

By the Committees on Justice Appropriations; Banking and Insurance; Judiciary; and Senators Campbell and Crist

604-2391-06

1                                   A bill to be entitled  
2           An act relating to foreclosure proceedings;  
3           amending s. 45.031, F.S.; revising procedures  
4           and requirements for judicial sales; creating  
5           s. 45.032, F.S.; providing for disbursement of  
6           surplus funds after a judicial sale; providing  
7           definitions; establishing a rebuttable  
8           presumption of entitlement to surplus funds in  
9           certain filings; providing legislative intent;  
10          providing requirements and procedures for  
11          disbursement of surplus funds by the clerk of  
12          court; providing for appointment of a surplus  
13          trustee under certain circumstances; providing  
14          for notice of appointment; providing for  
15          termination of appointment; providing for  
16          treatment of surplus funds as unclaimed  
17          property under certain circumstances; providing  
18          construction relating to title of property in a  
19          foreclosure sale; creating s. 45.033, F.S.;  
20          providing for a sale or assignment of rights to  
21          surplus funds in a property subject to  
22          foreclosure; establishing a rebuttable  
23          presumption of entitlement to surplus funds;  
24          providing requirements for proof; providing  
25          legislative intent; providing requirements for  
26          rebutting the presumption; providing  
27          requirements for transfers or assignments of  
28          surplus funds; providing duties and authority  
29          of a court in payment of surplus funds under a  
30          transfer or assignment; providing for  
31          nonapplication to certain instruments;

1 specifying absence of effect on title or  
2 marketability of certain property or validity  
3 of certain liens; creating s. 45.034, F.S.;  
4 providing qualifications for appointment as a  
5 surplus trustee by the Department of Financial  
6 Services; providing requirements for  
7 appointment as a surplus trustee; providing for  
8 application and renewal fees; providing duties  
9 of the department in certifying surplus  
10 trustees; requiring the department to establish  
11 a rotation system for assignment of cases to  
12 surplus trustees; providing duties of a surplus  
13 trustee; providing entitlement of a surplus  
14 trustee to certain service charges and fees;  
15 creating s. 45.035, F.S.; specifying service  
16 charges for clerks of court for administering  
17 judicial sales and surplus funds; creating s.  
18 501.2078, F.S.; providing definitions;  
19 providing a civil penalty for knowingly using  
20 unfair or deceptive homeowner victimization  
21 methods, acts, or practices in residential  
22 foreclosure proceedings; specifying higher  
23 priority of an order of restitution or  
24 reimbursement over imposition of a civil  
25 penalty; providing for deposit of civil  
26 penalties into the Legal Affairs Revolving  
27 Trust Fund of the Department of Legal Affairs;  
28 allocating such funds for certain purposes;  
29 specifying nonapplication to certain  
30 encumbrances, deeds, or actions; amending s.  
31 702.035, F.S.; specifying different

1 requirements relating to newspaper legal  
2 notices and process requirements for counties  
3 of different population sizes; limiting certain  
4 costs chargeable in a foreclosure proceeding;  
5 amending s. 201.02, F.S.; correcting a  
6 cross-reference; providing an effective date.  
7

8 Be It Enacted by the Legislature of the State of Florida:  
9

10 Section 1. Section 45.031, Florida Statutes, is  
11 amended to read:

12 45.031 Judicial sales procedure.--In any sale of real  
13 or personal property under an order or judgment, the  
14 procedures provided in ss. 45.031-45.035 following procedure  
15 may be followed as an alternative to any other sale procedure  
16 if so ordered by the court. +

17 (1) FINAL JUDGMENT SALE BY CLERK.--In the order or  
18 final judgment, the court shall direct the clerk to sell the  
19 property at public sale on a specified day that shall be not  
20 less than 20 days or more than 35 days after the date thereof,  
21 on terms and conditions specified in the order or judgment. A  
22 sale may be held more than 35 days after the date of final  
23 judgment or order if the plaintiff or plaintiff's attorney  
24 consents to such time. The final judgment shall contain the  
25 following statement in conspicuous type:  
26

27 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE  
28 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO  
29 ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO  
30 THIS FINAL JUDGMENT.  
31

1 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS  
2 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK  
3 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A  
4 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

5  
6 (b) If the property being foreclosed on has qualified  
7 for the homestead tax exemption in the most recent approved  
8 tax roll, the final judgment shall additionally contain the  
9 following statement in conspicuous type:

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

20  
21 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU  
22 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL  
23 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY  
24 AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP  
25 YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND  
26 THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN  
27 YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT  
28 AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR  
29 NEAREST LEGAL AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF  
30 YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT  
31 ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR

1 REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO  
2 CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE) FOR  
3 ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT  
4 OF THIS NOTICE.

