

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

28 | liens; creating s. 45.034, F.S.; providing qualifications  
29 | for appointment as a surplus trustee by the Department of  
30 | Financial Services; providing requirements for appointment  
31 | as a surplus trustee; providing for application and  
32 | renewal fees; providing duties of the department in  
33 | certifying surplus trustees; requiring the department to  
34 | establish a rotation system for assignment of cases to  
35 | surplus trustees; providing duties of a surplus trustee;  
36 | providing entitlement of a surplus trustee to certain  
37 | service charges and fees; creating s. 45.035, F.S.;  
38 | specifying service charges for clerks of court for  
39 | administering judicial sales and surplus funds; creating  
40 | s. 501.2078, F.S.; providing definitions; providing a  
41 | civil penalty for knowingly using unfair or deceptive  
42 | homeowner victimization methods, acts, or practices in  
43 | residential foreclosure proceedings; specifying higher  
44 | priority of an order of restitution or reimbursement over  
45 | imposition of a civil penalty; providing for deposit of  
46 | civil penalties into the Legal Affairs Revolving Trust  
47 | Fund of the Department of Legal Affairs; allocating such  
48 | funds for certain purposes; specifying nonapplication to  
49 | certain encumbrances, deeds, or actions; amending s.  
50 | 702.035, F.S.; specifying different newspaper legal notice  
51 | and process requirements for counties above a certain  
52 | population size; limiting certain costs chargeable in a  
53 | foreclosure proceeding; amending s. 201.02, F.S.;  
54 | correcting a cross-reference; providing effective dates.

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

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

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

(1) FINAL JUDGMENT SALE BY CLERK.--

(a) In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:

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

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK

82 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A  
 83 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

84  
 85 (b) If the property being foreclosed on has qualified for  
 86 the homestead tax exemption in the most recent approved tax  
 87 roll, the final judgment shall additionally contain the  
 88 following statement in conspicuous type:

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

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

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

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

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

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

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

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

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(Caption of Action)

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

190  
 191           The undersigned clerk of the court certifies that he or she  
 192 executed and filed a certificate of sale in this action on  
 193 \_\_\_\_\_, (year) , for the property described herein and that no  
 194 objections to the sale have been filed within the time allowed  
 195 for filing objections.

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

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

202 By (Deputy Clerk)

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

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

209           (7) DISBURSEMENTS OF PROCEEDS.--

210           (a) On filing a certificate of title, the clerk shall  
 211 disburse the proceeds of the sale in accordance with the order  
 212 or final judgment and shall file a report of such disbursements  
 213 and serve a copy of it on each party ~~not in default~~, and on the  
 214 Department of Revenue if the department was named as a defendant  
 215 in the action or if the Agency for Workforce Innovation or the  
 216 former Department of Labor and Employment Security was named as



217 a defendant while the Department of Revenue was providing  
 218 unemployment tax collection services under contract with the  
 219 Agency for Workforce Innovation through an interagency agreement  
 220 pursuant to s. 443.1316.

221 (b) The certificate of disbursements shall be, in  
 222 substantially the following form:

223  
 224 (Caption of Action)

225  
 226 CERTIFICATE OF DISBURSEMENTS

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

232 Name Amount

233  
 234 Total disbursements: \$ \_\_\_\_\_

235 Surplus retained by clerk, if any: \$ \_\_\_\_\_

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

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244 WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
 245 (Clerk)  
 246 By (Deputy Clerk)  
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248 (c) If no objections to the report are served within 10  
 249 days after it is filed, the disbursements by the clerk shall  
 250 stand approved as reported. If timely objections to the report  
 251 are served, they shall be heard by the court. Service of  
 252 objections to the report does not affect or cloud the title of  
 253 the purchaser of the property in any manner.

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

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

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

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

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

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

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

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

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

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

299        (2) There is established a rebuttable legal presumption  
300 that the owner of record on the date of the filing of a lis  
301 pendens is the person entitled to surplus funds after payment of  
302 subordinate lienholders who have timely filed a claim. A person  
303 claiming a legal right to the surplus as an assignee of the  
304 rights of the owner of record must prove to the court that such  
305 person is entitled to the funds. At any hearing regarding such  
306 entitlement, the court shall consider the factors set forth in  
307 s. 45.033 in determining whether an assignment is sufficient to  
308 overcome the presumption. It is the intent of the Legislature to  
309 abrogate the common law rule that surplus proceeds in a  
310 foreclosure case are the property of the owner of the property  
311 on the date of the foreclosure sale.

