

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to foreclosure proceedings; amending s.
8 45.031, F.S.; revising procedures and requirements for
9 judicial sales; creating s. 45.032, F.S.; providing for
10 disbursement of surplus funds after a judicial sale;
11 providing definitions; establishing a rebuttable
12 presumption of entitlement to surplus funds in certain
13 filings; providing legislative intent; providing
14 requirements and procedures for disbursement of surplus
15 funds by the clerk of court; providing for appointment of
16 a surplus trustee under certain circumstances; providing
17 for notice of appointment; providing for termination of
18 appointment; providing for treatment of surplus funds as
19 unclaimed property under certain circumstances; providing
20 construction relating to title of property in a
21 foreclosure sale; creating s. 45.033, F.S.; providing for
22 a sale or assignment of rights to surplus funds in a
23 property subject to foreclosure; establishing a rebuttable

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24 | presumption of entitlement to surplus funds; providing
25 | requirements for proof; providing legislative intent;
26 | providing requirements for rebutting the presumption;
27 | providing requirements for transfers or assignments of
28 | surplus funds; providing duties and authority of a court
29 | in payment of surplus funds under a transfer or
30 | assignment; providing for nonapplication to certain
31 | instruments; specifying absence of effect on title or
32 | marketability of certain property or validity of certain
33 | liens; creating s. 45.034, F.S.; providing qualifications
34 | for appointment as a surplus trustee by the Florida Clerks
35 | of Court Operations Corporation; providing requirements
36 | for appointment as a surplus trustee; providing for
37 | application and renewal fees; providing duties of the
38 | corporation in certifying surplus trustees; requiring the
39 | corporation to establish a rotation system for assignment
40 | of cases to surplus trustees; providing duties of a
41 | surplus trustee; providing entitlement of a surplus
42 | trustee to certain service charges and fees; creating s.
43 | 45.035, F.S.; specifying service charges for clerks of
44 | court for administering judicial sales and surplus funds;
45 | creating s. 501.2078, F.S.; providing definitions;
46 | providing a civil penalty for knowingly using unfair or
47 | deceptive homeowner victimization methods, acts, or
48 | practices in residential foreclosure proceedings;
49 | specifying higher priority of an order of restitution or
50 | reimbursement over imposition of a civil penalty;
51 | providing for deposit of civil penalties into the Legal

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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52 Affairs Revolving Trust Fund of the Department of Legal
 53 Affairs; allocating such funds for certain purposes;
 54 specifying nonapplication to certain encumbrances, deeds,
 55 or actions; amending s. 702.035, F.S.; limiting certain
 56 costs chargeable in a foreclosure proceeding; amending s.
 57 201.02, F.S.; correcting a cross-reference; providing an
 58 effective date.

59

60 Be It Enacted by the Legislature of the State of Florida:

61

62 Section 1. Section 45.031, Florida Statutes, is amended to
 63 read:

64 45.031 Judicial sales procedure.--In any sale of real or
 65 personal property under an order or judgment, the procedures
 66 provided in ss. 45.031-45.035 ~~following procedure~~ may be
 67 followed as an alternative to any other sale procedure if so
 68 ordered by the court. +

69 (1) FINAL JUDGMENT SALE BY CLERK.--In the order or final
 70 judgment, the court shall direct the clerk to sell the property
 71 at public sale on a specified day that shall be not less than 20
 72 days or more than 35 days after the date thereof, on terms and
 73 conditions specified in the order or judgment. A sale may be
 74 held more than 35 days after the date of final judgment or order
 75 if the plaintiff or plaintiff's attorney consents to such time.
 76 The final judgment shall contain the following statement in
 77 conspicuous type:

78

79 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE

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80 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
81 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
82 FINAL JUDGMENT.

83
84 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
85 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK
86 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A
87 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

88
89 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS
90 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER
91 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO
92 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE
93 ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT
94 INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE
95 SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE
96 SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

97
98 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU
99 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL
100 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN
101 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,
102 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT
103 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR
104 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO
105 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL
106 AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY
107 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY

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108 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR
 109 SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL
 110 OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS
 111 SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

112
 113 A copy of the final judgment shall be furnished by the clerk by
 114 first class mail to the last known address of every party to the
 115 action or to the attorney of record for such party. Any
 116 irregularity in such mailing, including the failure to include
 117 this statement in any final judgment or order, shall not affect
 118 the validity or finality of the final judgment or order or any
 119 sale held pursuant to the final judgment or order. Any sale held
 120 more than 35 days after the final judgment or order shall not
 121 affect the validity or finality of the final judgment or order
 122 or any sale held pursuant to such judgment or order ~~thereto~~.