5  
6 (c) A copy of the final judgment shall be furnished by  
7 the clerk by first class mail to the last known address of  
8 every party to the action or to the attorney of record for  
9 such party. Any irregularity in such mailing, including the  
10 failure to include this statement in any final judgment or  
11 order, shall not affect the validity or finality of the final  
12 judgment or order or any sale held pursuant to the final  
13 judgment or order. Any sale held more than 35 days after the  
14 final judgment or order shall not affect the validity or  
15 finality of the final judgment or order or any sale held  
16 pursuant to such judgment or order thereto.

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

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

24 (b) The time and place of sale.

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

27 (d) The caption of the action.

28 (e) The name of the clerk making the sale.

29 (f) A statement that any person claiming an interest  
30 in the surplus from the sale, if any, other than the property  
31

1 owner as of the date of the lis pendens must file a claim  
2 within 60 days after the sale.

3  
4 ~~The clerk shall receive a service charge of up to \$60 for~~  
5 ~~services in making, recording, and certifying the sale and~~  
6 ~~title that shall be assessed as costs.~~ The court, in its  
7 discretion, may enlarge the time of the sale. Notice of the  
8 changed time of sale shall be published as provided herein.

9 (3)(2) CONDUCT OF SALE; DEPOSIT REQUIRED.--The sale  
10 shall be conducted at public auction at the time and place set  
11 forth in the final judgment. The clerk shall receive the  
12 service charge imposed in s. 45.035 for services in making,  
13 recording, and certifying the sale and title that shall be  
14 assessed as costs. At the time of the sale, the successful  
15 high bidder shall post with the clerk a deposit equal to 5  
16 percent of the final bid. The deposit shall be applied to the  
17 sale price at the time of payment. If final payment is not  
18 made within the prescribed period, the clerk shall readvertise  
19 the sale as provided in this section and pay all costs of the  
20 sale from the deposit. Any remaining funds shall be applied  
21 toward the judgment.

22 (4)(3) CERTIFICATION OF SALE.--After a sale of the  
23 property the clerk shall promptly file a certificate of sale  
24 and serve a copy of it on each party ~~not in default~~ in  
25 substantially the following form:

26  
27 (Caption of Action)

28  
29 CERTIFICATE OF SALE



1  
2 WITNESS my hand and the seal of the court on .., ...(year)....  
3 ... (Clerk)...

4 By ... (Deputy Clerk)...

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

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

12 (7) DISBURSEMENTS OF PROCEEDS.--

13 (a) On filing a certificate of title, the clerk shall  
14 disburse the proceeds of the sale in accordance with the order  
15 or final judgment and shall file a report of such  
16 disbursements and serve a copy of it on each party ~~not in~~  
17 ~~default~~, and on the Department of Revenue if the department  
18 was named as a defendant in the action or if the Agency for  
19 Workforce Innovation or the former Department of Labor and  
20 Employment Security was named as a defendant while the  
21 Department of Revenue was providing unemployment tax  
22 collection services under contract with the Agency for  
23 Workforce Innovation through an interagency agreement pursuant  
24 to s. 443.1316.

25 (b) The certificate of disbursements shall be in  
26 substantially the following form:

27  
28 (Caption of Action)

29  
30 CERTIFICATE OF DISBURSEMENTS  
31





1           (8) VALUE OF PROPERTY.--The amount of the bid for the  
2 property at the sale shall be conclusively presumed to be  
3 sufficient consideration for the sale. Any party may serve an  
4 objection to the amount of the bid within 10 days after the  
5 clerk files the certificate of sale. If timely objections to  
6 the bid are served, the objections shall be heard by the  
7 court. Service of objections to the amount of the bid does not  
8 affect or cloud the title of the purchaser in any manner. If  
9 the case is one in which a deficiency judgment may be sought  
10 and application is made for a deficiency, the amount bid at  
11 the sale may be considered by the court as one of the factors  
12 in determining a deficiency under the usual equitable  
13 principles.

14           (9) EXECUTION SALES.--This section shall not apply to  
15 property sold under executions.

