

Bill No. CS for SB 166

Barcode 211664

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Campbell) 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 set forth 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 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION,
4 THERE MAY BE ADDITIONAL MONEY FROM THE SALE
5 AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE
6 PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
7 FINAL JUDGMENT.

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

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

25 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE
26 TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU
27 SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE
28 REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY
29 AN ATTORNEY WHO IS NOT RELATED TO THE PERSON
30 OFFERING TO HELP YOU, TO MAKE SURE THAT YOU
31 UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU

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

14 A copy of the final judgment shall be furnished by the
15 clerk by first-class mail to the last known address of every
16 party in the action or to the attorney of record for such
17 party. Any irregularity in the mailing, including the failure
18 to include this statement in any final judgment or order, does
19 not affect the validity or finality of the final judgment or
20 order or any sale held pursuant thereto.

21 Any sale held more than 35 days after the final
22 judgment or order shall not affect the validity or finality of
23 the final judgment or order or any sale held pursuant 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) A statement that any person claiming an interest
5 in the surplus from the sale, if any, other than the property
6 owner as of the date of the lis pendens, must file a claim no
7 later than 60 days after the sale.

8 (f)(e) The name of the clerk making 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 stated in s. 45.035 for services in making,
19 recording, and certifying the sale and title, which must be
20 assessed as costs.

21 At the time of the sale, the successful high bidder
22 shall post with the clerk a deposit equal to 5 percent of the
23 final bid. The deposit shall be applied to the sale price at
24 the time of payment. If final payment is not made within the
25 prescribed period, the clerk shall readvertise the sale as
26 provided in this section and pay all costs of the sale from
27 the deposit. Any remaining funds shall be applied toward the
28 judgment.

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

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1 substantially the following form:

2

3 (Caption of Action)

4

5

CERTIFICATE OF SALE

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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

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1 collection services under contract with the Agency for
2 Workforce Innovation through an interagency agreement pursuant
3 to s. 443.1316.7

4 (b) The certificate of disbursements shall be in
5 substantially the following form:

6
7 (Caption of Action)

8
9 CERTIFICATE OF DISBURSEMENTS

10

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

15 Name Amount

16

17 Total Disbursements: \$ _____

18 Surplus Retained by Clerk (if any): \$ _____

19

20 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS
21 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM
22 WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE
23 SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL
24 NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER
25 60 DAYS, ONLY THE OWNER OF RECORD AS OF THE
26 DATE OF THE LIS PENDENS MAY CLAIM THE SURPLUS.

27

28 WITNESS my hand and the seal of the court on ,

29 . . . (year)

30

. . . (Clerk) . . .

31

By . . . (Deputy Clerk) . . .

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(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 for in ss. 45.032-45.035.

(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 does ~~shall~~ not apply to property sold under executions.

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

45.032 Disbursement of surplus funds after judicial sale.--

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

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1 (a) "Owner of record" means the person or persons who
2 appear to be the owner of the property that is the subject of
3 the foreclosure proceeding on the date of the filing of the
4 lis pendens. In determining an owner of record, a person need
5 not perform a title search and examination but may rely on the
6 plaintiff's allegation of ownership in the complaint when
7 determining the owner of record.

8 (b) "Subordinate lienholder" means the holder of a
9 subordinate lien shown on the face of the pleadings as an
10 encumbrance on the property. The lien being foreclosed on is
11 not a subordinate lien. A subordinate lienholder includes, but
12 is not limited to, a subordinate mortgage, judgment,
13 assessment lien, or construction lien. However, the holder of
14 a subordinate lien may not be deemed a subordinate lienholder
15 if the holder was paid in full from the proceeds of the sale.

16 (c) "Surplus funds" or "surplus" means the funds
17 remaining after payment of all disbursements required by the
18 final judgment of foreclosure and shown on the certificate of
19 disbursements.

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

22 (2) There is established a rebuttable legal
23 presumption that the owner of record on the date of the filing
24 of a lis pendens is the person entitled to surplus funds after
25 payment of subordinate lienholders who have timely filed a
26 claim. A person claiming a legal right to the surplus as an
27 assignee of the rights of the owner of record must prove to
28 the court that the person is entitled to the funds. At any
29 hearing regarding such entitlement, the court shall consider
30 the factors set forth in s. 45.033 in determining whether an
31 assignment is sufficient to overcome the presumption. The

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1 Legislature intends to abrogate the common law rule that
2 surplus proceeds in a foreclosure case are the property of the
3 owner of the property on the date of the foreclosure sale.

