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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
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The Committee on Judiciary (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 43.19, Florida Statutes, is repealed.

Section 2. Paragraph (a) of subsection (1), paragraph (f)
of subsection (2), and paragraph (b) of subsection (7) of
section 45.031, Florida Statutes, are 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 this section and ss. 45.0315-45.035 may be followed



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12 as an alternative to any other sale procedure if so ordered by
13 the court.

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

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

28

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

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

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



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

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

48 (7) DISBURSEMENTS OF PROCEEDS.—

49 (b) The certificate of disbursements shall be in
50 substantially the following form:

51
52 (Caption of Action)

53
54 CERTIFICATE OF DISBURSEMENTS

55
56 The undersigned clerk of the court certifies that he or she
57 disbursed the proceeds received from the sale of the property as
58 provided in the order or final judgment to the persons and in
59 the amounts as follows:

60 Name Amount

61
62 Total disbursements: \$....

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

64
65 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
66 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
67 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
68 ~~THE SALE.~~ IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
69 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS



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70 UNCLAIMED 60-DAYS, ONLY THE OWNER OF RECORD AS OF THE DATE OF
71 THE LIS PENDENS MAY CLAIM THE SURPLUS.

72
73 WITNESS my hand and the seal of the court on, ...(year)....
74(Clerk)..
75 By ...(Deputy Clerk)..
76

77 Section 3. Paragraph (d) of subsection (1) and subsections
78 (3) and (4) of section 45.032, Florida Statutes, are amended, to
79 read:

80 45.032 Disbursement of surplus funds after judicial sale.-

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

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

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

87 (a) If the owner of record claims the surplus before the
88 date that the clerk reports it as unclaimed ~~during the 60-day~~
89 ~~period~~ and there is no subordinate lienholder, the court shall
90 order the clerk to deduct any applicable service charges from
91 the surplus and pay the remainder to the owner of record. The
92 clerk may establish a reasonable requirement that the owner of
93 record prove his or her identity before receiving the
94 disbursement. The clerk may assist an owner of record in making
95 a claim. An owner of record may use the following form in making
96 a claim:

97
98 (Caption of Action)



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OWNER'S CLAIM FOR
MORTGAGE FORECLOSURE SURPLUS

State of
County of

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

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

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

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

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

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

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

6. My (our) new address is:

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

8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY



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128 MONEY TO WHICH I (WE) MAY BE ENTITLED.

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

132

133 ...(Signatures)...

134

135 Sworn to (or affirmed) and subscribed before me this
136 day of, ...(year)...., by ...(name of person making
137 statement)....

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

139 ...(Print, Type, or Stamp Commissioned Name of Notary
140 Public)...

141

142 Personally Known OR Produced Identification

143 Type of Identification Produced.....

144

145 (b) If any person other than the owner of record claims an
146 interest in the proceeds prior to the date that the clerk
147 reports the surplus as unclaimed ~~during the 60-day period~~ or if
148 the owner of record files a claim for the surplus but
149 acknowledges that one or more other persons may be entitled to
150 part or all of the surplus, the court shall set an evidentiary
151 hearing to determine entitlement to the surplus. At the
152 evidentiary hearing, an equity assignee has the burden of
153 proving that he or she is entitled to some or all of the surplus
154 funds. The court may grant summary judgment to a subordinate
155 lienholder prior to or at the evidentiary hearing. The court
156 shall consider the factors in s. 45.033 when hearing a claim



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157 that any person other than a subordinate lienholder or the owner
158 of record is entitled to the surplus funds.

159 (c) One year after the sale, any surplus remaining with the
160 clerk of the court which has not been disbursed as provided in
161 this section is presumed unclaimed as set forth in s. 717.113
162 and must be reported and remitted to the department in
163 accordance with ss. 717.117 and 717.119, unless there is a
164 pending court proceeding regarding entitlement to the surplus.
165 At the conclusion of any court proceeding and any appeal
166 regarding entitlement to the surplus, the clerk of the court
167 shall, if directed by the court order, report and remit the
168 unclaimed property to the department or to another entity, as
169 applicable, or, if not directed by the court order, to the owner
170 of record. For purposes of establishing entitlement to the
171 surplus after the property has been remitted to the department,
172 only the owner of record reported by the clerk of the court or
173 the beneficiary of a deceased owner of record reported by the
174 clerk is entitled to the surplus. A surplus of less than \$10
175 escheats to the clerk. For purposes of this paragraph, the term
176 "beneficiary" has the same meaning as in s. 731.201. ~~If no claim~~
177 ~~is filed during the 60-day period, the clerk shall appoint a~~
178 ~~surplus trustee from a list of qualified surplus trustees as~~
179 ~~authorized in s. 45.034. Upon such appointment, the clerk shall~~
180 ~~prepare a notice of appointment of surplus trustee and shall~~
181 ~~furnish a copy to the surplus trustee. The form of the notice~~
182 ~~may be as follows:-~~