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

18           45.032 Disbursement of surplus funds after judicial  
19 sale.--

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

21           (a) "Owner of record" means the person or persons who  
22 appear to be the owner of the property that is the subject of  
23 the foreclosure proceeding on the date of the filing of the  
24 lis pendens. In determining an owner of record, a person need  
25 not perform a title search and examination but may rely on the  
26 plaintiff's allegation of ownership in the complaint when  
27 determining the owner of record.

28           (b) "Subordinate lienholder" means the holder of a  
29 subordinate lien shown on the face of the pleadings as an  
30 encumbrance on the property. The lien held by the party filing  
31 the foreclosure lawsuit is not a subordinate lien. A

1 subordinate lienholder includes, but is not limited to, a  
2 subordinate mortgage, judgment, assessment lien, or  
3 construction lien. However, the holder of a subordinate lien  
4 shall not be deemed a subordinate lienholder if the holder was  
5 paid in full from the proceeds of the sale.

6 (c) "Surplus funds" or "surplus" means the funds  
7 remaining after payment of all disbursements required by the  
8 final judgment of foreclosure and shown on the certificate of  
9 disbursements.

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

12 (2) 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 to  
18 the court that such person is entitled to the funds. At any  
19 hearing regarding such entitlement, the court shall consider  
20 the factors set forth in s. 45.033 in determining whether an  
21 assignment is sufficient to overcome the presumption. It is  
22 the intent of the Legislature to abrogate the common law rule  
23 that surplus proceeds in a foreclosure case are the property  
24 of the owner of the property on the date of the foreclosure  
25 sale.

26 (3) During the 60 days after the clerk issues a  
27 certificate of disbursements, the clerk shall hold the surplus  
28 pending a court order.

29 (a) If the owner of record claims the surplus during  
30 the 60-day period and there is no subordinate lienholder, the  
31 court shall order the clerk to deduct any applicable service

1 charges from the surplus and pay the remainder to the owner of  
2 record. The clerk may establish a reasonable requirement that  
3 the owner of record prove his or her identity before receiving  
4 the disbursement. The clerk may assist an owner of record in  
5 making a claim. An owner of record may use the following form  
6 in making a claim:

7  
8 (Caption of Action)

9  
10 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

11  
12 State of ... ..

13 County of ... ..

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

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

19  
20 (Legal description of real property)

21  
22 2. I (we) do not owe any money on any mortgage on the  
23 property that was foreclosed other than the one that was paid  
24 off by the foreclosure.

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

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

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

31 6. My (our) new address is:.....

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

4           8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED  
5 TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT  
6 HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO  
7 CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.

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

11  
12           ...(Signatures)...

13  
14           Sworn to (or affirmed) and subscribed before me this  
15 .... day of ....., ...(year)...., by ...(name of person making  
16 statement)....

17 (Signature of Notary Public - State of Florida)

18           (Print, Type, or Stamp Commissioned Name of Notary  
19 Public)

20           Personally Known .... OR Produced Identification ....

21           Type of Identification Produced ....

22  
23           (b) If any person other than the owner of record  
24 claims an interest in the proceeds during the 60-day period or  
25 if the owner of record files a claim for the surplus but  
26 acknowledges that one or more other persons may be entitled to  
27 part or all of the surplus, the court shall set an evidentiary  
28 hearing to determine entitlement to the surplus. At the  
29 evidentiary hearing, an equity assignee has the burden of  
30 proving that he or she is entitled to some or all of the  
31 surplus funds. The court may grant summary judgment to a

1 subordinate lienholder prior to or at the evidentiary hearing.  
2 The court shall consider the factors in s. 45.033 when hearing  
3 a claim that any person other than a subordinate lienholder or  
4 the owner of record is entitled to the surplus funds.

5 (c) If no claim is filed during the 60-day period, the  
6 clerk shall appoint a surplus trustee from a list of qualified  
7 surplus trustees as authorized in s. 45.034. Upon such  
8 appointment, the clerk shall prepare a notice of appointment  
9 of surplus trustee and shall furnish a copy to the surplus  
10 trustee. The form of the notice may be as follows:

11  
12 (Caption of Action)

13  
14 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

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

25 WITNESS my hand and the seal of the court on  
26 .....(year)....

27 ...(Clerk)...

