

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Clemons offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 1936 and 1937, insert:

5 Section 36. Section 43.19, Florida Statutes, is repealed.

6 Section 37. Paragraph (a) of subsection (1), paragraph (f)
7 of subsection (2), and paragraph (b) of subsection (7) of
8 section 45.031, Florida Statutes, are amended to read:

9 45.031 Judicial sales procedure.—In any sale of real or
10 personal property under an order or judgment, the procedures
11 provided in this section and ss. 45.0315-45.035 may be followed
12 as an alternative to any other sale procedure if so ordered by
13 the court.

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14 (1) FINAL JUDGMENT.—

15 (a) In the order or final judgment, the court shall direct
16 the clerk to sell the property at public sale on a specified day
17 that shall be not less than 20 days or more than 35 days after
18 the date thereof, on terms and conditions specified in the order
19 or judgment. A sale may be held more than 35 days after the date
20 of final judgment or order if the plaintiff or plaintiff's
21 attorney consents to such time. The final judgment shall contain
22 the following statement in conspicuous type:

23 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
24 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
25 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
26 FINAL JUDGMENT.

27 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
28 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE
29 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS
30 UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A TIMELY
31 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

32 (2) PUBLICATION OF SALE.—Notice of sale shall be published
33 once a week for 2 consecutive weeks in a newspaper of general
34 circulation, as defined in chapter 50, published in the county
35 where the sale is to be held. The second publication shall be at
36 least 5 days before the sale. The notice shall contain:

37 (f) A statement that any person claiming an interest in
38 the surplus from the sale, if any, other than the property owner

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39 as of the date of the lis pendens must file a claim before the
40 clerk reports the surplus as unclaimed ~~within 60 days after the~~
41 ~~sale.~~

42
43 The court, in its discretion, may enlarge the time of the sale.
44 Notice of the changed time of sale shall be published as
45 provided herein.

46 (7) DISBURSEMENTS OF PROCEEDS.—

47 (b) The certificate of disbursements shall be in
48 substantially the following form:

49 (Caption of Action)

50 CERTIFICATE OF DISBURSEMENTS

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

55 Name Amount

56 Total disbursements: \$....

57 Surplus retained by clerk, if any: \$....

58 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
59 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
60 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
61 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
62 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS

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63 UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF
64 THE LIS PENDENS MAY CLAIM THE SURPLUS.

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

67 By ...(Deputy Clerk)...

68 Section 38. Subsection (5) of section 45.032, Florida
69 Statutes, is renumbered as subsection (4), and paragraph (d) of
70 subsection (1), subsection (3), and present subsection (4) of
71 that section are amended to read:

72 45.032 Disbursement of surplus funds after judicial sale.-

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

74 ~~(d) "Surplus trustee" means a person qualifying as a~~
75 ~~surplus trustee pursuant to s. 45.034.~~

76 (3) During the period that ~~60 days after~~ the clerk holds
77 ~~issues a certificate of disbursements,~~ the clerk shall hold the
78 surplus pending a court order:-

79 (a) If the owner of record claims the surplus before the
80 date that the clerk reports it as unclaimed ~~during the 60-day~~
81 ~~period~~ and there is no subordinate lienholder, the court shall
82 order the clerk to deduct any applicable service charges from
83 the surplus and pay the remainder to the owner of record. The
84 clerk may establish a reasonable requirement that the owner of
85 record prove his or her identity before receiving the
86 disbursement. The clerk may assist an owner of record in making

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87 a claim. An owner of record may use the following form in making
88 a claim:

89 (Caption of Action)

90 OWNER'S CLAIM FOR
91 MORTGAGE FORECLOSURE SURPLUS

92 State of

93 County of

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

95 1. I was (we were) the owner of the following described
96 real property in County, Florida, prior to the foreclosure
97 sale and as of the date of the filing of the lis pendens:

98 ...(Legal description of real property)...

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

102 3. I (we) do not owe any money that is the subject of an
103 unpaid judgment, tax warrant, condominium lien, cooperative
104 lien, or homeowners' association.

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

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

108 6. My (our) new address is:

109 7. If there is more than one owner entitled to the
110 surplus, we have agreed that the surplus should be paid
111 jointly, or to:, at the following address:

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

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

119 ...(Signatures)...

120 Sworn to (or affirmed) and subscribed before me this
121 day of, ...(year)...., by ...(name of person making
122 statement)....

123 ...(Signature of Notary Public - State of Florida)...