4 (3) During the 60 days after the clerk issues the
5 certificate of disbursements, the clerk shall hold the surplus
6 pending a court order.

7 (a) If the owner of record claims the surplus during
8 the 60-day period, and there is no subordinate lienholder, the
9 court shall order the clerk to deduct any applicable service
10 charges from the surplus and pay the remainder to the owner of
11 record. The clerk may establish a reasonable requirement that
12 the owner of record prove his or her identity before receiving
13 the disbursement. The clerk may assist an owner of record in
14 making a claim. An owner of record may use the following form
15 in making a claim:

16
17 (Caption of Action)

18 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS.

19 State of _____

20 County of _____

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

23 1. I was (we were) the owner of the following
24 described real property in _____ County,
25 Florida, before the foreclosure sale and as of
26 the date of the filing of the lis pendens:

27 (Legal description of real property)

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

31 3. I (we) do not owe any money that is the

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- 1 subject of an unpaid judgment, condominium
- 2 lien, cooperative lien, or homeowner's
- 3 association.
- 4 4. I am (we are) not currently in bankruptcy.
- 5 5. I (we) have not sold or assigned my (our)
- 6 right to the mortgage surplus.
- 7 6. My (our) new address is: _____.
- 8 7. If there is more than one owner entitled to
- 9 the surplus, we have agreed that the surplus
- 10 should be paid _____ jointly, or to: _____, at
- 11 the following address: _____.
- 12 8. I (WE) UNDERSTAND THAT I (WE) ARE NOT
- 13 REQUIRED TO HAVE A LAWYER OR ANY OTHER
- 14 REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN
- 15 MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO
- 16 CLAIM ANY MONEY TO WHICH I (WE) MAY BE
- 17 ENTITLED.
- 18 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS
- 19 GIVEN UNDER OATH, AND THAT IF ANY STATEMENTS
- 20 ARE UNTRUE I (WE) MAY BE PROSECUTED CRIMINALLY
- 21 FOR PERJURY.

23 (Signatures)

24 Sworn to (or affirmed) and subscribed before me

25 this _____ day of _____,

26 (year) _____, by _____ (name of person making

27 statement).

28

29 (Signature of Notary Public - State of Florida)

30 (Print, Type, or Stamp Commissioned Name of

31 Notary Public)

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1 Personally Known _____ OR Produced
 2 Identification _____
 3 Type of Identification Produced _____
 4

5 (b) If any person other than the owner of record
 6 claims an interest in the proceeds during the 60 days, or if
 7 the owner of record files a claim for the surplus but
 8 acknowledges that one or more other persons may be entitled to
 9 part of all of the surplus, the court shall set an evidentiary
 10 hearing to determine entitlement to the surplus. At the
 11 evidentiary hearing, a grantee or assignee has the burden of
 12 proving that he or she is entitled to some or all of the
 13 surplus funds. The court may grant summary judgment to a
 14 subordinate lienholder prior to or at the evidentiary hearing.
 15 The court shall consider the factors in s. 45.033 when hearing
 16 a claim that any person other than a subordinate lienholder or
 17 the owner of record is entitled to the surplus funds.

18 (c) If no claim is filed, the clerk shall contact the
 19 Florida Clerks of Court Operations Corporation, established
 20 under s. 28.35, for appointment of a surplus trustee. The
 21 Florida Clerks of Court Operations Corporation shall make an
 22 appointment within 10 days. Upon assignment, the clerk shall
 23 prepare a notice of appointment of surplus trustee and shall
 24 furnish a copy to the surplus trustee. The form of the notice
 25 may be as follows:

26
 27 (Caption of Action)
 28 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE
 29 The undersigned clerk of the court certifies
 30 that he or she disbursed the proceeds received
 31 from the sale of the property as provided in

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1 the order or final judgment to the persons
2 named in the certificate of disbursements, and
3 that surplus funds of \$ _____ remain and
4 are subject to disbursement to the owner of
5 record. You have been appointed as surplus
6 trustee for the purpose of finding the owner of
7 record in order for the clerk to disburse the
8 surplus, after deducting costs, to the owner of
9 record.

10 WITNESS my hand and the seal of the court on
11 _____, ... (year)....
12 ... (Clerk)....
13 By... (Deputy Clerk)...

14
15 (4) If the surplus trustee is unable to locate the
16 owner of record entitled to the surplus within 1 year after
17 appointment, the appointment shall terminate and the clerk
18 shall notify the surplus trustee that his or her appointment
19 was terminated. Thirty days after termination of the
20 appointment of the surplus trustee, the clerk shall treat the
21 remaining funds as unclaimed property, to be deposited with
22 the Chief Financial Officer pursuant to chapter 717.

