the
 30 Chief Financial Officer pursuant to chapter 717.

31 (5) Proceedings regarding surplus funds in a

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1 foreclosure case do not in any manner affect or cloud the
2 title of the purchaser at the foreclosure sale of the
3 property.

4 Section 3. Section 45.033, Florida Statutes, is
5 created to read:

6 45.033 Sale or assignment of rights to surplus funds
7 in a property subject to foreclosure.--

8 (1) There is established a rebuttable presumption that
9 the owner of record of real property on the date of the filing
10 of a lis pendens is the person entitled to surplus funds after
11 payment of subordinate lienholders who have timely filed a
12 claim. A person claiming a legal right to the surplus as an
13 assignee of the rights of the owner of record must prove
14 entitlement to the surplus funds pursuant to this section. It
15 is the intent of the Legislature to abrogate the common law
16 rule that surplus proceeds in a foreclosure case are the
17 property of the owner of the property on the date of the
18 foreclosure sale.

19 (2) The presumption may be rebutted only by:

20 (a) The grantee or assignee of a voluntary transfer or
21 assignment establishing a right to collect the surplus funds
22 or any portion or percentage of the surplus funds by proving
23 that the transfer or assignment qualifies as a voluntary
24 transfer or assignment as provided in subsection (3); or

25 (b) The grantee or assignee proving that the grantee
26 or assignee is a grantee or assignee by virtue of an
27 involuntary transfer or assignment of the right to collect the
28 surplus. An involuntary transfer or assignment may be as a
29 result of inheritance or as a result of the appointment of a
30 guardian.

31 (3) A voluntary transfer or assignment shall be a

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1 transfer or assignment qualified under this subsection,
2 thereby entitling the transferee or assignee to the surplus
3 funds or a portion or percentage of the surplus funds, if:

4 (a) The transfer or assignment is in writing and the
5 instrument:

6 1. If executed prior to the foreclosure sale, includes
7 a financial disclosure that specifies the assessed value of
8 the property, a statement that the assessed value may be lower
9 than the actual value of the property, the approximate amount
10 of any debt encumbering the property, and the approximate
11 amount of any equity in the property. If the instrument was
12 executed after the foreclosure sale, the instrument must also
13 specify the foreclosure sale price and the amount of the
14 surplus.

15 2. Includes a statement that the owner does not need
16 an attorney or other representative to recover surplus funds
17 in a foreclosure.

18 3. Specifies all forms of consideration paid for the
19 rights to the property or the assignment of the rights to any
20 surplus funds.

21 (b) The transfer or assignment is filed with the court
22 on or before 60 days after the filing of the certificate of
23 disbursements.

24 (c) There are funds available to pay the transfer or
25 assignment after payment of timely filed claims of subordinate
26 lienholders.

27 (d) The transferor or assignee is qualified as a
28 surplus trustee, or could qualify as a surplus trustee,
29 pursuant to s. 45.034.

30 (e) The total compensation paid or payable, or earned
31 or expected to be earned, by the transferee or assignee does

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1 not exceed 12 percent of the surplus.

2 (4) The court shall honor a transfer or assignment
3 that complies with the requirements of subsection (3), in
4 which case the court shall order the clerk to pay the
5 transferor or assignee from the surplus.

6 (5) If the court finds that a voluntary transfer or
7 assignment does not qualify under subsection (3) but that the
8 transfer or assignment was procured in good faith and with no
9 intent to defraud the transferor or assignor, the court may
10 order the clerk to pay the claim of the transferee or assignee
11 after payment of timely filed claims of subordinate
12 lienholders.

13 (6) If a voluntary transfer or assignment of the
14 surplus is set aside, the owner of record shall be entitled to
15 payment of the surplus after payment of timely filed claims of
16 subordinate lienholders, but the transferee or assignee may
17 seek in a separate proceeding repayment of any consideration
18 paid for the transfer or assignment.