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

- 129 (a) A description of the property to be sold.
- 130 (b) The time and place of sale.
- 131 (c) A statement that the sale will be made pursuant to the
 132 order or final judgment.
- 133 (d) The caption of the action.
- 134 (e) The name of the clerk making the sale.

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135 (f) A statement that any person claiming an interest in
136 the surplus from the sale, if any, other than the property owner
137 as of the date of the lis pendens must file a claim within 60
138 days after the sale.

139
140 ~~The clerk shall receive a service charge of up to \$60 for~~
141 ~~services in making, recording, and certifying the sale and title~~
142 ~~that shall be assessed as costs.~~ The court, in its discretion,
143 may enlarge the time of the sale. Notice of the changed time of
144 sale shall be published as provided herein.

145 (3)-(2) CONDUCT OF SALE; DEPOSIT REQUIRED.--The sale shall
146 be conducted at public auction at the time and place set forth
147 in the final judgment. The clerk shall receive the service
148 charge imposed in s. 45.035 for services in making, recording,
149 and certifying the sale and title that shall be assessed as
150 costs. At the time of the sale, the successful high bidder shall
151 post with the clerk a deposit equal to 5 percent of the final
152 bid. The deposit shall be applied to the sale price at the time
153 of payment. If final payment is not made within the prescribed
154 period, the clerk shall readvertise the sale as provided in this
155 section and pay all costs of the sale from the deposit. Any
156 remaining funds shall be applied toward the judgment.

157 (4)-(3) CERTIFICATION OF SALE.--After a sale of the
158 property the clerk shall promptly file a certificate of sale and
159 serve a copy of it on each party ~~not in default~~ in substantially
160 the following form:

161
162 (Caption of Action)

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CERTIFICATE OF SALE

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

(Clerk)

By (Deputy Clerk)

(5)~~(4)~~ CERTIFICATE OF TITLE.--If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party ~~not in default~~ in substantially the following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she executed and filed a certificate of sale in this action on

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191 _____, (year) , for the property described herein and that no
192 objections to the sale have been filed within the time allowed
193 for filing objections.

194 The following property in _____ County, Florida:
195 (description)
196 was sold to .

197
198 WITNESS my hand and the seal of the court on _____, (year) .
199 (Clerk)

200 By (Deputy Clerk)

201 ~~(6)-(5)~~ CONFIRMATION; RECORDING.--When the certificate of
202 title is filed the sale shall stand confirmed, and title to the
203 property shall pass to the purchaser named in the certificate
204 without the necessity of any further proceedings or instruments.

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

207 (7) DISBURSEMENTS OF PROCEEDS.--

208 (a) On filing a certificate of title, the clerk shall
209 disburse the proceeds of the sale in accordance with the order
210 or final judgment and shall file a report of such disbursements
211 and serve a copy of it on each party not in default, and on the
212 Department of Revenue if the department was named as a defendant
213 in the action or if the Agency for Workforce Innovation or the
214 former Department of Labor and Employment Security was named as
215 a defendant while the Department of Revenue was providing
216 unemployment tax collection services under contract with the
217 Agency for Workforce Innovation through an interagency agreement
218 pursuant to s. 443.1316.

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219 (b) The certificate of disbursements shall be in
220 substantially the following form:

221
222 (Caption of Action)

223
224 CERTIFICATE OF DISBURSEMENTS

225
226 The undersigned clerk of the court certifies that he or she
227 disbursed the proceeds received from the sale of the property as
228 provided in the order or final judgment to the persons and in
229 the amounts as follows:

230 Name Amount

231
232 Total disbursements: \$ _____

233 Surplus retained by clerk, if any: \$ _____

234
235 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
236 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60
237 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT
238 BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE
239 OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE
240 SURPLUS.