124 ...(Print, Type, or Stamp Commissioned Name of Notary
125 Public)...

126 Personally Known OR Produced Identification

127 Type of Identification Produced.....

128 (b) If any person other than the owner of record claims an
129 interest in the proceeds prior to the date that the clerk
130 reports the surplus as unclaimed ~~during the 60-day period~~ or if
131 the owner of record files a claim for the surplus but
132 acknowledges that one or more other persons may be entitled to
133 part or all of the surplus, the court shall set an evidentiary
134 hearing to determine entitlement to the surplus. At the
135 evidentiary hearing, an equity assignee has the burden of
136 proving that he or she is entitled to some or all of the surplus

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137 funds. The court may grant summary judgment to a subordinate
138 lienholder prior to or at the evidentiary hearing. The court
139 shall consider the factors in s. 45.033 when hearing a claim
140 that any person other than a subordinate lienholder or the owner
141 of record is entitled to the surplus funds.

142 (c) One year after the sale, any surplus remaining with
143 the clerk of the court that has not been disbursed as provided
144 herein is subject to s. 717.113 and must be reported and
145 remitted to the department in accordance with ss. 717.117 and
146 717.119, provided there is no pending court proceeding regarding
147 entitlement to the surplus. At the conclusion of any court
148 proceeding and any appeal regarding entitlement to the surplus,
149 the clerk of the court shall report and remit the unclaimed
150 property to the department if directed by a court order, to
151 another entity if directed by the court order, or, if not
152 directed by the court order, in the name of the owner of record.
153 For purposes of establishing entitlement to the surplus after
154 the property has been remitted to the department, only the owner
155 of record reported by the clerk of the court, or the
156 beneficiary, as defined in s. 731.201, of a deceased owner of
157 record reported by the clerk, is entitled to the surplus. A
158 surplus of less than \$10 escheats to ~~If no claim is filed during~~
159 ~~the 60-day period,~~ the clerk shall ~~appoint a surplus trustee~~
160 ~~from a list of qualified surplus trustees as authorized in s.~~
161 ~~45.034. Upon such appointment, the clerk shall prepare a notice~~

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162 ~~of appointment of surplus trustee and shall furnish a copy to~~
163 ~~the surplus trustee. The form of the notice may be as follows:~~

164
165 ~~(Caption of Action)~~

166
167 ~~NOTICE OF APPOINTMENT~~
168 ~~OF SURPLUS TRUSTEE~~

169
170 ~~The undersigned clerk of the court certifies that he or she~~
171 ~~disbursed the proceeds received from the sale of the property as~~
172 ~~provided in the order or final judgment to the persons named in~~
173 ~~the certificate of disbursements, and that surplus funds of~~
174 ~~\$. . . . remain and are subject to disbursement to the owner of~~
175 ~~record. You have been appointed as surplus trustee for the~~
176 ~~purpose of finding the owner of record in order for the clerk to~~
177 ~~disburse the surplus, after deducting costs, to the owner of~~
178 ~~record.~~

179 ~~WITNESS my hand and the seal of the court on, . . . (year)~~
180 ~~. . . (Clerk) . . .~~
181 ~~By . . . (Deputy Clerk) . . .~~

182
183 ~~(4) If the surplus trustee is unable to locate the owner~~
184 ~~of record entitled to the surplus within 1 year after~~
185 ~~appointment, the appointment shall terminate and the clerk shall~~
186 ~~notify the surplus trustee that his or her appointment was~~

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187 ~~terminated. Thirty days after termination of the appointment of~~
188 ~~the surplus trustee, the clerk shall treat the remaining funds~~
189 ~~as unclaimed property to be deposited with the Chief Financial~~
190 ~~Officer pursuant to chapter 717.~~

191 Section 39. Paragraph (d) of subsection (3) of section
192 45.033, Florida Statutes, is amended, and paragraph (e) of that
193 subsection is redesignated as paragraph (d), to read:

194 45.033 Sale or assignment of rights to surplus funds in a
195 property subject to foreclosure.—

196 (3) A voluntary transfer or assignment shall be a transfer
197 or assignment qualified under this subsection, thereby entitling
198 the transferee or assignee to the surplus funds or a portion or
199 percentage of the surplus funds, if:

200 ~~(d) The transferor or assignee is qualified as a surplus~~
201 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
202 ~~45.034.~~

203 Section 40. Section 45.034, Florida Statutes, is repealed.

204 Section 41. Paragraphs (b) and (d) of subsection (2) of
205 section 45.035, Florida Statutes, are amended, and paragraph (c)
206 of that subsection is redesignated as paragraph (b), to read:

