

By the Committees on Banking and Insurance; Judiciary; and Senator Campbell

597-2066-06

1 A bill to be entitled

2 An act relating to foreclosure proceedings;

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

4 statement for inclusion into a final judgment

5 of foreclosure; requiring the clerk to furnish

6 a copy of the final judgment to parties;

7 revising information required to be provided in

8 a notice of sale; amending the form of a

9 certificate of disbursements; creating s.

10 45.032, F.S.; providing definitions;

11 establishing a presumption of entitlement to

12 surplus funds in certain filings; providing for

13 disbursement of surplus funds by the clerk of

14 court; giving a foreclosed owner 60 days to

15 claim any surplus; providing a form to make a

16 claim; providing that persons other than the

17 foreclosed owner have 60 days to file a claim

18 or be barred from recovery; providing for an

19 evidentiary hearing; providing for appointment

20 of a surplus trustee; providing time limits for

21 the surplus trustee to act; creating s. 45.033,

22 F.S.; providing requirements for a sale or

23 assignment of rights to surplus funds in a

24 foreclosure proceeding; creating a rebuttable

25 presumption of entitlement to certain funds;

26 providing requirements for transfers or

27 assignments in rebuttal; providing for

28 nonapplication to certain instruments;

29 specifying absence of effect on title or

30 marketability of certain property or validity

31 of certain liens; creating s. 45.034, F.S.;

1 providing qualifications of a surplus trustee;
2 providing for appointment of a surplus trustee;
3 providing fees; creating s. 45.035, F.S.;
4 providing for fees to the clerk of the court in
5 foreclosure actions; creating s. 501.2078,
6 F.S.; providing definitions; providing a civil
7 penalty for knowingly using unfair or deceptive
8 homeowner victimization methods, acts, or
9 practices in residential foreclosure
10 proceedings; specifying the higher priority of
11 an order of restitution or reimbursement over
12 imposition of a civil penalty; providing for
13 deposit of civil penalties into the Legal
14 Affairs Revolving Trust Fund of the Department
15 of Legal Affairs; allocating such funds for
16 certain purposes; providing exceptions;
17 specifying nonapplication to certain
18 encumbrances; amending s. 702.035, F.S.;
19 limiting costs chargeable in a foreclosure
20 proceeding; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Section 45.031, Florida Statutes, is
25 amended to read:

26 45.031 Judicial sales procedure.--In any sale of real
27 or personal property under an order or judgment, the
28 procedures set forth in ss. 45.031-45.035 ~~following procedure~~
29 may be followed as an alternative to any other sale procedure
30 if so ordered by the court:
31

1 (1) ~~FINAL JUDGMENT SALE BY CLERK.~~--In the order or
2 final judgment, the court shall direct the clerk to sell the
3 property at public sale on a specified day that shall be not
4 less than 20 days or more than 35 days after the date thereof,
5 on terms and conditions specified in the order or judgment. A
6 sale may be held more than 35 days after the date of final
7 judgment or order if the plaintiff or plaintiff's attorney
8 consents to such time. The final judgment shall contain the
9 following statement in conspicuous type:

10 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION,
11 THERE MAY BE ADDITIONAL MONEY FROM THE SALE
12 AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE
13 PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
14 FINAL JUDGMENT.

15 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A
16 RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU
17 MUST FILE A CLAIM WITH THE CLERK NO LATER THAN
18 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A
19 CLAIM, YOU WILL NOT BE ENTITLED TO ANY
20 REMAINING FUNDS.

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

1 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE
2 TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU
3 SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE
4 REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY
5 AN ATTORNEY WHO IS NOT RELATED TO THE PERSON
6 OFFERING TO HELP YOU, TO MAKE SURE THAT YOU
7 UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU
8 ARE NOT TRANSFERRING YOUR PROPERTY OR THE
9 EQUITY IN YOUR PROPERTY WITHOUT THE PROPER
10 INFORMATION. IF YOU CANNOT AFFORD TO PAY AN
11 ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR
12 NEAREST LEGAL AID OFFICE AND TELEPHONE PHONE
13 NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR
14 THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY
15 MAY BE ABLE TO REFER YOU TO A LOCAL BAR
16 REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF
17 YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST
18 LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO
19 SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS
20 NOTICE.