183
184 ~~(Caption of Action)~~
185



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186 ~~NOTICE OF APPOINTMENT~~
187 ~~OF SURPLUS TRUSTEE~~
188

189 ~~The undersigned clerk of the court certifies that he or she~~
190 ~~disbursed the proceeds received from the sale of the property as~~
191 ~~provided in the order or final judgment to the persons named in~~
192 ~~the certificate of disbursements, and that surplus funds of~~
193 ~~\$. . . . remain and are subject to disbursement to the owner of~~
194 ~~record. You have been appointed as surplus trustee for the~~
195 ~~purpose of finding the owner of record in order for the clerk to~~
196 ~~disburse the surplus, after deducting costs, to the owner of~~
197 ~~record.~~

198 ~~WITNESS my hand and the seal of the court on, . . . (year)~~

199 ~~. . . (Clerk) . . .~~

200 ~~By . . . (Deputy Clerk) . . .~~

201
202 ~~(4) If the surplus trustee is unable to locate the owner of~~
203 ~~record entitled to the surplus within 1 year after appointment,~~
204 ~~the appointment shall terminate and the clerk shall notify the~~
205 ~~surplus trustee that his or her appointment was terminated.~~
206 ~~Thirty days after termination of the appointment of the surplus~~
207 ~~trustee, the clerk shall treat the remaining funds as unclaimed~~
208 ~~property to be deposited with the Chief Financial Officer~~
209 ~~pursuant to chapter 717.~~

210 Section 4. Paragraph (d) of subsection (3) of section
211 45.033, Florida Statutes, is amended to read:

212 45.033 Sale or assignment of rights to surplus funds in a
213 property subject to foreclosure.-

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



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215 or assignment qualified under this subsection, thereby entitling
216 the transferee or assignee to the surplus funds or a portion or
217 percentage of the surplus funds, if:

218 ~~(d) The transferor or assignee is qualified as a surplus~~
219 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
220 ~~45.034.~~

221 Section 5. Section 45.034, Florida Statutes, is repealed.

222 Section 6. Paragraphs (b) and (d) of subsection (2) of
223 section 45.035, Florida Statutes, are amended to read:

224 45.035 Clerk's fees.—In addition to other fees or service
225 charges authorized by law, the clerk shall receive service
226 charges related to the judicial sales procedure set forth in ss.
227 45.031-45.034 and this section:

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

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

233 ~~(d) The clerk is entitled to a service charge of \$15 for~~
234 ~~appointing a surplus trustee, furnishing the surplus trustee~~
235 ~~with a copy of the final judgment and the certificate of~~
236 ~~disbursements, and disbursing to the surplus trustee the~~
237 ~~trustee's cost advance.~~

238 Section 7. Paragraph (h) of subsection (6) of section
239 318.1451, Florida Statutes, is amended to read:

240 318.1451 Driver improvement schools.—

241 (6) The department shall adopt rules establishing and
242 maintaining policies and procedures to implement the
243 requirements of this section. These policies and procedures may



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244 include, but shall not be limited to, the following:

245 (h) *Miscellaneous requirements.*—The department shall
246 require that all course providers:

247 1. Disclose all fees associated with courses offered by the
248 provider and associated driver improvement schools and not
249 charge any fees that are not disclosed during registration.

250 2. Provide proof of ownership, copyright, or written
251 permission from the course owner to use the course in this
252 state.

253 3. Ensure that any course that is offered in a classroom
254 setting, by the provider or a school authorized by the provider
255 to teach the course, is offered at locations that are free from
256 distractions and reasonably accessible to most applicants.

257 4. Issue a certificate to persons who successfully complete
258 the course.