241
242 WITNESS my hand and the seal of the court on _____, (year) .
243 (Clerk)

244 By (Deputy Clerk)

245

246 (c) If no objections to the report are served within 10
247 days after it is filed, the disbursements by the clerk shall
248 stand approved as reported. If timely objections to the report
249 are served, they shall be heard by the court. Service of
250 objections to the report does not affect or cloud the title of
251 the purchaser of the property in any manner.

252 (d) If there are funds remaining after payment of all
253 disbursements required by the final judgment of foreclosure and
254 shown on the certificate of disbursements, the surplus shall be
255 distributed as provided ss. 45.031-45.035.

256 (8) VALUE OF PROPERTY.--The amount of the bid for the
257 property at the sale shall be conclusively presumed to be
258 sufficient consideration for the sale. Any party may serve an
259 objection to the amount of the bid within 10 days after the
260 clerk files the certificate of sale. If timely objections to the
261 bid are served, the objections shall be heard by the court.
262 Service of objections to the amount of the bid does not affect
263 or cloud the title of the purchaser in any manner. If the case
264 is one in which a deficiency judgment may be sought and
265 application is made for a deficiency, the amount bid at the sale
266 may be considered by the court as one of the factors in
267 determining a deficiency under the usual equitable principles.

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

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

272 45.032 Disbursement of surplus funds after judicial
273 sale.--

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

275 (a) "Owner of record" means the person or persons who
276 appear to be the owner of the property that is the subject of
277 the foreclosure proceeding on the date of the filing of the lis
278 pendens. In determining an owner of record, a person need not
279 perform a title search and examination but may rely on the
280 plaintiff's allegation of ownership in the complaint when
281 determining the owner of record.

282 (b) "Subordinate lienholder" means the holder of a
283 subordinate lien shown on the face of the pleadings as an
284 encumbrance on the property. A lien being foreclosed on is not a
285 subordinate lien. A subordinate lienholder includes, but is not
286 limited to, a subordinate mortgage, judgment, assessment lien,
287 or construction lien. However, the holder of a subordinate lien
288 shall not be deemed a subordinate lienholder if the holder was
289 paid in full from the proceeds of the sale.

290 (c) "Surplus funds" or "surplus" means the funds remaining
291 after payment of all disbursements required by the final
292 judgment of foreclosure and shown on the certificate of
293 disbursements.

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

296 (2) There is established a rebuttable legal presumption
297 that the owner of record on the date of the filing of a lis
298 pendens is the person entitled to surplus funds after payment of
299 subordinate lienholders who have timely filed a claim. A person
300 claiming a legal right to the surplus as an assignee of the
301 rights of the owner of record must prove to the court that such

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302 person is entitled to the funds. At any hearing regarding such
 303 entitlement, the court shall consider the factors set forth in
 304 s. 45.033 in determining whether an assignment is sufficient to
 305 overcome the presumption. It is the intent of the Legislature to
 306 abrogate the common law rule that surplus proceeds in a
 307 foreclosure case are the property of the owner of the property
 308 on the date of the foreclosure sale.

309 (3) During the 60 days after the clerk issues a
 310 certificate of disbursements, the clerk shall hold the surplus
 311 pending a court order.

312 (a) If the owner of record claims the surplus during the
 313 60-day period and there is no subordinate lienholder, the court
 314 shall order the clerk to deduct any applicable service charges
 315 from the surplus and pay the remainder to the owner of record.
 316 The clerk may establish a reasonable requirement that the owner
 317 of record prove his or her identity before receiving the
 318 disbursement. The clerk may assist an owner of record in making
 319 a claim. An owner of record may use the following form in making
 320 a claim:

321
 322 (Caption of Action)

323
 324 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

325
 326 State of _____

327 County of _____

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

329 1. I was (we were) the owner of the following described

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330 real property in _____ County, Florida, prior to the foreclosure
 331 sale and as of the date of the filing of the lis pendens:

332
 333 (Legal description of real property)

334
 335 2. I (we) do not owe any money on any mortgage on the
 336 property that was foreclosed other than the one that was paid
 337 off by the foreclosure.

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

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

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

344 6. My (our) new address is: _____.

345 7. If there is more than one owner entitled to the
 346 surplus, we have agreed that the surplus should be paid _____
 347 jointly, or to : _____, at the following address: _____.

