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HB 65, Engrossed 1

2006 Legislature

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

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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

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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

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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.

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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

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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

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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)
 247

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.

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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.

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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: _____.

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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

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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) .

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(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

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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.

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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

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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.

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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.

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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

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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.

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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,

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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.

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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:

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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.