259 5. Within 7 business days after a person successfully
260 completes the course, transmit the individual completion
261 certificate together with the citation number through the
262 Florida Courts E-Filing Portal governed by the Florida Courts E-
263 Filing Authority to the clerk of the circuit court of the county
264 where the citation is issued.

265 Section 8. Section 717.113, Florida Statutes, is amended to
266 read:

267 717.113 Property held by courts and public agencies.—All
268 intangible property held for the owner by any court, government
269 or governmental subdivision or agency, public corporation, or
270 public authority that has not been claimed by the owner for more
271 than 1 year after it became payable or distributable is presumed
272 unclaimed. Except as provided in s. 45.032(3)(c), money held in



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273 the court registry for which a court order has not been issued
274 to determine an owner does not become payable or distributable
275 and is not subject to reporting under this chapter.

276 Notwithstanding the provisions of this section, funds deposited
277 in the Minerals Trust Fund pursuant to s. 377.247 are presumed
278 unclaimed only if the funds have not been claimed by the owner
279 for more than 5 years after the date of first production from
280 the well.

281 Section 9. Subsection (8) of section 717.124, Florida
282 Statutes, is amended to read:

283 717.124 Unclaimed property claims.—

284 (8) This section applies to all unclaimed property reported
285 and remitted to the Chief Financial Officer, including, but not
286 limited to, property reported pursuant to ss. 45.032, 732.107,
287 733.816, and 744.534 ~~ss. 43.19, 45.032, 732.107, 733.816, and~~
288 ~~744.534.~~

289 Section 10. Section 717.138, Florida Statutes, is amended
290 to read:

291 717.138 Rulemaking authority.—The department shall
292 administer and provide for the enforcement of this chapter. The
293 department has authority to adopt rules pursuant to ss.
294 120.536(1) and 120.54 to implement the provisions of this
295 chapter. The department may adopt rules to allow for electronic
296 filing of fees, forms, and reports required by this chapter. The
297 authority to adopt rules pursuant to this chapter applies to all
298 unclaimed property reported and remitted to the Chief Financial
299 Officer, including, but not limited to, property reported and
300 remitted pursuant to ss. 45.032, 732.107, 733.816, and 744.534
301 ~~ss. 43.19, 45.032, 732.107, 733.816, and 744.534.~~



302 Section 11. Section 717.1401, Florida Statutes, is amended
303 to read:

304 717.1401 Repeal.—This chapter shall not repeal, but shall
305 be additional and supplemental to the existing provisions of ss.
306 43.18 and 402.17 ~~ss. 43.18, 43.19, and 402.17~~ and chapter 716.

307 Section 12. This act shall take effect July 1, 2019.

308
309 ===== T I T L E A M E N D M E N T =====

310 And the title is amended as follows:

311 Delete everything before the enacting clause
312 and insert:

313 A bill to be entitled
314 An act relating to clerks of the court; repealing s.
315 43.19, F.S., relating to the disposition of certain
316 money paid into a court which is unclaimed; amending
317 s. 45.031, F.S.; revising the time periods within
318 which certain persons must file claims for certain
319 unclaimed surplus funds; amending s. 45.032, F.S.;
320 deleting provisions defining and specifying the powers
321 of a "surplus trustee"; specifying procedures for the
322 clerk to use in handling surpluses that remain
323 unclaimed; specifying the entities eligible for the
324 surplus once the funds have been remitted to the
325 Department of Financial Services; conforming
326 provisions to changes made by the act; amending s.
327 45.033, F.S.; conforming a provision to changes made
328 by the act; repealing s. 45.034, F.S., relating to
329 qualifications and appointment of a surplus trustee in
330 foreclosure actions; amending s. 45.035, F.S.;



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331 revising service charges that a clerk may receive and
332 deduct from surplus amounts; amending s. 318.1451,
333 F.S.; requiring all driver improvement course
334 providers to transmit, within a specified timeframe,
335 the individual completion certificate and citation
336 number through the Florida Courts E-Filing Portal
337 governed by the Florida Courts E-Filing Authority to
338 the clerk of the circuit court in the county where the
339 citation was issued; amending s. 717.113, F.S.;
340 providing that certain funds remaining after a
341 judicial sale and held in a court registry are not
342 payable or distributable and are not subject to
343 certain reporting requirements; amending ss. 717.124,
344 717.138, and 717.1401, F.S.; conforming cross-
345 references; providing an effective date.