

## CHAMBER ACTION

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1 The Judiciary Appropriations Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

24 requirements for proof; providing legislative intent;  
25 providing requirements for rebutting the presumption;  
26 providing requirements for transfers or assignments of  
27 surplus funds; providing duties and authority of a court  
28 in payment of surplus funds under a transfer or  
29 assignment; providing for nonapplication to certain  
30 instruments; specifying absence of effect on title or  
31 marketability of certain property or validity of certain  
32 liens; creating s. 45.034, F.S.; providing qualifications  
33 for appointment as a surplus trustee by the Department of  
34 Financial Services; providing requirements for appointment  
35 as a surplus trustee; providing for application and  
36 renewal fees; providing duties of the department in  
37 certifying surplus trustees; requiring the department to  
38 establish a rotation system for assignment of cases to  
39 surplus trustees; providing duties of a surplus trustee;  
40 providing entitlement of a surplus trustee to certain  
41 service charges and fees; creating s. 45.035, F.S.;  
42 specifying service charges for clerks of court for  
43 administering judicial sales and surplus funds; amending  
44 s. 50.013, F.S.; specifying different newspaper legal  
45 notice and process requirements for counties of different  
46 population sizes; creating s. 501.2078, F.S.; providing  
47 definitions; providing a civil penalty for knowingly using  
48 unfair or deceptive homeowner victimization methods, acts,  
49 or practices in residential foreclosure proceedings;  
50 specifying higher priority of an order of restitution or  
51 reimbursement over imposition of a civil penalty;

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52 providing for deposit of civil penalties into the Legal  
 53 Affairs Revolving Trust Fund of the Department of Legal  
 54 Affairs; allocating such funds for certain purposes;  
 55 specifying nonapplication to certain encumbrances, deeds,  
 56 or actions; amending s. 702.035, F.S.; limiting certain  
 57 costs chargeable in a foreclosure proceeding; amending s.  
 58 201.02, F.S.; correcting a cross-reference; providing an  
 59 effective date.  
 60

61 Be It Enacted by the Legislature of the State of Florida:  
 62

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

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

70 (1) FINAL JUDGMENT SALE BY CLERK.--In the order or final  
 71 judgment, the court shall direct the clerk to sell the property  
 72 at public sale on a specified day that shall be not less than 20  
 73 days or more than 35 days after the date thereof, on terms and  
 74 conditions specified in the order or judgment. A sale may be  
 75 held more than 35 days after the date of final judgment or order  
 76 if the plaintiff or plaintiff's attorney consents to such time.  
 77 The final judgment shall contain the following statement in  
 78 conspicuous type:  
 79

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80 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE  
 81 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE  
 82 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS  
 83 FINAL JUDGMENT.

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

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

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

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108 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY  
109 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR  
110 SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL  
111 OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS  
112 SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

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

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

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

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

140

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

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

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

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163        (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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192 \_\_\_\_\_, (year) , for the property described herein and that no  
193 objections to the sale have been filed within the time allowed  
194 for filing objections.

195 The following property in \_\_\_\_\_ County, Florida:  
196 (description)  
197 was sold to .

198  
199 WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
200 (Clerk)

201 By (Deputy Clerk)

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

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

208 (7) DISBURSEMENTS OF PROCEEDS.--

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

322  
 323 (Caption of Action)

324  
 325 OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

326  
 327 State of \_\_\_\_\_

328 County of \_\_\_\_\_

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

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

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

333  
 334 (Legal description of real property)  
 335

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

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

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

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

345 6. My (our) new address is: \_\_\_\_\_.

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

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

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

356  
 357 (Signatures)  
 358

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

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

364  
 365 Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

366  
 367 Type of Identification Produced \_\_\_\_\_

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

382 (c) If no claim is filed during the 60-day period, the  
 383 clerk shall appoint a surplus trustee from a list of qualified  
 384 surplus trustees as authorized in s. 45.034. Upon such  
 385 appointment, the clerk shall prepare a notice of appointment of  
 386 surplus trustee and shall furnish a copy to the surplus trustee.