21 A copy of the final judgment shall be furnished by the
22 clerk by first-class mail to the last known address of every
23 party in the action or to the attorney of record for such
24 party. Any irregularity in the mailing, including the failure
25 to include this statement in any final judgment or order, does
26 not affect the validity or finality of the final judgment or
27 order or any sale held pursuant thereto.

28 Any sale held more than 35 days after the final
29 judgment or order shall not affect the validity or finality of
30 the final judgment or order or any sale held pursuant thereto.
31

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

7 (a) A description of the property to be sold.

8 (b) The time and place of sale.

9 (c) A statement that the sale will be made pursuant to
10 the order or final judgment.

11 (d) The caption of the action.

12 (e) A statement that any person claiming an interest
13 in the surplus from the sale, if any, other than the property
14 owner as of the date of the lis pendens, must file a claim no
15 later than 60 days after the sale.

16 ~~(f)~~(e) The name of the clerk making the sale.

17
18 ~~The clerk shall receive a service charge of up to \$60 for~~
19 ~~services in making, recording, and certifying the sale and~~
20 ~~title that shall be assessed as costs.~~ The court, in its
21 discretion, may enlarge the time of the sale. Notice of the
22 changed time of sale shall be published as provided herein.

23 ~~(3)~~(2) CONDUCT OF SALE; DEPOSIT REQUIRED.--The sale
24 shall be conducted at public auction at the time and place set
25 forth in the final judgment. The clerk shall receive the
26 service charge stated in s. 45.035 for services in making,
27 recording, and certifying the sale and title, which must be
28 assessed as costs.

29 At the time of the sale, the successful high bidder
30 shall post with the clerk a deposit equal to 5 percent of the
31 final bid. The deposit shall be applied to the sale price at

1 | the time of payment. If final payment is not made within the
2 | prescribed period, the clerk shall readvertise the sale as
3 | provided in this section and pay all costs of the sale from
4 | the deposit. Any remaining funds shall be applied toward the
5 | judgment.

6 | ~~(4)~~~~(3)~~ CERTIFICATION OF SALE.--After a sale of the
7 | property the clerk shall promptly file a certificate of sale
8 | and serve a copy of it on each party ~~not in default~~ in
9 | substantially the following form:

10 |

11 | (Caption of Action)

12 |

13 |

CERTIFICATE OF SALE

14 |

15 | The undersigned clerk of the court certifies that
16 | notice of public sale of the property described in the order
17 | or final judgment was published in , a newspaper
18 | circulated in County, Florida, in the manner shown by the
19 | proof of publication attached, and on , ... (year) , the
20 | property was offered for public sale to the highest and best
21 | bidder for cash. The highest and best bid received for the
22 | property in the amount of \$ _____, was submitted by , to
23 | whom the property was sold. The proceeds of the sale are
24 | retained for distribution in accordance with the order or
25 | final judgment or law. WITNESS my hand and the seal of this
26 | court on , ... (year)

27 |

... (Clerk) ...

28 |

By ... (Deputy Clerk) ...

29 |

30 | ~~(5)~~~~(4)~~ CERTIFICATE OF TITLE.--If no objections to the
31 | sale are filed within 10 days after filing the certificate of

1 sale, the clerk shall file a certificate of title and serve a
2 copy of it on each party ~~not in default~~ in substantially the
3 following form:

4

5 (Caption of Action)

6

7

CERTIFICATE OF TITLE

8

9 The undersigned clerk of the court certifies that he or
10 she executed and filed a certificate of sale in this action on
11, ...(year)..., for the property described herein and that
12 no objections to the sale have been filed within the time
13 allowed for filing objections.