23 (5) Proceedings regarding surplus funds in a
24 foreclosure case do not affect or cloud the title of the
25 purchaser at the foreclosure sale of the property in any
26 manner.

27 Section 3. Section 45.033, Florida Statutes, is
28 created to read:

29 45.033 Sale or assignment of rights to surplus funds
30 in a property subject to foreclosure.--

31 (1) There is established a rebuttable legal

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1 presumption that the owner of record on the date of the filing
 2 of a lis pendens is the person entitled to surplus funds after
 3 payment of subordinate lienholders who have timely filed a
 4 claim. A person claiming a legal right to the surplus as an
 5 assignee of the rights of the owner of record must prove
 6 entitlement to the surplus funds pursuant to this section. The
 7 Legislature intends to abrogate the common law rule that
 8 surplus proceeds in a foreclosure case are the property of the
 9 owner of the property on the date of the foreclosure sale.

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

11 (a) The grantee or assignee of a voluntary transfer or
 12 assignment proving the right to collect the surplus funds or
 13 any portion or percentage of the surplus funds by proving that
 14 the transfer or assignment qualifies as required by this
 15 section; or

16 (b) The grantee or assignee is a grantee or assignee
 17 by virtue of an involuntary transfer or assignment of the
 18 right to collect the surplus. An involuntary transfer or
 19 assignment may be as a result of inheritance or as a result of
 20 the appointment of a guardian.

21 (3) A voluntary transfer or assignment shall be a
 22 transfer or assignment qualified under this subsection,
 23 thereby entitling the transferee or assignee to the surplus
 24 funds, or a portion or percentage of the surplus funds, if:

25 (a) The transfer or assignment is in writing, and the
 26 instrument:

27 1. Was executed before the foreclosure sale and
 28 includes a financial disclosure that specifies the assessed
 29 values of the property, a statement that the assessed value
 30 may be lower than the actual value of the property, the
 31 approximate amount of any debt encumbering the property, and

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1 the approximate amount of any equity in the property. If the
2 instrument was executed after the foreclosure sale, the
3 instrument must also specify the foreclosure sale price and
4 the amount of the surplus.

5 2. Includes a statement that the owner does not need
6 an attorney or other representative to recover surplus funds
7 in a foreclosure.

8 3. Specifies all forms of consideration paid for the
9 rights to the property or the assignment of the rights to any
10 surplus funds.

11 (b) The transfer or assignment is filed with the court
12 on or before 60 days after the filing of the certificate of
13 disbursements.

14 (c) There are funds available to pay the transfer or
15 assignment after payment of timely filed claims of subordinate
16 lienholders.

17 (d) The transferor or assignee is qualified as a
18 surplus trustee, or could qualify as a surplus trustee,
19 pursuant to s. 45.034.

20 (4) The court shall honor a transfer or assignment
21 that complies with the requirements set forth in subsection
22 (3), in which case the court shall order the clerk to pay the
23 transferor or assignee from the surplus.

24 (5) If the court finds that a voluntary transfer or
25 assignment does not qualify under subsection (3), but that it
26 was procured in good faith and with no intent to defraud the
27 transferor or assignor, the court may order the clerk to pay
28 claim to the transferee or assignee after payment of timely
29 filed claims of subordinate lienholders.

30 (6) If a voluntary transfer or assignment of the
31 surplus is set aside, the owner of record is entitled to

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1 payment of the surplus funds after payment of timely filed
 2 claims of subordinate lienholders; but the transferee or
 3 assignee may, in a separate proceeding, seek repayment of any
 4 consideration paid for the transfer or assignment.

5 (7) This section does not apply to a deed, mortgage,
 6 or deed in lieu of foreclosure unless a person other than the
 7 owner of record is claiming that a deed or mortgage entitles
 8 the person to surplus funds. This section does not affect the
 9 title or marketability of the real property that is the
 10 subject of the deed or other instrument. This section does not
 11 affect the validity of a lien evidenced by a mortgage.

12 Section 4. Section 45.034, Florida Statutes, is
 13 created to read:

14 45.034 Qualifications and appointment of a surplus
 15 trustee in a foreclosure action.--

16 (1) A surplus trustee is a third-party trustee
 17 approved by the Florida Clerks of Court Operations
 18 Corporation. A surplus trustee must be willing to accept cases
 19 on a statewide basis; however, a surplus trustee may employ
 20 subcontractors who are not qualified as a surplus trustee if
 21 the surplus trustee remains primarily responsible for the
 22 duties set forth in this section.