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

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

355
 356 (Signatures)

357

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358 Sworn to (or affirmed) and subscribed before me this _____
 359 day of _____, (year) _____, by _____ (name of person making statement)

360 _____
 361 (Signature of Notary Public - State of Florida)
 362 (Print, Type, or Stamp Commissioned Name of Notary Public)

363
 364 Personally Known _____ OR Produced Identification _____

365
 366 Type of Identification Produced _____

367
 368 (b) If any person other than the owner of record claims an
 369 interest in the proceeds during the 60-day period or if the
 370 owner of record files a claim for the surplus but acknowledges
 371 that one or more other persons may be entitled to part or all of
 372 the surplus, the court shall set an evidentiary hearing to
 373 determine entitlement to the surplus. At the evidentiary
 374 hearing, a grantee or assignee has the burden of proving that he
 375 or she is entitled to some or all of the surplus funds. The
 376 court may grant summary judgment to a subordinate lienholder
 377 prior to or at the evidentiary hearing. The court shall consider
 378 the factors in s. 45.033 when hearing a claim that any person
 379 other than a subordinate lienholder or the owner of record is
 380 entitled to the surplus funds.

381 (c) If no claim is filed during the 60-day period, the
 382 clerk shall contact the Florida Clerks of Court Operations
 383 Corporation, established by s. 28.35, for appointment of a
 384 surplus trustee. The corporation shall make an appointment
 385 within 10 days. Upon assignment, the clerk shall prepare a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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386 notice of appointment of surplus trustee and shall furnish a
 387 copy to the surplus trustee. The form of the notice may be as
 388 follows:

389
 390 (Caption of Action)

391
 392 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

393
 394 The undersigned clerk of the court certifies that he or she
 395 disbursed the proceeds received from the sale of the property as
 396 provided in the order or final judgment to the persons named in
 397 the certificate of disbursements, and that surplus funds of
 398 \$ _____ remain and are subject to disbursement to the owner
 399 of record. You have been appointed as surplus trustee for the
 400 purpose of finding the owner of record in order for the clerk to
 401 disburse the surplus, after deducting costs, to the owner of
 402 record.

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

404 _____ (Clerk)

405 By _____ (Deputy Clerk)

406
 407 (4) If the surplus trustee is unable to locate the owner
 408 of record entitled to the surplus within 1 year after
 409 appointment, the appointment shall terminate and the clerk shall
 410 notify the surplus trustee that his or her appointment was
 411 terminated. Thirty days after termination of the appointment of
 412 the surplus trustee, the clerk shall treat the remaining funds
 413 as unclaimed property to be deposited with the Chief Financial

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414 Officer pursuant to chapter 717.

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

418 Section 3. Section 45.033, Florida Statutes, is created to
419 read:

420 45.033 Sale or assignment of rights to surplus funds in a
421 property subject to foreclosure.--

422 (1) There is established a rebuttable presumption that the
423 owner of record of real property on the date of the filing of a
424 lis pendens is the person entitled to surplus funds after
425 payment of subordinate lienholders who have timely filed a
426 claim. A person claiming a legal right to the surplus as an
427 assignee of the rights of the owner of record must prove
428 entitlement to the surplus funds pursuant to this section. It is
429 the intent of the Legislature to abrogate the common law rule
430 that surplus proceeds in a foreclosure case are the property of
431 the owner of the property on the date of the foreclosure sale.

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

433 (a) Proof that the grantee or assignee is a grantee or
434 assignee with the right to collect the surplus funds or any
435 portion or percentage of the surplus funds by virtue of a
436 voluntary transfer or assignment that qualifies as a transfer or
437 assignment under this section; or

438 (b) Proof that the grantee or assignee is a grantee or
439 assignee by virtue of an involuntary transfer or assignment of
440 the right to collect the surplus. An involuntary transfer or

441 assignment may be as a result of inheritance or as a result of
442 the appointment of a guardian.

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

447 (a) The transfer or assignment is in writing and the
448 instrument:

449 1. If executed prior to the foreclosure sale, includes a
450 financial disclosure that specifies the assessed value of the
451 property, a statement that the assessed value may be lower than
452 the actual value of the property, the approximate amount of any
453 debt encumbering the property, and the approximate amount of any
454 equity in the property. If the instrument was executed after the
455 foreclosure sale, the instrument must also specify the
456 foreclosure sale price and the amount of the surplus.