14 The following property in County, Florida:

15

(description)

16 was sold to

17

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

19

...(year)....

20

...(Clerk)...

21

By ...(Deputy Clerk)...

22

23 ~~(6)(5)~~ CONFIRMATION; RECORDING.--When the certificate
24 of title is filed the sale shall stand confirmed, and title to
25 the property shall pass to the purchaser named in the
26 certificate without the necessity of any further proceedings
27 or instruments.

28

~~(6)~~ ~~RECORDING~~.--The certificate of title shall be
29 recorded by the clerk.

30

(7) DISBURSEMENTS OF PROCEEDS.--

31

1 (a) On filing a certificate of title, the clerk shall
2 disburse the proceeds of the sale in accordance with the order
3 or final judgment and shall file a report of such
4 disbursements and serve a copy of it on each party ~~not in~~
5 ~~default~~, and on the Department of Revenue if the department
6 was named as a defendant in the action or if the Agency for
7 Workforce Innovation or the former Department of Labor and
8 Employment Security was named as a defendant while the
9 Department of Revenue was providing unemployment tax
10 collection services under contract with the Agency for
11 Workforce Innovation through an interagency agreement pursuant
12 to s. 443.1316~~.7~~

13 (b) The certificate of disbursements shall be in
14 substantially the following form:

15
16 (Caption of Action)

17
18 CERTIFICATE OF DISBURSEMENTS

19
20 The undersigned clerk of the court certifies that he or
21 she disbursed the proceeds received from the sale of the
22 property as provided in the order or final judgment to the
23 persons and in the amounts as follows:

24 Name Amount

25
26 Total Disbursements: \$ _____
27 Surplus Retained by Clerk (if any): \$ _____

28
29 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS
30 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM
31 WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE

1 SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL
2 NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER
3 60 DAYS, ONLY THE OWNER OF RECORD AS OF THE
4 DATE OF THE LIS PENDENS MAY CLAIM THE SURPLUS.

5
6 WITNESS my hand and the seal of the court on ,
7 . . .(year)

8 . . .(Clerk) . . .

9 By . . .(Deputy Clerk) . . .

10
11 (c) If no objections to the report are served within
12 10 days after it is filed, the disbursements by the clerk
13 shall stand approved as reported. If timely objections to the
14 report are served, they shall be heard by the court. Service
15 of objections to the report does not affect or cloud the title
16 of the purchaser of the property in any manner.

17 (d) If there are funds remaining after payment of all
18 disbursements required by the final judgment of foreclosure
19 and shown on the certificate of disbursements, the surplus
20 shall be distributed as provided for in ss. 45.032-45.035.

21 (8) VALUE OF PROPERTY.--The amount of the bid for the
22 property at the sale shall be conclusively presumed to be
23 sufficient consideration for the sale. Any party may serve an
24 objection to the amount of the bid within 10 days after the
25 clerk files the certificate of sale. If timely objections to
26 the bid are served, the objections shall be heard by the
27 court. Service of objections to the amount of the bid does
28 not affect or cloud the title of the purchaser in any manner.
29 If the case is one in which a deficiency judgment may be
30 sought and application is made for a deficiency, the amount
31 bid at the sale may be considered by the court as one of the

1 factors in determining a deficiency under the usual equitable
2 principles.

3 (9) EXECUTION SALES.--This section ~~does shall~~ not
4 apply to property sold under executions.

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

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

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

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

17 (b) "Subordinate lienholder" means the holder of a
18 subordinate lien shown on the face of the pleadings as an
19 encumbrance on the property. The lien being foreclosed on is
20 not a subordinate lien. A subordinate lienholder includes, but
21 is not limited to, a subordinate mortgage, judgment,
22 assessment lien, or construction lien. However, the holder of
23 a subordinate lien may not be deemed a subordinate lienholder
24 if the holder was paid in full from the proceeds of the sale.