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387 The form of the notice may be as follows:

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389 (Caption of Action)

390

391 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

392

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

402 WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .

403 (Clerk)

404 By \_\_\_\_\_ (Deputy Clerk)

405

406 (4) If the surplus trustee is unable to locate the owner  
 407 of record entitled to the surplus within 1 year after  
 408 appointment, the appointment shall terminate and the clerk shall  
 409 notify the surplus trustee that his or her appointment was  
 410 terminated. Thirty days after termination of the appointment of  
 411 the surplus trustee, the clerk shall treat the remaining funds  
 412 as unclaimed property to be deposited with the Chief Financial  
 413 Officer pursuant to chapter 717.

414 (5) Proceedings regarding surplus funds in a foreclosure

415 case do not in any manner affect or cloud the title of the  
416 purchaser at the foreclosure sale of the property.

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

419 45.033 Sale or assignment of rights to surplus funds in a  
420 property subject to foreclosure.--

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

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

432 (a) The grantee or assignee of a voluntary transfer or  
433 assignment establishing a right to collect the surplus funds or  
434 any portion or percentage of the surplus funds by proving that  
435 the transfer or assignment qualifies as a voluntary transfer or  
436 assignment as provided in subsection (3); or

437 (b) The grantee or assignee proving that the grantee or  
438 assignee is a grantee or assignee by virtue of an involuntary  
439 transfer or assignment of the right to collect the surplus. An  
440 involuntary transfer or assignment may be as a result of  
441 inheritance or as a result of the appointment of a guardian.



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

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

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

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

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

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

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

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

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

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

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

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

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

496 45.034 Qualifications and appointment of a surplus trustee  
497 in foreclosure actions.--

498       (1) A surplus trustee is a third-party trustee approved  
499 pursuant to this section by the Department of Financial  
500 Services. A surplus trustee must be willing to accept cases on a  
501 statewide basis; however, a surplus trustee may employ  
502 subcontractors that are not qualified as a surplus trustee  
503 provided the surplus trustee remains primarily responsible for  
504 the duties set forth in this section.

505       (2) A surplus trustee is an entity that holds and  
506 administers surplus proceeds from a foreclosure pursuant to ss.  
507 45.031-45.035.

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

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

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

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

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

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

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

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

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

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

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

540 (5) The Department of Financial Services shall develop a  
541 rotation system for assignment of cases to all qualified surplus  
542 trustees.

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

552 (7) A surplus trustee is entitled to the following service  
553 charges and fees which shall be disbursed by the clerk and

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554 payable from the surplus:

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

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

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

562 45.035 Clerk's fees.--In addition to other fees or service  
563 charges authorized by law, the clerk shall receive service  
564 charges related to the judicial sales procedure set forth in ss.  
565 45.031-45.034 and this section:

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

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

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

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

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

580 (d) The clerk is entitled to a service charge of \$10 for  
581 appointing a surplus trustee, furnishing the surplus trustee

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582 | with a copy of the final judgment and the certificate of  
583 | disbursements, and disbursing to the surplus trustee the  
584 | trustee's cost advance.

585 |       Section 6. Section 50.031, Florida Statutes, is amended to  
586 | read:

587 |       50.031 Newspapers in which legal notices and process may  
588 | be published.--No notice or publication required to be published  
589 | in a newspaper in the nature of or in lieu of process of any  
590 | kind, nature, character or description provided for under any  
591 | law of the state, whether heretofore or hereafter enacted, and  
592 | whether pertaining to constructive service, or the initiating,  
593 | assuming, reviewing, exercising or enforcing jurisdiction or  
594 | power, by any court in this state, or any notice of sale of  
595 | property, real or personal, for taxes, state, county or  
596 | municipal, or sheriff's, guardian's or administrator's or any  
597 | sale made pursuant to any judicial order, decree or statute or  
598 | any other publication or notice pertaining to any affairs of the  
599 | state, or any county, municipality or other political  
600 | subdivision thereof, shall be deemed to have been published in  
601 | accordance with the statutes providing for such publication,  
602 | unless, for a county with less than a total population of 1  
603 | million as reflected in the most recent Official Decennial  
604 | Census of the United States Census Bureau as shown on the  
605 | official website of the United State Census Bureau, the same  
606 | shall have been published for the prescribed period of time  
607 | required for such publication, in a newspaper which at the time  
608 | of such publication shall have been in existence for 1 year and  
609 | shall have been entered as periodicals matter at a post office