19 (7) This section does not apply to a deed, mortgage,
20 or deed in lieu of foreclosure unless a person other than the
21 owner of record is claiming that a deed or mortgage entitles
22 the person to surplus funds. Nothing in this section affects
23 the title or marketability of the real property that is the
24 subject of the deed or other instrument. Nothing in this
25 section affects the validity of a lien evidenced by a
26 mortgage.

27 Section 4. Effective upon this act becoming a law,
28 section 45.034, Florida Statutes, is created to read:

29 45.034 Qualifications and appointment of a surplus
30 trustee in foreclosure actions.--

31 (1) A surplus trustee is a third-party trustee

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1 approved pursuant to this section by the Department of
 2 Financial Services. A surplus trustee must be willing to
 3 accept cases on a statewide basis; however, a surplus trustee
 4 may employ subcontractors that are not qualified as a surplus
 5 trustee provided the surplus trustee remains primarily
 6 responsible for the duties set forth in this section.

7 (2) A surplus trustee is an entity that holds and
 8 administers surplus proceeds from a foreclosure pursuant to
 9 ss. 45.031-45.035.

10 (3) To be a surplus trustee, an entity must apply for
 11 certification with the Department of Financial Services. The
 12 application must contain:

13 (a) The name and address of the entity and of one or
 14 more principals of the entity.

15 (b) A certificate of good standing from the Secretary
 16 of State indicating that the entity is an entity registered in
 17 this state.

18 (c) A statement under oath by a principal of the
 19 entity certifying that the entity, or a principal of the
 20 entity, has a minimum of 12 months' experience in the recovery
 21 of surplus funds in foreclosure actions.

22 (d) Proof that the entity holds a valid Class "A"
 23 private investigator license pursuant to chapter 493.

24 (e) Proof that the entity carries a minimum of
 25 \$500,000 in liability insurance, cash reserves, or bonding.

26 (f) A statement from an attorney licensed to practice
 27 in this state certifying that the attorney is a principal of
 28 the entity or is employed by the entity on a full-time basis
 29 and that the attorney will supervise the management of the
 30 entity during the entity's tenure as a surplus trustee.

31 (g) A statement under oath by a principal of the

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1 entity certifying that the principal understands his or her
2 duty to immediately notify the department if the principal
3 ever fails to qualify as an entity entitled to be a surplus
4 trustee.

5 (h) A nonrefundable application fee of \$25.

6 (4) The Department of Financial Services shall certify
7 any surplus trustee that applies and qualifies. Applications
8 must be filed by June 1, and all applications that qualify
9 shall be certified by the department by June 30 and shall be
10 effective for 1 year commencing July 1. The department shall
11 renew a certification upon receipt of the \$25 fee and a
12 statement under oath from a principal of the surplus trustee
13 certifying that the surplus trustee continues to qualify under
14 this section.

15 (5) The Department of Financial Services shall develop
16 a rotation system for assignment of cases to all qualified
17 surplus trustees.

18 (6) The primary duty of a surplus trustee is to locate
19 the owner of record within 1 year after appointment. Upon
20 locating the owner of record, the surplus trustee shall file a
21 petition with the court on behalf of the owner of record
22 seeking disbursement of the surplus funds. If more than one
23 person appears to be the owner of record, the surplus trustee
24 shall obtain agreement between such persons as to the payment
25 of the surplus, or file an interpleader. The interpleader may
26 be filed as part of the foreclosure case.

27 (7) A surplus trustee is entitled to the following
28 service charges and fees which shall be disbursed by the clerk
29 and payable from the surplus:

30 (a) Upon obtaining a court order, a cost advance of 2
31 percent of the surplus.

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1 (b) Upon obtaining a court order disbursing the
2 surplus to the owner of record, a service charge of 10 percent
3 of the surplus.

4 Section 5. Section 45.035, Florida Statutes, is
5 created to read:

6 45.035 Clerk's fees.--In addition to other fees or
7 service charges authorized by law, the clerk shall receive
8 service charges related to the judicial sales procedure set
9 forth in ss. 45.031-45.034 and this section:

10 (1) The clerk shall receive a service charge of \$60
11 for services in making, recording, and certifying the sale and
12 title, which service charge shall be assessed as costs and
13 shall be advanced by the plaintiff before the sale.