25 (c) "Surplus funds" or "surplus" means the funds
26 remaining after payment of all disbursements required by the
27 final judgment of foreclosure and shown on the certificate of
28 disbursements.

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

31

1 (2) There is established a rebuttable legal
2 presumption that the owner of record on the date of the filing
3 of a lis pendens is the person entitled to surplus funds after
4 payment of subordinate lienholders who have timely filed a
5 claim. A person claiming a legal right to the surplus as an
6 assignee of the rights of the owner of record must prove to
7 the court that the person is entitled to the funds. At any
8 hearing regarding such entitlement, the court shall consider
9 the factors set forth in s. 45.033 in determining whether an
10 assignment is sufficient to overcome the presumption. The
11 Legislature intends to abrogate the common law rule that
12 surplus proceeds in a foreclosure case are the property of the
13 owner of the property on the date of the foreclosure sale.

14 (3) During the 60 days after the clerk issues the
15 certificate of disbursements, the clerk shall hold the surplus
16 pending a court order.

17 (a) If the owner of record claims the surplus during
18 the 60-day period, and there is no subordinate lienholder, the
19 court shall order the clerk to deduct any applicable service
20 charges from the surplus and pay the remainder to the owner of
21 record. The clerk may establish a reasonable requirement that
22 the owner of record prove his or her identity before receiving
23 the disbursement. The clerk may assist an owner of record in
24 making a claim. An owner of record may use the following form
25 in making a claim:

26
27 (Caption of Action)

28 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS.

29 State of _____

30 County of _____

31

1 Under penalty of perjury, I (we) hereby certify
2 that:
3 1. I was (we were) the owner of the following
4 described real property in _____ County,
5 Florida, before the foreclosure sale and as of
6 the date of the filing of the lis pendens:
7 (Legal description of real property)
8 2. I (we) do not owe any money on any mortgage
9 on the property that was foreclosed other than
10 the one that was paid off by the foreclosure.
11 3. I (we) do not owe any money that is the
12 subject of an unpaid judgment, condominium
13 lien, cooperative lien, or homeowner's
14 association.
15 4. I am (we are) not currently in bankruptcy.
16 5. I (we) have not sold or assigned my (our)
17 right to the mortgage surplus.
18 6. My (our) new address is: _____.
19 7. If there is more than one owner entitled to
20 the surplus, we have agreed that the surplus
21 should be paid _____ jointly, or to: _____, at
22 the following address: _____.
23 8. I (WE) UNDERSTAND THAT I (WE) ARE NOT
24 REQUIRED TO HAVE A LAWYER OR ANY OTHER
25 REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN
26 MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO
27 CLAIM ANY MONEY TO WHICH I (WE) MAY BE
28 ENTITLED.
29 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS
30 GIVEN UNDER OATH, AND THAT IF ANY STATEMENTS
31

1 ARE UNTRUE I (WE) MAY BE PROSECUTED CRIMINALLY
2 FOR PERJURY.

3
4 (Signatures)

5 Sworn to (or affirmed) and subscribed before me
6 this _____,
7 (year) _____, by _____ (name of person making
8 statement).

9
10 (Signature of Notary Public - State of Florida)

11 (Print, Type, or Stamp Commissioned Name of
12 Notary Public)

13 Personally Known _____ OR Produced

14 Identification _____

15 Type of Identification Produced _____

16
17 (b) If any person other than the owner of record
18 claims an interest in the proceeds during the 60 days, or if
19 the owner of record files a claim for the surplus but
20 acknowledges that one or more other persons may be entitled to
21 part of all of the surplus, the court shall set an evidentiary
22 hearing to determine entitlement to the surplus. At the
23 evidentiary hearing, a grantee or assignee has the burden of
24 proving that he or she is entitled to some or all of the
25 surplus funds. The court may grant summary judgment to a
26 subordinate lienholder prior to or at the evidentiary hearing.
27 The court shall consider the factors in s. 45.033 when hearing
28 a claim that any person other than a subordinate lienholder or
29 the owner of record is entitled to the surplus funds.