457 2. Includes a statement that the owner does not need an
458 attorney or other representative to recover surplus funds in a
459 foreclosure.

460 3. Specifies all forms of consideration paid for the
461 rights to the property or the assignment of the rights to any
462 surplus funds.

463 (b) The transfer or assignment is filed with the court on
464 or before 60 days after the filing of the certificate of
465 disbursements.

466 (c) There are funds available to pay the transfer or
467 assignment after payment of timely filed claims of subordinate
468 lienholders.

469 (d) The transferor or assignee is qualified as a surplus
470 trustee, or could qualify as a surplus trustee, pursuant to s.
471 45.034.

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

476 (5) If the court finds that a voluntary transfer or
477 assignment does not qualify under subsection (3) but that the
478 transfer or assignment was procured in good faith and with no
479 intent to defraud the transferor or assignor, the court may
480 order the clerk to pay the claim of the transferee or assignee
481 after payment of timely filed claims of subordinate lienholders.

482 (6) If a voluntary transfer or assignment of the surplus
483 is set aside, the owner of record shall be entitled to payment
484 of the surplus after payment of timely filed claims of
485 subordinate lienholders, but the transferee or assignee may seek
486 in a separate proceeding repayment of any consideration paid for
487 the transfer or assignment.

488 (7) This section does not apply to a deed, mortgage, or
489 deed in lieu of foreclosure unless a person other than the owner
490 of record is claiming that a deed or mortgage entitles the
491 person to surplus funds. Nothing in this section affects the
492 title or marketability of the real property that is the subject
493 of the deed or other instrument. Nothing in this section affects
494 the validity of a lien evidenced by a mortgage.

495 Section 4. Section 45.034, Florida Statutes, is created to
496 read:

497 45.034 Qualifications and appointment of a surplus trustee
498 in foreclosure actions.--

499 (1) A surplus trustee is a third-party trustee approved
500 pursuant to this section by the Florida Clerks of Court
501 Operations Corporation, established by s. 28.35. A surplus
502 trustee must be willing to accept cases on a statewide basis;
503 however, a surplus trustee may employ subcontractors that are
504 not qualified as a surplus trustee provided the surplus trustee
505 remains primarily responsible for the duties set forth in this
506 section.

507 (2) To be a surplus trustee, an entity must apply for
508 certification with the Florida Clerks of Court Operations
509 Corporation. The application must contain:

510 (a) The name and address of the entity and of one or more
511 principals of the entity.

512 (b) A certificate of good standing from the Secretary of
513 State indicating that the entity is an entity registered in this
514 state.

515 (c) A statement under oath by a principal of the entity
516 certifying that the entity, or a principal of the entity, has a
517 minimum of 12 months' experience in the recovery of surplus
518 funds in foreclosure actions.

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

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

523 (f) A statement from an attorney licensed to practice in
524 this state certifying that the attorney is a principal of the

525 entity or is employed by the entity on a full-time basis and
526 that the attorney will supervise the management of the entity
527 during the entity's tenure as a surplus trustee.

528 (g) A statement under oath by a principal of the entity
529 certifying that the principal understands his or her duty to
530 immediately notify the corporation if the principal ever fails
531 to qualify as an entity entitled to be a surplus trustee.

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

533 (3) The corporation shall certify any surplus trustee that
534 applies and qualifies. Certification shall be on a calendar year
535 basis. The corporation may renew a qualification upon receipt of
536 the \$25 fee and a statement under oath from a principal of the
537 surplus trustee certifying that the surplus trustee continues to
538 qualify under this section.

539 (4) The corporation shall develop a rotation system for
540 assignment of cases to all qualified surplus trustees. Upon
541 notification by a clerk that the clerk is holding a surplus in a
542 case, the corporation shall assign the case to the next
543 qualified surplus trustee in the rotation.

544 (5) The primary duty of a surplus trustee is to locate the
545 owner of record within 1 year after appointment. Upon locating
546 the owner of record, the surplus trustee shall file a petition
547 with the court on behalf of the owner of record seeking
548 disbursement of the surplus funds. If more than one person
549 appears to be the owner of record, the surplus trustee shall
550 obtain agreement between such persons as to the payment of the
551 surplus, or file an interpleader. The interpleader may be filed
552 as part of the foreclosure case.