23 (2) A surplus trustee must apply for certification
 24 with the Florida Clerks of Court Operations Corporation. The
 25 application must contain:

26 (a) The name and address of the entity and of one or
 27 more principals of the entity.

28 (b) A certificate of good standing from the Secretary
 29 of State indicating that the entity is a Florida entity.

30 (c) A statement under oath by a principal of the
 31 entity certifying that the entity, or a principal of the

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1 entity, has a minimum of 12 months' experience in the recovery
2 of surplus funds in foreclosure actions.

3 (d) Proof that the entity holds a valid class "A"
4 private investigator's license pursuant to chapter 493.

5 (e) Proof that the entity carries a minimum of
6 \$500,000 in liability insurance, cash reserves, or bonding.

7 (f) A statement from an attorney licensed to practice
8 in the state certifying that the attorney is a principal of
9 the entity or is employed by the entity on a full-time basis,
10 and that the attorney will supervise the management of the
11 entity during its tenure as a surplus trustee.

12 (g) A statement under oath by a principal of the
13 entity certifying that the principal understands his or her
14 duty to immediately notify the Florida Clerks of Court
15 Operations Corporation if the trustee, in the future, fails to
16 qualify as an entity entitled to be a surplus trustee.

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

18 (3) The Florida Clerks of Court Operations Corporation
19 shall certify any surplus trustee that applies and qualifies.
20 Certification shall be on a calendar year basis. The
21 corporation may renew a qualification upon receipt of the \$25
22 fee and a statement under oath from a principal of the surplus
23 trustee certifying that the surplus trustee continues to
24 qualify under this section.

25 (4) The corporation shall develop a rotation system
26 for assignment of cases to all qualified surplus trustees.
27 Upon notification by a clerk that the clerk is holding a
28 surplus, the Florida Clerks of Court Operations Corporation
29 shall assign the case to the next qualified surplus trustee in
30 the rotation.

31 (5) The primary duty of a surplus trustee is to locate

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1 the owner of record within 1 year after appointment. Upon
 2 locating the owner of record, the surplus trustee shall file a
 3 petition with the court on behalf of the owner of record
 4 seeking disbursement of the surplus funds. If more than one
 5 person appears to be the owner of record, the surplus trustee
 6 shall obtain an agreement between such persons as to the
 7 payment of the surplus or file an interpleader. The
 8 interpleader may be filed as part of the foreclosure case.

9 (6) A surplus trustee is entitled to the following
 10 service charges and fees, which shall be disbursed by the
 11 clerk and payable from the surplus:

12 (a) Upon notice of appointment, a cost advance of 2
 13 percent of the surplus.

14 (b) Upon obtaining a court order disbursing the
 15 surplus to the owner of record, a service charge of 10 percent
 16 of the surplus.

17 Section 5. Section 46.035, Florida Statutes, is
 18 created to read:

19 45.035 Clerk's fees.--In addition to other fees or
 20 service charges authorized by law, the clerk shall receive
 21 service charges related to the judicial-sales procedure set
 22 forth in ss. 45.031-45.035.

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

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

30 (a) The clerk may withhold the sum of \$25 from the
 31 surplus, which may be used only for purposes of educating the

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1 public as to the rights of homeowners regarding foreclosure
2 proceedings.

3 (b) The clerk shall be entitled to a service charge of
4 \$10 for notifying a surplus trustee of his or her appointment.

5 (c) The clerk shall be entitled to a service charge of
6 \$10 for each disbursement of surplus proceeds.

7 (d) The clerk shall be entitled to a service charge of
8 \$10 for contacting the Florida Clerks of Court Operations
9 Corporation for assignment of the case to a surplus trustee,
10 furnishing the surplus trustee with a copy of the final
11 judgment and the certificate of disbursements, and disbursing
12 to the surplus trustee the trustee's cost advance.

13 Section 6. Section 501.2078, Florida Statutes, is
14 created to read:

15 501.2078 Violations involving individual homeowners
16 during the course of residential foreclosure proceedings;
17 civil penalties.--

18 (1) As used in this section:

19 (a) "Homeowner" means any individual who is the owner
20 of real property subject to a residential foreclosure
21 proceeding.

22 (b) "Residential foreclosure proceeding" means any
23 action in a court of this state in which a party seeks to
24 foreclose on a mortgage encumbering the mortgagor's primary
25 dwelling.

26 (c) "Victimize" means any course of action intended to
27 dupe, swindle, or cheat a homeowner subject to a residential
28 foreclosure proceeding. The factors that a court shall review
29 when determining whether a course of action is victimizing a
30 homeowner are:

31 1. The compensation received relative to the risk and

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1 the amount of work involved.