30 (c) If no claim is filed, the clerk shall contact the
31 Florida Clerks of Court Operations Corporation, established

1 under s. 28.35, for appointment of a surplus trustee. The
2 Florida Clerks of Court Operations Corporation shall make an
3 appointment within 10 days. Upon assignment, the clerk shall
4 prepare a notice of appointment of surplus trustee and shall
5 furnish a copy to the surplus trustee. The form of the notice
6 may be as follows:

7
8 (Caption of Action)

9 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

10 The undersigned clerk of the court certifies
11 that he or she disbursed the proceeds received
12 from the sale of the property as provided in
13 the order or final judgment to the persons
14 named in the certificate of disbursements, and
15 that surplus funds of \$ _____ remain and
16 are subject to disbursement to the owner of
17 record. You have been appointed as surplus
18 trustee for the purpose of finding the owner of
19 record in order for the clerk to disburse the
20 surplus, after deducting costs, to the owner of
21 record.

22 WITNESS my hand and the seal of the court on

23 _____, ... (year)....

24 ... (Clerk)...

25 By... (Deputy Clerk)...

26
27 (4) If the surplus trustee is unable to locate the
28 owner of record entitled to the surplus within 1 year after
29 appointment, the appointment shall terminate and the clerk
30 shall notify the surplus trustee that his or her appointment
31 was terminated. Thirty days after termination of the

1 appointment of the surplus trustee, the clerk shall treat the
2 remaining funds as unclaimed property, to be deposited with
3 the Chief Financial Officer pursuant to chapter 717.

4 (5) Proceedings regarding surplus funds in a
5 foreclosure case do not affect or cloud the title of the
6 purchaser at the foreclosure sale of the property in any
7 manner.

8 Section 3. Section 45.033, Florida Statutes, is
9 created to read:

10 45.033 Sale or assignment of rights to surplus funds
11 in a property subject to foreclosure.--

12 (1) There is established a rebuttable legal
13 presumption that the owner of record on the date of the filing
14 of a lis pendens is the person entitled to surplus funds after
15 payment of subordinate lienholders who have timely filed a
16 claim. A person claiming a legal right to the surplus as an
17 assignee of the rights of the owner of record must prove
18 entitlement to the surplus funds pursuant to this section. The
19 Legislature intends to abrogate the common law rule that
20 surplus proceeds in a foreclosure case are the property of the
21 owner of the property on the date of the foreclosure sale.

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

23 (a) The grantee or assignee of a voluntary transfer or
24 assignment proving the right to collect the surplus funds or
25 any portion or percentage of the surplus funds by proving that
26 the transfer or assignment qualifies as required by this
27 section; or

28 (b) The grantee or assignee is a grantee or assignee
29 by virtue of an involuntary transfer or assignment of the
30 right to collect the surplus. An involuntary transfer or
31

1 assignment may be as a result of inheritance or as a result of
2 the appointment of a guardian.

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

7 (a) The transfer or assignment is in writing, and the
8 instrument:

9 1. Was executed before the foreclosure sale and
10 includes a financial disclosure that specifies the assessed
11 values of the property, a statement that the assessed value
12 may be lower than the actual value of the property, the
13 approximate amount of any debt encumbering the property, and
14 the approximate amount of any equity in the property. If the
15 instrument was executed after the foreclosure sale, the
16 instrument must also specify the foreclosure sale price and
17 the amount of the surplus.

18 2. Includes a statement that the owner does not need
19 an attorney or other representative to recover surplus funds
20 in a foreclosure.

21 3. Specifies all forms of consideration paid for the
22 rights to the property or the assignment of the rights to any
23 surplus funds.

24 (b) The transfer or assignment is filed with the court
25 on or before 60 days after the filing of the certificate of
26 disbursements.

27 (c) There are funds available to pay the transfer or
28 assignment after payment of timely filed claims of subordinate
29 lienholders.