14 (2) If there is a surplus resulting from the sale, the
15 clerk may receive the following service charges, which shall
16 be deducted from the surplus:

17 (a) The clerk may withhold the sum of \$25 from the
18 surplus which may only be used for purposes of educating the
19 public as to the rights of homeowners regarding foreclosure
20 proceedings.

21 (b) The clerk is entitled to a service charge of \$10
22 for notifying a surplus trustee of his or her appointment.

23 (c) The clerk is entitled to a service charge of \$10
24 for each disbursement of surplus proceeds.

25 (d) The clerk is entitled to a service charge of \$10
26 for appointing a surplus trustee, furnishing the surplus
27 trustee with a copy of the final judgment and the certificate
28 of disbursements, and disbursing to the surplus trustee the
29 trustee's cost advance.

30 Section 6. Section 501.2078, Florida Statutes, is
31 created to read:

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1 501.2078 Violations involving individual homeowners
2 during the course of residential foreclosure proceedings;
3 civil penalties.--

4 (1) As used in this section:

5 (a) "Homeowner" means any individual who is the owner
6 of the property subject to a residential foreclosure
7 proceeding.

8 (b) "Residential foreclosure proceeding" means any
9 action in a court of this state in which a party seeks to
10 foreclose on a mortgage encumbering the mortgagor's primary
11 dwelling.

12 (c) "Victimize" means any course of action intended to
13 dupe, swindle, or cheat a homeowner subject to a residential
14 foreclosure proceeding. The factors that a court shall review
15 when determining whether a course of action is victimizing a
16 homeowner are:

17 1. The compensation received relative to the risk and
18 the amount of work involved.

19 2. The number of homeowners involved.

20 3. The relative bargaining position of the parties.

21 4. The relative knowledge and sophistication of the
22 parties.

23 5. Representations made in the inducement.

24 6. The timing of the agreement.

25 (2) Any person, other than a financial institution as
26 defined in s. 655.005, who willfully uses, or has willfully
27 used, a method, act, or practice in violation of this part,
28 which method, act, or practice victimizes or attempts to
29 victimize homeowners during the course of a residential
30 foreclosure proceeding, and in committing such violation knew
31 or should have known that such conduct was unfair or

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1 deceptive, is liable for a civil penalty of not more than
2 \$15,000 for each such violation.

3 (3) Any order of restitution or reimbursement based on
4 a violation of this part committed against a homeowner in a
5 residential foreclosure proceeding has priority over the
6 imposition of any civil penalty for such violation pursuant to
7 this section.

8 (4) Civil penalties collected pursuant to this section
9 shall be deposited into the Legal Affairs Revolving Trust Fund
10 of the Department of Legal Affairs and allocated solely to the
11 Department of Legal Affairs for the purpose of preparing and
12 distributing consumer education materials, programs, and
13 seminars to benefit homeowners in residential foreclosure
14 proceedings or to further enforcement efforts.

15 (5) This section does not apply to:

16 (a) The act of encumbering the dwelling subject to a
17 residential foreclosure proceeding with a substitute or
18 additional lien.

19 (b) A deed in lieu of foreclosure, a workout
20 agreement, a bankruptcy plan, or any other agreement between a
21 foreclosing lender and a homeowner.

22 (c) A foreclosure sale, eminent domain proceeding,
23 forfeiture, or any other legal process.

24 Section 7. Section 702.035, Florida Statutes, is
25 amended to read:

26 702.035 Legal notice concerning foreclosure
27 proceedings.--Whenever a legal advertisement, publication, or
28 notice relating to a foreclosure proceeding is required to be
29 placed in a newspaper, it is the responsibility of the
30 petitioner or petitioner's attorney to place such
31 advertisement, publication, or notice. For counties with more

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1 than 1 million total population as reflected in the most
2 recent official decennial census of the United States Census
3 Bureau as shown on the official website of the United States
4 Census Bureau, any notice of publication required by this
5 section shall be deemed to have been published in accordance
6 with the law if the notice is published in a newspaper that
7 has been entered as periodical matter at a post office in the
8 county in which the newspaper is published, is published a
9 minimum of 5 days a week, and has been in existence and
10 published a minimum of 5 days a week for 1 year or is a direct
11 successor to a newspaper that has been in existence for 1 year
12 and has been published a minimum of 5 days a week. The
13 advertisement, publication, or notice shall be placed directly
14 by the attorney for the petitioner, by the petitioner if
15 acting pro se, or by the clerk of the court. Only the actual
16 costs charged by the newspaper for the advertisement,
17 publication, or notice may be charged as costs in the action.

