

Bill No. SB 166

Barcode 384724

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Campbell) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (7) of 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 following procedure may be followed as an alternative to any other sale procedure if so ordered by the court:

(7) DISBURSEMENTS OF PROCEEDS.--

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party not in default, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and

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1 Employment Security was named as a defendant while the
 2 Department of Revenue was providing unemployment tax
 3 collection services under contract with the Agency for
 4 Workforce Innovation through an interagency agreement pursuant
 5 to s. 443.1316.7

6 (b) The certificate of disbursement shall be in
 7 substantially the following form:

8
 9 (Caption of Action)

10
 11 CERTIFICATE OF DISBURSEMENTS

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

17 Name		Amount
18		
19	Total	
20		

21 WITNESS my hand and the seal of the court on,
 22 ...(year)....

23 ... (Clerk)...

24 By ... (Deputy Clerk)...

25 (c) If no objections to the report are served within
 26 10 days after it is filed, the disbursements by the clerk
 27 shall stand approved as reported. If timely objections to the
 28 report are served, they shall be heard by the court. Service
 29 of objections to the report does not affect or cloud the title
 30 of the purchaser of the property in any manner.

31 (d) If there are funds remaining after payment of all

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1 disbursements required by the final judgment of foreclosure
2 and shown on the certificate of disbursements, the provisions
3 of ss. 45.032 and 45.033 apply.

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

6 45.032 Disbursement of surplus funds after judicial
7 sale.--

8 (1) As used in this section and s. 45.033, the term:

9 (a) "Owner of record" means the person or persons who
10 appear to be the owner of the property on the date of the
11 filing of the lis pendens. The clerk need not perform a title
12 search and examination, but may rely on the plaintiff's
13 allegation of ownership in the complaint when determining the
14 owner of record.

15 (b) "Notice of surplus funds" means a document in
16 substantially the following form:

17
18 (Caption of Action)

19
20 NOTICE OF SURPLUS FUNDS

21
22 The undersigned clerk of the court certifies that he or
23 she disbursed the proceeds received from the sale of the
24 property as provided in the order or final judgment to the
25 persons named in the certificate of disbursements, and that
26 surplus funds of \$ _____ remain and are subject to
27 disbursement by the court.

28 It appears that _____, as owner(s) of the
29 property at the time that the foreclosure was filed, (is/are)
30 entitled to payment of the surplus funds. The clerk of court
31 will pay the surplus funds to the owner(s) unless an objection

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1 to payment of the surplus funds is filed with the court on or
 2 before _____ . If an objection is timely
 3 filed, a hearing will be set in order for the court to
 4 determine who is entitled to receive the surplus funds.

5 IF YOU ARE AN INDIVIDUAL AND ARE THE OWNER OF THE
 6 PROPERTY, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT
 7 REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU
 8 DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR
 9 YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED.

10

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

13 By (Deputy Clerk)

14

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

18 (2) There is established a legal presumption that the
 19 owner of record on the date of the filing of a lis pendens is
 20 the person entitled to surplus funds. The surplus funds shall
 21 be paid to the owner of record on the date of the filing of
 22 the lis pendens unless a court rules otherwise.

23 (3) If the surplus funds are less than \$200, the clerk
 24 shall, after deducting a service charge of \$5, pay the surplus
 25 funds to the owner of record. The payment instrument may be
 26 furnished by regular mail to the last known address of the
 27 owner of record. If the surplus funds are \$200 or more,
 28 subsections (4)-(9) apply.

29 (4) The clerk shall furnish a notice of surplus funds
 30 by certified mail to the following persons:

31 (a) The owner of record.

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1 (b) All defendants in the action listed on the final
2 judgment of foreclosure, except that:

3 1. A defendant whose claim was paid in full as shown
4 on the certificate of disbursements need not be furnished a
5 notice of surplus funds.

6 2. Any defendant named by position and not by actual
7 name need not be furnished a notice of surplus funds. Examples
8 of such defendants include, but are not limited to, defendants
9 such as "unknown tenant" or "unknown heir."

10 (c) If a suggestion of bankruptcy was filed in the
11 action, the bankruptcy trustee.

12 (d) Any other person who appears from the record to be
13 a person who may be entitled to the surplus funds. The
14 plaintiff is not a person who is entitled to surplus funds and
15 need not be given a notice of surplus funds.

16
17 If the clerk is unsure who the owner of record is, the clerk
18 may write "unknown" on the form and send the notice of surplus
19 funds with a notice of hearing. The clerk may only receive one
20 service charge for the mailing.

21 (5) The clerk is entitled to a service charge of \$5
22 for each notice of surplus funds. The clerk may draw the
23 service charge from the surplus funds upon mailing.

24 (6) Unless an objection is filed within 30 days after
25 the mailing of the notice of surplus funds, the clerk shall
26 pay the surplus funds to the owner of record. If the location
27 of the owner of record is unknown, the clerk may expend up to
28 \$250 of the surplus funds to conduct or contract for a search
29 for the owner of record. If the search is unsuccessful and
30 more than 90 days has elapsed, the clerk shall treat the funds
31 as unclaimed property, which shall be deposited with the Chief

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1 Financial Officer pursuant to chapter 717.

2 (7) If an objection is filed or if the clerk is unable
3 to determine the owner of record, the court shall set a
4 hearing to determine the disposition of the surplus funds. The
5 clerk shall prepare a notice of the hearing and shall furnish
6 the notice by certified mail to all persons who have received
7 a notice of surplus funds and to any other person who has
8 requested notice of the hearing on surplus funds. The clerk is
9 entitled to an additional service charge of \$5 per notice of
10 hearing, which may be drawn from the surplus funds.