28 By ...(Deputy Clerk)...

29  
30 (4) If the surplus trustee is unable to locate the  
31 owner of record entitled to the surplus within 1 year after

1 appointment, the appointment shall terminate and the clerk  
2 shall notify the surplus trustee that his or her appointment  
3 was terminated. Thirty days after termination of the  
4 appointment of the surplus trustee, the clerk shall treat the  
5 remaining funds as unclaimed property to be deposited with the  
6 Chief Financial Officer pursuant to chapter 717.

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

11 Section 3. Section 45.033, Florida Statutes, is  
12 created to read:

13 45.033 Sale or assignment of rights to surplus funds  
14 in a property subject to foreclosure.--

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

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

27 (a) The grantee or assignee of a voluntary transfer or  
28 assignment establishing a right to collect the surplus funds  
29 or any portion or percentage of the surplus funds by proving  
30 that the transfer or assignment qualifies as a voluntary  
31 transfer or assignment as provided in subsection (3); or

1           (b) The grantee or assignee proving that the grantee  
2 or assignee is a grantee or assignee by virtue of an  
3 involuntary transfer or assignment of the right to collect the  
4 surplus. An involuntary transfer or assignment may be as a  
5 result of inheritance or as a result of the appointment of a  
6 guardian.

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

11           (a) The transfer or assignment is in writing and the  
12 instrument:

13           1. If executed prior to the foreclosure sale, includes  
14 a financial disclosure that specifies the assessed value of  
15 the property, a statement that the assessed value may be lower  
16 than the actual value of the property, the approximate amount  
17 of any debt encumbering the property, and the approximate  
18 amount of any equity in the property. If the instrument was  
19 executed after the foreclosure sale, the instrument must also  
20 specify the foreclosure sale price and the amount of the  
21 surplus.

22           2. Includes a statement that the owner does not need  
23 an attorney or other representative to recover surplus funds  
24 in a foreclosure.

25           3. Specifies all forms of consideration paid for the  
26 rights to the property or the assignment of the rights to any  
27 surplus funds.

28           (b) The transfer or assignment is filed with the court  
29 on or before 60 days after the filing of the certificate of  
30 disbursements.

31



1       (c) There are funds available to pay the transfer or  
2 assignment after payment of timely filed claims of subordinate  
3 lienholders.

4       (d) The transferor or assignee is qualified as a  
5 surplus trustee, or could qualify as a surplus trustee,  
6 pursuant to s. 45.034.

7       (e) The total compensation paid or payable, or earned  
8 or expected to be earned, by the transferee or assignee does  
9 not exceed 12 percent of the surplus.

10       (4) The court shall honor a transfer or assignment  
11 that complies with the requirements of subsection (3), in  
12 which case the court shall order the clerk to pay the  
13 transferor or assignee from the surplus.

14       (5) If the court finds that a voluntary transfer or  
15 assignment does not qualify under subsection (3) but that the  
16 transfer or assignment was procured in good faith and with no  
17 intent to defraud the transferor or assignor, the court may  
18 order the clerk to pay the claim of the transferee or assignee  
19 after payment of timely filed claims of subordinate  
20 lienholders.

21       (6) If a voluntary transfer or assignment of the  
22 surplus is set aside, the owner of record shall be entitled to  
23 payment of the surplus after payment of timely filed claims of  
24 subordinate lienholders, but the transferee or assignee may  
25 seek in a separate proceeding repayment of any consideration  
26 paid for the transfer or assignment.

27       (7) This section does not apply to a deed, mortgage,  
28 or deed in lieu of foreclosure unless a person other than the  
29 owner of record is claiming that a deed or mortgage entitles  
30 the person to surplus funds. Nothing in this section affects  
31 the title or marketability of the real property that is the

1 subject of the deed or other instrument. Nothing in this  
2 section affects the validity of a lien evidenced by a  
3 mortgage.

4 Section 4. Effective upon this act becoming a law,  
5 section 45.034, Florida Statutes, is created to read:

6 45.034 Qualifications and appointment of a surplus  
7 trustee in foreclosure actions.--

8 (1) A surplus trustee is a third-party trustee  
9 approved pursuant to this section by the Department of  
10 Financial Services. A surplus trustee must be willing to  
11 accept cases on a statewide basis; however, a surplus trustee  
12 may employ subcontractors that are not qualified as a surplus  
13 trustee provided the surplus trustee remains primarily  
14 responsible for the duties set forth in this section.