18 Section 8. Subsection (9) of section 201.02, Florida
19 Statutes, is amended to read:

20 201.02 Tax on deeds and other instruments relating to
21 real property or interests in real property.--

22 (9) A certificate of title issued by the clerk of
23 court under s. 45.031(5)(4) in a judicial sale of real
24 property under an order or final judgment issued pursuant to a
25 foreclosure proceeding is subject to the tax imposed by
26 subsection (1). However, the amount of the tax shall be
27 computed based solely on the amount of the highest and best
28 bid received for the property at the foreclosure sale. This
29 subsection is intended to clarify existing law and shall be
30 applied retroactively.

31 Section 9. This act shall take effect July 1, 2006.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to foreclosure proceedings;

8 amending s. 45.031, F.S.; revising procedures

9 and requirements for judicial sales; creating

10 s. 45.032, F.S.; providing for disbursement of

11 surplus funds after a judicial sale; providing

12 definitions; establishing a rebuttable

13 presumption of entitlement to surplus funds in

14 certain filings; providing legislative intent;

15 providing requirements and procedures for

16 disbursement of surplus funds by the clerk of

17 court; providing for appointment of a surplus

18 trustee under certain circumstances; providing

19 for notice of appointment; providing for

20 termination of appointment; providing for

21 treatment of surplus funds as unclaimed

22 property under certain circumstances; providing

23 construction relating to title of property in a

24 foreclosure sale; creating s. 45.033, F.S.;

25 providing for a sale or assignment of rights to

26 surplus funds in a property subject to

27 foreclosure; establishing a rebuttable

28 presumption of entitlement to surplus funds;

29 providing requirements for proof; providing

30 legislative intent; providing requirements for

31 rebutting the presumption; providing

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1 requirements for transfers or assignments of
2 surplus funds; providing duties and authority
3 of a court in payment of surplus funds under a
4 transfer or assignment; providing for
5 nonapplication to certain instruments;
6 specifying absence of effect on title or
7 marketability of certain property or validity
8 of certain liens; creating s. 45.034, F.S.;
9 providing qualifications for appointment as a
10 surplus trustee by the Department of Financial
11 Services; providing requirements for
12 appointment as a surplus trustee; providing for
13 application and renewal fees; providing duties
14 of the department in certifying surplus
15 trustees; requiring the department to establish
16 a rotation system for assignment of cases to
17 surplus trustees; providing duties of a surplus
18 trustee; providing entitlement of a surplus
19 trustee to certain service charges and fees;
20 creating s. 45.035, F.S.; specifying service
21 charges for clerks of court for administering
22 judicial sales and surplus funds; creating s.
23 501.2078, F.S.; providing definitions;
24 providing a civil penalty for knowingly using
25 unfair or deceptive homeowner victimization
26 methods, acts, or practices in residential
27 foreclosure proceedings; specifying higher
28 priority of an order of restitution or
29 reimbursement over imposition of a civil
30 penalty; providing for deposit of civil
31 penalties into the Legal Affairs Revolving

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1 Trust Fund of the Department of Legal Affairs;
2 allocating such funds for certain purposes;
3 specifying nonapplication to certain
4 encumbrances, deeds, or actions; amending s.
5 702.035, F.S.; specifying different
6 requirements relating to newspaper legal
7 notices and process requirements for counties
8 of different population sizes; limiting certain
9 costs chargeable in a foreclosure proceeding;
10 amending s. 201.02, F.S.; correcting a
11 cross-reference; providing an effective date.

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