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

556 (a) Upon notice of appointment, a cost advance of 2
557 percent of the surplus.

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

561 Section 5. Section 45.035, Florida Statutes, is created to
562 read:

563 45.035 Clerk's fees.--In addition to other fees or service
564 charges authorized by law, the clerk shall receive service
565 charges related to the judicial sales procedure set forth in ss.
566 45.031-45.034 and this section:

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

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

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

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

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

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581 (d) The clerk is entitled to a service charge of \$10 for
582 contacting the Florida Clerks of Court Operations Corporation
583 for assignment of the case to a surplus trustee, furnishing the
584 surplus trustee with a copy of the final judgment and the
585 certificate of disbursements, and disbursing to the surplus
586 trustee the trustee's cost advance.

587 Section 6. Section 501.2078, Florida Statutes, is created
588 to read:

589 501.2078 Violations involving individual homeowners during
590 the course of residential foreclosure proceedings; civil
591 penalties.--

592 (1) As used in this section:

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

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

598 (c) "Victimize" means any course of action intended to
599 dupe, swindle, or cheat a homeowner subject to a residential
600 foreclosure proceeding. The factors that a court shall review
601 when determining whether a course of action is victimizing a
602 homeowner are:

603 1. The compensation received relative to the risk and the
604 amount of work involved.

605 2. The number of homeowners involved.

606 3. The relative bargaining position of the parties.

607 4. The relative knowledge and sophistication of the
608 parties.

609 5. Representations made in the inducement.

610 6. The timing of the agreement.

611 (2) Any person, other than a financial institution as
612 defined in s. 655.005, who willfully uses, or has willfully
613 used, a method, act, or practice in violation of this part,
614 which method, act, or practice victimizes or attempts to
615 victimize homeowners during the course of a residential
616 foreclosure proceeding, and in committing such violation knew or
617 should have known that such conduct was unfair or deceptive, is
618 liable for a civil penalty of not more than \$15,000 for each
619 such violation.

620 (3) Any order of restitution or reimbursement based on a
621 violation of this part committed against a homeowner in a
622 residential foreclosure proceeding has priority over the
623 imposition of any civil penalty for such violation pursuant to
624 this section.

625 (4) Civil penalties collected pursuant to this section
626 shall be deposited into the Legal Affairs Revolving Trust Fund
627 of the Department of Legal Affairs and allocated solely to the
628 Department of Legal Affairs for the purpose of preparing and
629 distributing consumer education materials, programs, and
630 seminars to benefit homeowners in residential foreclosure
631 proceedings or to further enforcement efforts.

632 (5) This section does not apply to:

633 (a) The act of encumbering the dwelling subject to a
634 residential foreclosure proceeding with a substitute or
635 additional lien.

636 (b) A deed in lieu of foreclosure, a workout agreement, a

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637 bankruptcy plan, or any other agreement between a foreclosing
638 lender and a homeowner.

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

642 Section 7. Section 702.035, Florida Statutes, is amended
643 to read:

644 702.035 Legal notice concerning foreclosure
645 proceedings.--Whenever a legal advertisement, publication, or
646 notice relating to a foreclosure proceeding is required to be
647 placed in a newspaper, it is the responsibility of the
648 petitioner or petitioner's attorney to place such advertisement,
649 publication, or notice. The advertisement, publication, or
650 notice shall be placed directly by the attorney for the
651 petitioner, by the petitioner if acting pro se, or by the clerk
652 of the court. Only the actual costs charged by the newspaper for
653 the advertisement, publication, or notice may be charged as
654 costs in the action.

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

657 201.02 Tax on deeds and other instruments relating to real
658 property or interests in real property.--

659 (9) A certificate of title issued by the clerk of court
660 under s. 45.031(5)~~(4)~~ in a judicial sale of real property under
661 an order or final judgment issued pursuant to a foreclosure
662 proceeding is subject to the tax imposed by subsection (1).
663 However, the amount of the tax shall be computed based solely on
664 the amount of the highest and best bid received for the property

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665 | at the foreclosure sale. This subsection is intended to clarify
666 | existing law and shall be applied retroactively.

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