

CHAMBER ACTION

1 The Justice Council 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. 50.031, 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:
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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:
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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.

84
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.

89
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.

98
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:

162

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.--

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. The lien held by the party filing
286 the foreclosure lawsuit is not a subordinate lien. A subordinate
287 lienholder includes, but is not limited to, a subordinate
288 mortgage, judgment, assessment lien, or construction lien.
289 However, the holder of a subordinate lien shall not be deemed a
290 subordinate lienholder if the holder was paid in full from the
291 proceeds of the sale.

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

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

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

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

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

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

323 |
 324 | (Caption of Action)

325 |
 326 | OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

327 |
 328 | State of _____
 329 | County of _____

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

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331 1. I was (we were) the owner of the following described
 332 real property in _____ County, Florida, prior to the foreclosure
 333 sale and as of the date of the filing of the lis pendens:

334
 335 (Legal description of real property)
 336

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

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

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

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

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

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

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

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

357
 358 (Signatures)

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

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

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

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

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

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387 surplus trustee and shall furnish a copy to the surplus trustee.
 388 The form of the notice may be as 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
 414 Officer pursuant to chapter 717.

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

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

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

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

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

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

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

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498 Section 4. Section 45.034, Florida Statutes, is created to
499 read:

500 45.034 Qualifications and appointment of a surplus trustee
501 in foreclosure actions.--

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

509 (2) A surplus trustee is an entity that holds and
510 administers surplus proceeds from a foreclosure pursuant to ss.
511 45.031-45.035.

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

515 (a) The name and address of the entity and of one or more
516 principals of the entity.

517 (b) A certificate of good standing from the Secretary of
518 State indicating that the entity is an entity registered in this
519 state.

520 (c) A statement under oath by a principal of the entity
521 certifying that the entity, or a principal of the entity, has a
522 minimum of 12 months' experience in the recovery of surplus
523 funds in foreclosure actions.

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

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

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

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

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

538 (4) The Department of Financial Services shall certify any
539 surplus trustee that applies and qualifies. Applications must be
540 filed by June 1, and all applications that qualify shall be
541 certified by the department by June 30 and shall be effective
542 for 1 year commencing July 1. The department shall renew a
543 certification upon receipt of the \$25 fee and a statement under
544 oath from a principal of the surplus trustee certifying that the
545 surplus trustee continues to qualify under this section.

546 (5) The Department of Financial Services shall develop a
547 rotation system for assignment of cases to all qualified surplus
548 trustees.

549 (6) The primary duty of a surplus trustee is to locate the
550 owner of record within 1 year after appointment. Upon locating
551 the owner of record, the surplus trustee shall file a petition
552 with the court on behalf of the owner of record seeking
553 disbursement of the surplus funds. If more than one person

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554 appears to be the owner of record, the surplus trustee shall
555 obtain agreement between such persons as to the payment of the
556 surplus, or file an interpleader. The interpleader may be filed
557 as part of the foreclosure case.

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

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

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

566 Section 5. Section 45.035, Florida Statutes, is created to
567 read:

568 45.035 Clerk's fees.--In addition to other fees or service
569 charges authorized by law, the clerk shall receive service
570 charges related to the judicial sales procedure set forth in ss.
571 45.031-45.034 and this section:

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

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

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

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

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

586 (d) The clerk is entitled to a service charge of \$10 for
587 appointing a surplus trustee, furnishing the surplus trustee
588 with a copy of the final judgment and the certificate of
589 disbursements, and disbursing to the surplus trustee the
590 trustee's cost advance.

591 Section 6. Section 50.031, Florida Statutes, is amended to
592 read:

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

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

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638 | this section. Proof of such publication shall be made by uniform
639 | affidavit.

640 | Section 7. Section 501.2078, Florida Statutes, is created
641 | to read:

642 | 501.2078 Violations involving individual homeowners during
643 | the course of residential foreclosure proceedings; civil
644 | penalties.--

645 | (1) As used in this section:

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

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

651 | (c) "Victimize" means any course of action intended to
652 | dupe, swindle, or cheat a homeowner subject to a residential
653 | foreclosure proceeding. The factors that a court shall review
654 | when determining whether a course of action is victimizing a
655 | homeowner are:

656 | 1. The compensation received relative to the risk and the
657 | amount of work involved.

658 | 2. The number of homeowners involved.

659 | 3. The relative bargaining position of the parties.

660 | 4. The relative knowledge and sophistication of the
661 | parties.

662 | 5. Representations made in the inducement.

663 | 6. The timing of the agreement.

664 | (2) Any person, other than a financial institution as
665 | defined in s. 655.005, who willfully uses, or has willfully

666 used, a method, act, or practice in violation of this part,
667 which method, act, or practice victimizes or attempts to
668 victimize homeowners during the course of a residential
669 foreclosure proceeding, and in committing such violation knew or
670 should have known that such conduct was unfair or deceptive, is
671 liable for a civil penalty of not more than \$15,000 for each
672 such violation.

673 (3) Any order of restitution or reimbursement based on a
674 violation of this part committed against a homeowner in a
675 residential foreclosure proceeding has priority over the
676 imposition of any civil penalty for such violation pursuant to
677 this section.

678 (4) Civil penalties collected pursuant to this section
679 shall be deposited into the Legal Affairs Revolving Trust Fund
680 of the Department of Legal Affairs and allocated solely to the
681 Department of Legal Affairs for the purpose of preparing and
682 distributing consumer education materials, programs, and
683 seminars to benefit homeowners in residential foreclosure
684 proceedings or to further enforcement efforts.

685 (5) This section does not apply to:

686 (a) The act of encumbering the dwelling subject to a
687 residential foreclosure proceeding with a substitute or
688 additional lien.

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

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

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694 Section 8. Section 702.035, Florida Statutes, is amended
695 to read:

696 702.035 Legal notice concerning foreclosure
697 proceedings.--Whenever a legal advertisement, publication, or
698 notice relating to a foreclosure proceeding is required to be
699 placed in a newspaper, it is the responsibility of the
700 petitioner or petitioner's attorney to place such advertisement,
701 publication, or notice. The advertisement, publication, or
702 notice shall be placed directly by the attorney for the
703 petitioner, by the petitioner if acting pro se, or by the clerk
704 of the court. Only the actual costs charged by the newspaper for
705 the advertisement, publication, or notice may be charged as
706 costs in the action.

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

709 201.02 Tax on deeds and other instruments relating to real
710 property or interests in real property.--

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

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