

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

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (7) of section 45.031, Florida
15 Statutes, is amended to read:

16 45.031 Judicial sales procedure.--In any sale of real
17 or personal property under an order or judgment, the following
18 procedure may be followed as an alternative to any other sale
19 procedure if so ordered by the court:

20 (7) DISBURSEMENTS OF PROCEEDS.--

21 (a) On filing a certificate of title, the clerk shall
22 disburse the proceeds of the sale in accordance with the order
23 or final judgment and shall file a report of such
24 disbursements and serve a copy of it on each party not in
25 default, and on the Department of Revenue if the department
26 was named as a defendant in the action or if the Agency for
27 Workforce Innovation or the former Department of Labor and
28 Employment Security was named as a defendant while the
29 Department of Revenue was providing unemployment tax
30 collection services under contract with the Agency for
31

1 Workforce Innovation through an interagency agreement pursuant
2 to s. 443.1316~~.7~~

3 (b) The certificate of disbursement shall be in
4 substantially the following form:

5
6 (Caption of Action)

7
8 CERTIFICATE OF DISBURSEMENTS

9
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 and in the amounts as follows:

14 Name	Amount
15	
16 Total	

17
18 WITNESS my hand and the seal of the court on,
19 ...(year)....

20 ...(Clerk)...

21 By ...(Deputy Clerk)...

22 (c) If no objections to the report are served within
23 10 days after it is filed, the disbursements by the clerk
24 shall stand approved as reported. If timely objections to the
25 report are served, they shall be heard by the court. Service
26 of objections to the report does not affect or cloud the title
27 of the purchaser of the property in any manner.

28 (d) If there are funds remaining after payment of all
29 disbursements required by the final judgment of foreclosure
30 and shown on the certificate of disbursements, the provisions
31 of ss. 45.032 and 45.033 apply.

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

3 45.032 Disbursement of surplus funds after judicial
4 sale.--

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

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

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

14
15 (Caption of Action)

16
17 NOTICE OF SURPLUS FUNDS

18
19 The undersigned clerk of the court certifies that he or
20 she disbursed the proceeds received from the sale of the
21 property as provided in the order or final judgment to the
22 persons named in the certificate of disbursements, and that
23 surplus funds of \$ _____ remain and are subject to
24 disbursement by the court.

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

1 filed, a hearing will be set in order for the court to
2 determine who is entitled to receive the surplus funds.

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

8
9 WITNESS my hand and the seal of the court on _____, _____ (year).

10 _____ (Clerk)

11 By _____ (Deputy Clerk)

12
13 (c) "Surplus funds" means the funds remaining after
14 payment of all disbursements required by the final judgment of
15 foreclosure and shown on the certificate of disbursements.

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

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

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

29 (a) The owner of record.

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

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

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

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

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

14
15 If the clerk is unsure who the owner of record is, the clerk
16 may write "unknown" on the form and send the notice of surplus
17 funds with a notice of hearing. The clerk may only receive one
18 service charge for the mailing.

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

22 (6) Unless an objection is filed within 30 days after
23 the mailing of the notice of surplus funds, the clerk shall
24 pay the surplus funds to the owner of record. If the location
25 of the owner of record is unknown, the clerk may expend up to
26 \$250 of the surplus funds to conduct or contract for a search
27 for the owner of record. If the search is unsuccessful and
28 more than 90 days has elapsed, the clerk shall treat the funds
29 as unclaimed property, which shall be deposited with the Chief
30 Financial Officer pursuant to chapter 717.

31

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

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

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

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

22 45.033 Sale or assignment of rights to surplus
23 proceeds in a property subject to foreclosure.--

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

28 (2) Another person may rebut that presumption only by
29 proving that a transfer or assignment of the right to collect
30 the surplus funds, or any portion or percentage of the surplus
31 funds, has been executed as required by this section.

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

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

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

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

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

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

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

31

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

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.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 166

4 The Committee Substitute differs from the underlying bill in
5 that it:

- 6 - Removes provisions that directed a court to determine
7 reasonable fees for filing a motion to disburse funds;
- 8 - Removes references to a mortgagor's primary dwelling;
- 9 - Applies to all types of foreclosures on all types of
10 property, except for violations of the Florida Deceptive
11 and Unfair Trade Practices Act;
- 12 - Removes provisions that required a notice on orange paper
13 to be delivered along with a mortgage foreclosure
14 complaint;
- 15 - Removes provisions that prohibited persons from
16 contacting an owner of property under foreclosure within
17 30 days after the foreclosure action was initiated;
- 18 - Removes provisions regulating the sale of property in
19 default;
- 20 - Creates a presumption that the owner of surplus funds is
21 the record owner of property on the date of the filing of
22 a lis pendens;
- 23 - Requires clerks of court to notify defendants of
24 foreclosure actions, if surplus funds exist;
- 25 - Provides for the disbursement of surplus funds without a
26 hearing if no objections to paying the former property
27 owner are filed;
- 28 - Authorizes clerks of court to spend some of the surplus
29 funds to locate a former property owner; and
- 30 - Requires clerks of court to deposit certain surplus funds
31 with the chief financial officer as unclaimed property.