207 45.035 Clerk's fees.—In addition to other fees or service
208 charges authorized by law, the clerk shall receive service
209 charges related to the judicial sales procedure set forth in ss.
210 45.031-45.034 and this section:

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

214 ~~(b) The clerk is entitled to a service charge of \$15 for~~
215 ~~notifying a surplus trustee of his or her appointment.~~

216 ~~(d) The clerk is entitled to a service charge of \$15 for~~
217 ~~appointing a surplus trustee, furnishing the surplus trustee~~
218 ~~with a copy of the final judgment and the certificate of~~
219 ~~disbursements, and disbursing to the surplus trustee the~~
220 ~~trustee's cost advance.~~

221 Section 42. Section 717.113, Florida Statutes, is amended
222 to read:

223 717.113 Property held by courts and public agencies.—All
224 intangible property held for the owner by any court, government
225 or governmental subdivision or agency, public corporation, or
226 public authority that has not been claimed by the owner for more
227 than 1 year after it became payable or distributable is presumed
228 unclaimed. Except as provided in s. 45.032(3)(c), money held in
229 the court registry and for which no court order has been issued
230 to determine an owner does not become payable or distributable
231 and is not subject to reporting under this chapter.

232 Notwithstanding the provisions of this section, funds deposited
233 in the Minerals Trust Fund pursuant to s. 377.247 are presumed
234 unclaimed only if the funds have not been claimed by the owner

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235 for more than 5 years after the date of first production from
236 the well.

237 Section 43. Subsection (8) of section 717.124, Florida
238 Statutes, is amended to read:

239 717.124 Unclaimed property claims.—

240 (8) This section applies to all unclaimed property
241 reported and remitted to the Chief Financial Officer, including,
242 but not limited to, property reported pursuant to ss. ~~43.19,~~
243 45.032, 732.107, 733.816, and 744.534.

244 Section 44. Section 717.138, Florida Statutes, is amended
245 to read:

246 717.138 Rulemaking authority.—The department shall
247 administer and provide for the enforcement of this chapter. The
248 department has authority to adopt rules pursuant to ss.
249 120.536(1) and 120.54 to implement the provisions of this
250 chapter. The department may adopt rules to allow for electronic
251 filing of fees, forms, and reports required by this chapter. The
252 authority to adopt rules pursuant to this chapter applies to all
253 unclaimed property reported and remitted to the Chief Financial
254 Officer, including, but not limited to, property reported and
255 remitted pursuant to ss. ~~43.19,~~ 45.032, 732.107, 733.816, and
256 744.534.

257 Section 45. Section 717.1401, Florida Statutes, is amended
258 to read:

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259 717.1401 Repeal.—This chapter shall not repeal, but shall
 260 be additional and supplemental to the existing provisions of ss.
 261 43.18, ~~43.19~~, and 402.17 and chapter 716.

262 -----
 263 -----

264 **T I T L E A M E N D M E N T**

265 Remove line 162 and insert:
 266 627.351, F.S.; conforming cross-references; repealing
 267 s. 43.19, F.S., relating to the disposition of certain
 268 money paid into a court which is unclaimed; amending
 269 s. 45.031, F.S.; revising the time periods within
 270 which certain persons must file claims for certain
 271 unclaimed surplus funds; amending s. 45.032, F.S.;
 272 deleting provisions defining and specifying the powers
 273 of a "surplus trustee"; authorizing specified entities
 274 to claim surplus funds that remain after a judicial
 275 sale; specifying procedures for those entities to
 276 receive such funds; specifying procedures for the
 277 clerk to use in handling surpluses that remain
 278 unclaimed; specifying the entities eligible for the
 279 surplus once the funds have been remitted to the
 280 department; conforming provisions to changes made by
 281 the act; amending s. 45.033, F.S.; conforming a
 282 provision to changes made by the act; repealing s.
 283 45.034, F.S., relating to qualifications and

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284 appointment of a surplus trustee in foreclosure
285 actions; amending s. 45.035, F.S.; revising service
286 charges that a clerk may receive and deduct from
287 surplus amounts; amending s. 717.113, F.S.; exempting
288 certain funds remaining after a judicial sale and held
289 in a court registry from becoming payable or
290 distributable and subject to certain reporting
291 requirements; amending ss. 717.124, 717.138, and
292 717.1401, F.S.; conforming cross-references; providing

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