15 (2) A surplus trustee is an entity that holds and  
16 administers surplus proceeds from a foreclosure pursuant to  
17 ss. 45.031-45.035.

18 (3) To be a surplus trustee, an entity must apply for  
19 certification with the Department of Financial Services. The  
20 application must contain:

21 (a) The name and address of the entity and of one or  
22 more principals of the entity.

23 (b) A certificate of good standing from the Secretary  
24 of State indicating that the entity is an entity registered in  
25 this state.

26 (c) A statement under oath by a principal of the  
27 entity certifying that the entity, or a principal of the  
28 entity, has a minimum of 12 months' experience in the recovery  
29 of surplus funds in foreclosure actions.

30 (d) Proof that the entity holds a valid Class "A"  
31 private investigator license pursuant to chapter 493.

1           (e) Proof that the entity carries a minimum of  
2 \$500,000 in liability insurance, cash reserves, or bonding.

3           (f) A statement from an attorney licensed to practice  
4 in this state certifying that the attorney is a principal of  
5 the entity or is employed by the entity on a full-time basis  
6 and that the attorney will supervise the management of the  
7 entity during the entity's tenure as a surplus trustee.

8           (g) A statement under oath by a principal of the  
9 entity certifying that the principal understands his or her  
10 duty to immediately notify the department if the principal  
11 ever fails to qualify as an entity entitled to be a surplus  
12 trustee.

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

14           (4) The Department of Financial Services shall certify  
15 any surplus trustee that applies and qualifies. Applications  
16 must be filed by June 1, and all applications that qualify  
17 shall be certified by the department by June 30 and shall be  
18 effective for 1 year commencing July 1. The department shall  
19 renew a certification upon receipt of the \$25 fee and a  
20 statement under oath from a principal of the surplus trustee  
21 certifying that the surplus trustee continues to qualify under  
22 this section.

23           (5) The Department of Financial Services shall develop  
24 a rotation system for assignment of cases to all qualified  
25 surplus trustees.

26           (6) The primary duty of a surplus trustee is to locate  
27 the owner of record within 1 year after appointment. Upon  
28 locating the owner of record, the surplus trustee shall file a  
29 petition with the court on behalf of the owner of record  
30 seeking disbursement of the surplus funds. If more than one  
31 person appears to be the owner of record, the surplus trustee

1 shall obtain agreement between such persons as to the payment  
2 of the surplus, or file an interpleader. The interpleader may  
3 be filed as part of the foreclosure case.

4 (7) A surplus trustee is entitled to the following  
5 service charges and fees which shall be disbursed by the clerk  
6 and payable from the surplus:

7 (a) Upon obtaining a court order, a cost advance of 2  
8 percent of the surplus.

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

12 Section 5. Section 45.035, Florida Statutes, is  
13 created to read:

14 45.035 Clerk's fees.--In addition to other fees or  
15 service charges authorized by law, the clerk shall receive  
16 service charges related to the judicial sales procedure set  
17 forth in ss. 45.031-45.034 and this section:

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

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

25 (a) The clerk may withhold the sum of \$25 from the  
26 surplus which may only be used for purposes of educating the  
27 public as to the rights of homeowners regarding foreclosure  
28 proceedings.

29 (b) The clerk is entitled to a service charge of \$10  
30 for notifying a surplus trustee of his or her appointment.

31

1       (c) The clerk is entitled to a service charge of \$10  
2 for each disbursement of surplus proceeds.

3       (d) The clerk is entitled to a service charge of \$10  
4 for appointing a surplus trustee, furnishing the surplus  
5 trustee with a copy of the final judgment and the certificate  
6 of disbursements, and disbursing to the surplus trustee the  
7 trustee's cost advance.

8       Section 6. 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:

14       (a) "Homeowner" means any individual who is the owner  
15 of the property subject to a residential foreclosure  
16 proceeding.

17       (b) "Residential foreclosure proceeding" means any  
18 action in a court of this state in which a party seeks to  
19 foreclose on a mortgage encumbering the mortgagor's primary  
20 dwelling.

21       (c) "Victimize" means any course of action intended to  
22 dupe, swindle, or cheat a homeowner subject to a residential  
23 foreclosure proceeding. The factors that a court shall review  
24 when determining whether a course of action is victimizing a  
25 homeowner are:

26       1. The compensation received relative to the risk and  
27 the amount of work involved.

28       2. The number of homeowners involved.