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

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610 in the county where published, or in a newspaper which is a  
611 direct successor of a newspaper which together have been so  
612 published. For counties with more than 1 million total  
613 population as reflected in the most recent Official Decennial  
614 Census of the United States Census Bureau as shown on the  
615 official website of the United States Census Bureau, any notice  
616 of publication shall be deemed to have been published in  
617 accordance with the law if the notice is published in a  
618 newspaper that has been entered as a periodical matter at a post  
619 office in the county in which the newspaper is published, is  
620 published a minimum of 5 days a week, and has been in existence  
621 and published a minimum of 5 days a week for 1 year or is a  
622 direct successor to a newspaper that has been in existence for 1  
623 year that has been published a minimum of 5 days a week.†  
624 ~~provided,~~ However, this section ~~that nothing herein contained~~  
625 shall not apply ~~where~~ in any county in which there is ~~shall be~~  
626 no newspaper in existence which has ~~shall have~~ been published  
627 for the length of time ~~above~~ prescribed in this section. No  
628 legal publication of any kind, nature or description, as herein  
629 defined, shall be valid or binding or held to be in compliance  
630 with the statutes providing for such publication unless the same  
631 shall have been published in accordance with the provisions of  
632 this section. Proof of such publication shall be made by uniform  
633 affidavit.

634 Section 7. Section 501.2078, Florida Statutes, is created  
635 to read:

636           501.2078 Violations involving individual homeowners during  
 637 the course of residential foreclosure proceedings; civil  
 638 penalties.--

639           (1) As used in this section:

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

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

645           (c) "Victimize" means any course of action intended to  
 646 dupe, swindle, or cheat a homeowner subject to a residential  
 647 foreclosure proceeding. The factors that a court shall review  
 648 when determining whether a course of action is victimizing a  
 649 homeowner are:

650           1. The compensation received relative to the risk and the  
 651 amount of work involved.

652           2. The number of homeowners involved.

653           3. The relative bargaining position of the parties.

654           4. The relative knowledge and sophistication of the  
 655 parties.

656           5. Representations made in the inducement.

657           6. The timing of the agreement.

658           (2) Any person, other than a financial institution as  
 659 defined in s. 655.005, who willfully uses, or has willfully  
 660 used, a method, act, or practice in violation of this part,  
 661 which method, act, or practice victimizes or attempts to  
 662 victimize homeowners during the course of a residential  
 663 foreclosure proceeding, and in committing such violation knew or



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664 should have known that such conduct was unfair or deceptive, is  
665 liable for a civil penalty of not more than \$15,000 for each  
666 such violation.

667 (3) Any order of restitution or reimbursement based on a  
668 violation of this part committed against a homeowner in a  
669 residential foreclosure proceeding has priority over the  
670 imposition of any civil penalty for such violation pursuant to  
671 this section.

672 (4) Civil penalties collected pursuant to this section  
673 shall be deposited into the Legal Affairs Revolving Trust Fund  
674 of the Department of Legal Affairs and allocated solely to the  
675 Department of Legal Affairs for the purpose of preparing and  
676 distributing consumer education materials, programs, and  
677 seminars to benefit homeowners in residential foreclosure  
678 proceedings or to further enforcement efforts.

679 (5) This section does not apply to:

680 (a) The act of encumbering the dwelling subject to a  
681 residential foreclosure proceeding with a substitute or  
682 additional lien.

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

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

688 Section 8. Section 702.035, Florida Statutes, is amended  
689 to read:

690 702.035 Legal notice concerning foreclosure  
691 proceedings.--Whenever a legal advertisement, publication, or

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692 notice relating to a foreclosure proceeding is required to be  
693 placed in a newspaper, it is the responsibility of the  
694 petitioner or petitioner's attorney to place such advertisement,  
695 publication, or notice. The advertisement, publication, or  
696 notice shall be placed directly by the attorney for the  
697 petitioner, by the petitioner if acting pro se, or by the clerk  
698 of the court. Only the actual costs charged by the newspaper for  
699 the advertisement, publication, or notice may be charged as  
700 costs in the action.

701 Section 9. Subsection (9) of section 201.02, Florida  
702 Statutes, is amended to read:

703 201.02 Tax on deeds and other instruments relating to real  
704 property or interests in real property.--

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

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