30
31

1 (d) The transferor or assignee is qualified as a
2 surplus trustee, or could qualify as a surplus trustee,
3 pursuant to s. 45.034.

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

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

14 (6) If a voluntary transfer or assignment of the
15 surplus is set aside, the owner of record is entitled to
16 payment of the surplus funds after payment of timely filed
17 claims of subordinate lienholders; but the transferee or
18 assignee may, in a separate proceeding, seek repayment of any
19 consideration paid for the transfer or assignment.

20 (7) This section does not apply to a deed, mortgage,
21 or deed in lieu of foreclosure unless a person other than the
22 owner of record is claiming that a deed or mortgage entitles
23 the person to surplus funds. This section does not affect the
24 title or marketability of the real property that is the
25 subject of the deed or other instrument. This section does not
26 affect the validity of a lien evidenced by a mortgage.

27 Section 4. Section 45.034, Florida Statutes, is
28 created to read:

29 45.034 Qualifications and appointment of a surplus
30 trustee in a foreclosure action.--
31

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

8 (2) A surplus trustee must apply for certification
9 with the Florida Clerks of Court Operations Corporation. The
10 application must contain:

11 (a) The name and address of the entity and of one or
12 more principals of the entity.

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

15 (c) A statement under oath by a principal of the
16 entity certifying that the entity, or a principal of the
17 entity, has a minimum of 12 months' experience in the recovery
18 of surplus funds in foreclosure actions.

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

21 (e) Proof that the entity carries a minimum of
22 \$500,000 in liability insurance, cash reserves, or bonding.

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

28 (g) A statement under oath by a principal of the
29 entity certifying that the principal understands his or her
30 duty to immediately notify the Florida Clerks of Court
31

1 Operations Corporation if the trustee, in the future, fails to
2 qualify as an entity entitled to be a surplus trustee.

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

4 (3) The Florida Clerks of Court Operations Corporation
5 shall certify any surplus trustee that applies and qualifies.
6 Certification shall be on a calendar year basis. The
7 corporation may renew a qualification upon receipt of the \$25
8 fee and a statement under oath from a principal of the surplus
9 trustee certifying that the surplus trustee continues to
10 qualify under this section.

11 (4) The corporation shall develop a rotation system
12 for assignment of cases to all qualified surplus trustees.
13 Upon notification by a clerk that the clerk is holding a
14 surplus, the Florida Clerks of Court Operations Corporation
15 shall assign the case to the next qualified surplus trustee in
16 the rotation.

17 (5) The primary duty of a surplus trustee is to locate
18 the owner of record within 1 year after appointment. Upon
19 locating the owner of record, the surplus trustee shall file a
20 petition with the court on behalf of the owner of record
21 seeking disbursement of the surplus funds. If more than one
22 person appears to be the owner of record, the surplus trustee
23 shall obtain an agreement between such persons as to the
24 payment of the surplus or file an interpleader. The
25 interpleader may be filed as part of the foreclosure case.

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

29 (a) Upon notice of appointment, a cost advance of 2
30 percent of the surplus.

31

1 (b) Upon obtaining a court order disbursing the
2 surplus to the owner of record, a service charge of 10 percent
3 of the surplus.

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

6 45.035 Clerk's fees.--In addition to other fees or
7 service charges authorized by law, the clerk shall receive
8 service charges related to the judicial-sales procedure set
9 forth in ss. 45.031-45.035.

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

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

17 (a) The clerk may withhold the sum of \$25 from the
18 surplus, which may be used only for purposes of educating the
19 public as to the rights of homeowners regarding foreclosure
20 proceedings.

21 (b) The clerk shall be entitled to a service charge of
22 \$10 for notifying a surplus trustee of his or her appointment.

23 (c) The clerk shall be entitled to a service charge of
24 \$10 for each disbursement of surplus proceeds.

25 (d) The clerk shall be entitled to a service charge of
26 \$10 for contacting the Florida Clerks of Court Operations
27 Corporation for assignment of the case to a surplus trustee,
28 furnishing the surplus trustee with a copy of the final
29 judgment and the certificate of disbursements, and disbursing
30 to the surplus trustee the trustee's cost advance.