11 (8) At the hearing, any person other than the owner of
12 record has the burden of proving that he or she is entitled to
13 some or all of the surplus funds. The court shall consider the
14 factors in s. 45.033 when hearing a claim that a person other
15 than the owner of record is entitled to the surplus funds.

16 (9) The clerk of court may collect an additional fee
17 of \$25 from any surplus funds remaining in the court registry
18 following a foreclosure sale. The clerk shall use the proceeds
19 of such fee solely for purposes of educating the public as to
20 the rights of homeowners regarding foreclosure proceedings.

21 Section 3. Section 45.033, Florida Statutes, is
22 created to read:

23 45.033 Sale or assignment of rights to surplus
24 proceeds in a property subject to foreclosure.--

25 (1) There is a rebuttable presumption that the owner
26 of real property as of the date of the filing of a lis pendens
27 is entitled to surplus funds available in a foreclosure of
28 that real property.

29 (2) Another person may rebut that presumption only by
30 proving that a transfer or assignment of the right to collect
31 the surplus funds, or any portion or percentage of the surplus

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1 funds, has been executed as required by this section.

2 (3) For a transfer or assignment to qualify as one
3 entitling the transferee or assignee to the surplus funds, or
4 any portion or percentage thereof, the instrument must:

5 (a) Be executed with the formality of a deed.

6 (b) Include a financial disclosure that specifies the
7 assessed value of the property and states that the assessed
8 value may be lower than the actual value of the property, the
9 approximate amount of any debt encumbering the property, and
10 the approximate amount of any equity in the property.

11 (c) Include a statement that the owner does not need
12 an attorney or other representative to recover surplus funds
13 in a foreclosure.

14 (d) Specify all forms of consideration paid for the
15 rights to the property or the assignment of the rights to any
16 surplus funds.

17 (4) A transfer or assignment that does not qualify
18 under subsection (3) may nevertheless qualify if the court
19 finds that the instrument was procured in good faith and with
20 no intent to defraud the transferee or assignee.

21 (5) A party who has executed a transfer or assignment
22 that does not conform to the requirements of this section may
23 petition the court presiding over the foreclosure proceeding
24 to set aside the nonconforming transfer or assignment. If the
25 transfer or assignment is set aside, the owner of record is
26 entitled to the surplus funds, but the other party may, in a
27 separate proceeding, seek rescission of the contract and
28 appropriate damages therein. The prevailing party in any
29 proceeding under this subsection is entitled to recover all
30 fees and costs incurred in connection with the proceeding,
31 including reasonable attorney's fees.

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

8 Section 4. Section 501.2078, Florida Statutes, is
9 created to read:

10 501.2078 Violations involving individual homeowners
11 during the course of residential foreclosure proceedings;
12 civil penalties.--

13 (1) As used in this section, the term:

14 (a) "Residential foreclosure proceeding" means any
15 action in a circuit court of this state in which a party seeks
16 to foreclose on a mortgage encumbering the mortgagor's primary
17 dwelling.

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

21 (2) Any person, other than a financial institution as
22 defined by s. 655.005, who willfully uses, or has willfully
23 used, a method, act, or practice in violation of this part,
24 which method, act, or practice victimizes or attempts to
25 victimize a homeowner during the course of a residential
26 foreclosure proceeding, and in committing such violation knew
27 or should have known that such conduct was unfair or
28 deceptive, is liable for a civil penalty of not more than
29 \$15,000 for each such violation.

30 (3) Any order of restitution or reimbursement based on
31 a violation of this part committed against a homeowner in a

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1 residential foreclosure proceeding has priority over the
2 imposition of any civil penalty for such violation pursuant to
3 this section.

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

11 (5) This section does not apply to the act of
12 encumbering the dwelling subject to a residential foreclosure
13 proceeding with a substitute or additional lien.

14 Section 5. Section 702.035, Florida Statutes, is
15 amended to read:

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

27 Section 6. This act shall take effect July 1, 2006.

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

31 And the title is amended as follows:

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1 Delete everything before the enacting clause

2

3 and insert:

4 A bill to be entitled

5 An act relating to foreclosure proceedings;
6 amending s. 45.031, F.S.; providing for
7 distribution of surplus funds from a judicial
8 sale; creating s. 45.032, F.S.; providing
9 definitions; providing a form for a notice of
10 surplus funds; creating a presumption that the
11 owner of record on the date of the filing of a
12 lis pendens is the person entitled to any
13 surplus proceeds from a judicial sale of that
14 property; providing for disbursement of surplus
15 funds by the clerk of court; requiring notice
16 to potential claimants; providing for service
17 charges to the clerk; requiring a hearing in
18 certain circumstances; creating s. 45.033,
19 F.S.; providing that there is a rebuttable
20 presumption that the owner of real property as
21 of the date of the filing of a lis pendens is
22 entitled to surplus funds available in a
23 foreclosure; providing criteria for a sale or
24 assignment of rights to the surplus funds;
25 providing for attorney's fees; providing
26 exceptions; creating s. 501.2078, F.S.;
27 providing definitions; providing a civil
28 penalty for knowingly using unfair or deceptive
29 methods, acts, or practices to victimize a
30 homeowner during the course of residential
31 foreclosure proceedings; providing an

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1 exception; specifying higher priority of an
2 order of restitution or reimbursement over
3 imposition of a civil penalty; providing for
4 deposit of civil penalties into the Legal
5 Affairs Revolving Trust Fund of the Department
6 of Legal Affairs; allocating such funds for
7 certain purposes; providing that the penalty
8 does not apply to the act of encumbering a
9 dwelling subject to a substitute or additional
10 lien; amending s. 702.035, F.S.; limiting costs
11 chargeable in a foreclosure proceeding to the
12 actual cost of a required legal advertisement;
13 providing an effective date.

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