29       3. The relative bargaining position of the parties.

30       4. The relative knowledge and sophistication of the  
31 parties.

1           5. Representations made in the inducement.  
2           6. The timing of the agreement.  
3           (2) Any person, other than a financial institution as  
4 defined in s. 655.005, who willfully uses, or has willfully  
5 used, a method, act, or practice in violation of this part,  
6 which method, act, or practice victimizes or attempts to  
7 victimize homeowners during the course of a residential  
8 foreclosure proceeding, and in committing such violation knew  
9 or should have known that such conduct was unfair or  
10 deceptive, is liable for a civil penalty of not more than  
11 \$15,000 for each such violation.  
12           (3) Any order of restitution or reimbursement based on  
13 a violation of this part committed against a homeowner in a  
14 residential foreclosure proceeding has priority over the  
15 imposition of any civil penalty for such violation pursuant to  
16 this section.  
17           (4) Civil penalties collected pursuant to this section  
18 shall be deposited into the Legal Affairs Revolving Trust Fund  
19 of the Department of Legal Affairs and allocated solely to the  
20 Department of Legal Affairs for the purpose of preparing and  
21 distributing consumer education materials, programs, and  
22 seminars to benefit homeowners in residential foreclosure  
23 proceedings or to further enforcement efforts.  
24           (5) This section does not apply to:  
25           (a) The act of encumbering the dwelling subject to a  
26 residential foreclosure proceeding with a substitute or  
27 additional lien.  
28           (b) A deed in lieu of foreclosure, a workout  
29 agreement, a bankruptcy plan, or any other agreement between a  
30 foreclosing lender and a homeowner.  
31

1           (c) A foreclosure sale, eminent domain proceeding,  
2 forfeiture, or any other legal process.

3           Section 7. Section 702.035, Florida Statutes, is  
4 amended to read:

5           702.035 Legal notice concerning foreclosure  
6 proceedings.--Whenever a legal advertisement, publication, or  
7 notice relating to a foreclosure proceeding is required to be  
8 placed in a newspaper, it is the responsibility of the  
9 petitioner or petitioner's attorney to place such  
10 advertisement, publication, or notice. For counties with more  
11 than 1 million total population as reflected in the most  
12 recent official decennial census of the United States Census  
13 Bureau as shown on the official website of the United States  
14 Census Bureau, any notice of publication required by this  
15 section shall be deemed to have been published in accordance  
16 with the law if the notice is published in a newspaper that  
17 has been entered as periodical matter at a post office in the  
18 county in which the newspaper is published, is published a  
19 minimum of 5 days a week, and has been in existence and  
20 published a minimum of 5 days a week for 1 year or is a direct  
21 successor to a newspaper that has been in existence for 1 year  
22 and has been published a minimum of 5 days a week. The  
23 advertisement, publication, or notice shall be placed directly  
24 by the attorney for the petitioner, by the petitioner if  
25 acting pro se, or by the clerk of the court. Only the actual  
26 costs charged by the newspaper for the advertisement,  
27 publication, or notice may be charged as costs in the action.

28           Section 8. Subsection (9) of section 201.02, Florida  
29 Statutes, is amended to read:

30           201.02 Tax on deeds and other instruments relating to  
31 real property or interests in real property.--

1           (9) A certificate of title issued by the clerk of  
2 court under s. 45.031~~(5)~~~~(4)~~ in a judicial sale of real  
3 property under an order or final judgment issued pursuant to a  
4 foreclosure proceeding is subject to the tax imposed by  
5 subsection (1). However, the amount of the tax shall be  
6 computed based solely on the amount of the highest and best  
7 bid received for the property at the foreclosure sale. This  
8 subsection is intended to clarify existing law and shall be  
9 applied retroactively.

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

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

15 Corrects reference to ss. 45.031-45.035, F.S., for  
16 distribution of funds remaining after payment of all  
disbursements in foreclosure proceedings.

17 Removes references to the Clerk of Courts Corporation in  
18 qualifying surplus trustees. The bill would require the  
Department of Financial Services to perform this duty.

19 Limits the total compensation paid to a surplus trustee to 12  
20 percent of the surplus.

21 Provides that notice requirements are satisfied in counties  
22 with more than a million population when such notice is  
published in a newspaper.

23 Amends s. 201.02, F.S., to correct a cross reference relating  
24 to certificate of titles issued by the clerk of court based on  
a foreclosure proceeding.