31

1 Section 6. Section 501.2078, Florida Statutes, is
2 created to read:

3 501.2078 Violations involving individual homeowners
4 during the course of residential foreclosure proceedings;
5 civil penalties.--

6 (1) As used in this section:

7 (a) "Homeowner" means any individual who is the owner
8 of real property subject to a residential foreclosure
9 proceeding.

10 (b) "Residential foreclosure proceeding" means any
11 action in a court of this state in which a party seeks to
12 foreclose on a mortgage encumbering the mortgagor's primary
13 dwelling.

14 (c) "Victimize" means any course of action intended to
15 dupe, swindle, or cheat a homeowner subject to a residential
16 foreclosure proceeding. The factors that a court shall review
17 when determining whether a course of action is victimizing a
18 homeowner are:

19 1. The compensation received relative to the risk and
20 the amount of work involved.

21 2. The number of homeowners involved.

22 3. The relative bargaining position of the parties.

23 4. The relative knowledge and sophistication of the
24 parties.

25 5. Representations made in the inducement.

26 6. The timing of the agreement.

27 (2) Any person, other than a financial institution as
28 defined in s. 655.005, who willfully uses, or has willfully
29 used, a method, act, or practice in violation of this part,
30 which method, act, or practice victimizes or attempts to
31 victimize homeowners during the course of a residential

1 foreclosure proceeding and, in committing such violation knew
2 or should have known that such conduct was unfair or
3 deceptive, is liable for a civil penalty of not more than
4 \$15,000 for each such violation.

5 (3) Any order of restitution or reimbursement based on
6 a violation of this part committed against a homeowner in a
7 residential foreclosure proceeding has priority over the
8 imposition of any civil penalty for such violation pursuant to
9 this section.

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

17 (5) This section does not apply to:

18 (a) The act of encumbering the dwelling subject to a
19 residential foreclosure proceeding with a substitute or
20 additional lien.

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

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

27 Section 7. Section 702.035, Florida Statutes, is
28 amended to read:

29 702.035 Legal notice concerning foreclosure
30 proceedings.--Whenever a legal advertisement, publication, or
31 notice relating to a foreclosure proceeding is required to be

1 placed in a newspaper, it is the responsibility of the
2 petitioner or petitioner's attorney to place such
3 advertisement, publication, or notice. The advertisement,
4 publication, or notice shall be placed directly by the
5 attorney for the petitioner, by the petitioner if acting pro
6 se, or by the clerk of the court. Only the actual costs
7 charged by the newspaper for the advertisement, publication,
8 or notice may be charged as costs in the action.

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

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 CS/SB 166

14 Requires a final judgement from a foreclosure proceeding to
15 include a statement notifying subordinate lien holders and the
16 property owner that there may be additional money from the
foreclosure sale.

17 Requires a foreclosure sale of real property to be conducted
18 at public auction at the time and place set forth in the final
judgement.

19 Requires the Certificate of Sale filed by the Clerk of Court
to include the amount the property was sold for.

20 Requires the Clerk to serve all parties with a copy of the
21 Certificate of Disbursements detailing the total amount of
payments made to parties pursuant to the sale and any
22 remaining surplus. Requires the Certificate of Disbursement
to contain certain notice requirements.

23 Permits a subordinate lienholder or assignee the right to
24 collect excess funds under certain circumstances.

25 Creates requirements for a valid assignment of the legal right
to the surplus.

26 Creates the position of surplus trustee to aid in locating
27 owners of surplus funds from a foreclosure sale.

28 Requires a surplus trustee to be appointed if no claim for the
surplus from a foreclosure sale is made within specified time
29 period.

30 States the surplus trustee is entitled to a cash advance of 2
percent of the surplus at appointment, and 10 percent of the
31 surplus upon obtaining a court order disbursing the surplus to
the owner of record.