2 2. The number of homeowners involved.

3 3. The relative bargaining position of the parties.

4 4. The relative knowledge and sophistication of the
5 parties.

6 5. Representations made in the inducement.

7 6. The timing of the agreement.

8 (2) Any person, other than a financial institution as
9 defined in s. 655.005, who willfully uses, or has willfully
10 used, a method, act, or practice in violation of this part,
11 which method, act, or practice victimizes or attempts to
12 victimize homeowners during the course of a residential
13 foreclosure proceeding and, in committing such violation knew
14 or should have known that such conduct was unfair or
15 deceptive, is liable for a civil penalty of not more than
16 \$15,000 for each such violation.

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

22 (4) Civil penalties collected pursuant to this section
23 shall be deposited into the Legal Affairs Revolving Trust Fund
24 of the Department of Legal Affairs and allocated solely to the
25 Department of Legal Affairs for the purpose of preparing and
26 distributing consumer education materials, programs, and
27 seminars to benefit homeowners in residential foreclosure
28 proceedings or to further enforcement efforts.

29 (5) This section does not apply to:

30 (a) The act of encumbering the dwelling subject to a
31 residential foreclosure proceeding with a substitute or

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1 additional lien.

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

5 (c) Any action taken by a lender, mortgage broker,
6 assignee of a mortgage, or counsel for any such entity in
7 foreclosing a mortgage or collecting on the note.

8 Section 7. Section 702.035, Florida Statutes, is
9 amended to read:

10 702.035 Legal notice concerning foreclosure
11 proceedings.--Whenever a legal advertisement, publication, or
12 notice relating to a foreclosure proceeding is required to be
13 placed in a newspaper, it is the responsibility of the
14 petitioner or petitioner's attorney to place such
15 advertisement, publication, or notice. The advertisement,
16 publication, or notice shall be placed directly by the
17 attorney for the petitioner, by the petitioner if acting pro
18 se, or by the clerk of the court. Only the actual costs
19 charged by the newspaper for the advertisement, publication,
20 or notice may be charged as costs in the action.

21 Section 8. This act shall take effect July 1, 2006.

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

25 And the title is amended as follows:

26 Delete everything before the enacting clause

27

28 and insert:

29 A bill to be entitled

30 An act relating to foreclosure proceedings;

31 amending s. 45.031, F.S.; adding a required

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1 statement for inclusion into a final judgment
2 of foreclosure; requiring the clerk to furnish
3 a copy of the final judgment to parties;
4 revising information required to be provided in
5 a notice of sale; amending the form of a
6 certificate of disbursements; creating s.
7 45.032, F.S.; providing definitions;
8 establishing a presumption of entitlement to
9 surplus funds in certain filings; providing for
10 disbursement of surplus funds by the clerk of
11 court; giving a foreclosed owner 60 days to
12 claim any surplus; providing a form to make a
13 claim; providing that persons other than the
14 foreclosed owner have 60 days to file a claim
15 or be barred from recovery; providing for an
16 evidentiary hearing; providing for appointment
17 of a surplus trustee; providing time limits for
18 the surplus trustee to act; creating s. 45.033,
19 F.S.; providing requirements for a sale or
20 assignment of rights to surplus funds in a
21 foreclosure proceeding; creating a rebuttable
22 presumption of entitlement to certain funds;
23 providing requirements for transfers or
24 assignments in rebuttal; providing for
25 nonapplication to certain instruments;
26 specifying absence of effect on title or
27 marketability of certain property or validity
28 of certain liens; creating s. 45.034, F.S.;
29 providing qualifications of a surplus trustee;
30 providing for appointment of a surplus trustee;
31 providing fees; creating s. 45.035, F.S.;

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1 providing for fees to the clerk of the court in
2 foreclosure actions; creating s. 501.2078,
3 F.S.; providing definitions; providing a civil
4 penalty for knowingly using unfair or deceptive
5 homeowner victimization methods, acts, or
6 practices in residential foreclosure
7 proceedings; specifying the higher priority of
8 an order of restitution or reimbursement over
9 imposition of a civil penalty; providing for
10 deposit of civil penalties into the Legal
11 Affairs Revolving Trust Fund of the Department
12 of Legal Affairs; allocating such funds for
13 certain purposes; providing exceptions;
14 specifying nonapplication to certain
15 encumbrances; amending s. 702.035, F.S.;
16 limiting costs chargeable in a foreclosure
17 proceeding; providing an effective date.

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