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

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

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(Caption of Action)

OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

State of \_\_\_\_\_

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

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

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

(Legal description of real property)

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

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

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

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

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

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

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

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

358  
 359 (Signatures)

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

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

366  
 367 Personally Known OR Produced Identification

368  
 369 Type of Identification Produced

370  
 371 (b) If any person other than the owner of record claims an  
 372 interest in the proceeds during the 60-day period or if the  
 373 owner of record files a claim for the surplus but acknowledges  
 374 that one or more other persons may be entitled to part or all of  
 375 the surplus, the court shall set an evidentiary hearing to  
 376 determine entitlement to the surplus. At the evidentiary  
 377 hearing, an equity assignee has the burden of proving that he or

378 she is entitled to some or all of the surplus funds. The court  
 379 may grant summary judgment to a subordinate lienholder prior to  
 380 or at the evidentiary hearing. The court shall consider the  
 381 factors in s. 45.033 when hearing a claim that any person other  
 382 than a subordinate lienholder or the owner of record is entitled  
 383 to the surplus funds.

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

390  
 391 (Caption of Action)

392  
 393 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

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

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

(Clerk)

By (Deputy Clerk)

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

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

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

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

(1) There is established a rebuttable presumption that the owner of record of real property on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove entitlement to the surplus funds pursuant to this section. It is the intent of the Legislature to abrogate the common law rule



431 that surplus proceeds in a foreclosure case are the property of  
432 the owner of the property on the date of the foreclosure sale.

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

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

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

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

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

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

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

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

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

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

470       (d) The transferor or assignee is qualified as a surplus  
471 trustee, or could qualify as a surplus trustee, pursuant to s.  
472 45.034.

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

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

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

485 after payment of timely filed claims of subordinate lienholders.

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

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

499 Section 4. Effective upon this act becoming a law, section  
500 45.034, Florida Statutes, is created to read:

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

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

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

512 45.031-45.035.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

566 surplus.

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

569 45.035 Clerk's fees.--In addition to other fees or service  
570 charges authorized by law, the clerk shall receive service  
571 charges related to the judicial sales procedure set forth in ss.  
572 45.031-45.034 and this section:

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

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

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

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

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

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

592 Section 6. Section 501.2078, Florida Statutes, is created  
 593 to read:

594 501.2078 Violations involving individual homeowners during  
 595 the course of residential foreclosure proceedings; civil  
 596 penalties.--

597 (1) As used in this section:

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

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

603 (c) "Victimize" means any course of action intended to  
 604 dupe, swindle, or cheat a homeowner subject to a residential  
 605 foreclosure proceeding. The factors that a court shall review  
 606 when determining whether a course of action is victimizing a  
 607 homeowner are:

608 1. The compensation received relative to the risk and the  
 609 amount of work involved.

610 2. The number of homeowners involved.

611 3. The relative bargaining position of the parties.

612 4. The relative knowledge and sophistication of the  
 613 parties.

614 5. Representations made in the inducement.

615 6. The timing of the agreement.

616 (2) Any person, other than a financial institution as  
 617 defined in s. 655.005, who willfully uses, or has willfully  
 618 used, a method, act, or practice in violation of this part,

619 which method, act, or practice victimizes or attempts to  
620 victimize homeowners during the course of a residential  
621 foreclosure proceeding, and in committing such violation knew or  
622 should have known that such conduct was unfair or deceptive, is  
623 liable for a civil penalty of not more than \$15,000 for each  
624 such violation.

625 (3) Any order of restitution or reimbursement based on a  
626 violation of this part committed against a homeowner in a  
627 residential foreclosure proceeding has priority over the  
628 imposition of any civil penalty for such violation pursuant to  
629 this section.

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

637 (5) This section does not apply to:

638 (a) The act of encumbering the dwelling subject to a  
639 residential foreclosure proceeding with a substitute or  
640 additional lien.

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

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



646 Section 7. Section 702.035, Florida Statutes, is amended  
647 to read:

648 702.035 Legal notice concerning foreclosure  
649 proceedings.--Whenever a legal advertisement, publication, or  
650 notice relating to a foreclosure proceeding is required to be  
651 placed in a newspaper, it is the responsibility of the  
652 petitioner or petitioner's attorney to place such advertisement,  
653 publication, or notice. For counties with more than 1 million  
654 total population as reflected in the most recent Official  
655 Decennial Census of the United States Census Bureau as shown on  
656 the official website of the United States Census Bureau, any  
657 notice of publication required by this section shall be deemed  
658 to have been published in accordance with the law if the notice  
659 is published in a newspaper that has been entered as a  
660 periodical matter at a post office in the county in which the  
661 newspaper is published, is published a minimum of 5 days a week,  
662 and has been in existence and published a minimum of 5 days a  
663 week for 1 year or is a direct successor to a newspaper that has  
664 been in existence for 1 year that has been published a minimum  
665 of 5 days a week. The advertisement, publication, or notice  
666 shall be placed directly by the attorney for the petitioner, by  
667 the petitioner if acting pro se, or by the clerk of the court.  
668 Only the actual costs charged by the newspaper for the  
669 advertisement, publication, or notice may be charged as costs in  
670 the action.

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

673           201.02 Tax on deeds and other instruments relating to real  
674 property or interests in real property.--

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

683           Section 9. Except as otherwise expressly provided in this  
684 act, this act shall take effect July 1, 2006.