

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to unclaimed funds held by the clerks
 3 of court; repealing s. 43.19, F.S., relating to the
 4 deposit of unclaimed funds with the Chief Financial
 5 Officer to the credit of the State School Fund;
 6 amending s. 45.032, F.S.; deleting a definition;
 7 requiring the clerk to report as unclaimed property a
 8 surplus under certain circumstances; providing
 9 reporting requirements; requiring the Department of
 10 Financial Services to prescribe a form by rule;
 11 specifying who is entitled to a surplus under certain
 12 circumstances; conforming provisions to changes made
 13 by the act; amending s. 45.033, F.S.; conforming a
 14 provision to changes made by the act; repealing s.
 15 45.034, F.S., relating to qualifications and
 16 appointment of a surplus trustee in foreclosure
 17 actions; amending s. 45.035, F.S.; revising service
 18 charges that a clerk may receive and deduct from
 19 surplus; amending ss. 717.124, 717.138, and 717.1401,
 20 F.S.; conforming cross-references; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 43.19, Florida Statutes, is repealed.

26 Section 2. Paragraph (d) of subsection (1) and subsections
 27 (3) and (4) of section 45.032, Florida Statutes, are amended,
 28 and subsection (5) of that section is redesignated as subsection
 29 (4), to read:

30 45.032 Disbursement of surplus funds after judicial sale.-

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

32 ~~(d) "Surplus trustee" means a person qualifying as a~~

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33 ~~surplus trustee pursuant to s. 45.034.~~

34 (3) During the 60 days after the clerk issues a certificate
35 of disbursements, the clerk shall hold the surplus pending a
36 court order or expiration of the 60 days. Upon expiration of the
37 60 days, the clerk shall report the surplus as provided in
38 paragraph (c).

39 (a) If the owner of record claims the surplus during the
40 60-day period and there is no subordinate lienholder, the court
41 shall order the clerk to deduct any applicable service charges
42 from the surplus and pay the remainder to the owner of record.
43 The clerk may establish a reasonable requirement that the owner
44 of record prove his or her identity before receiving the
45 disbursement. The clerk may assist an owner of record in making
46 a claim. An owner of record may use the following form in making
47 a claim:

48
49 (Caption of Action)

50
51 OWNER'S CLAIM FOR
52 MORTGAGE FORECLOSURE SURPLUS

53
54 State of

55 County of

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

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

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61 ...(Legal description of real property)...

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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, tax warrant, 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:

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

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

...(Signatures)...

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

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91 Public)...

92

93 Personally Known OR Produced Identification

94 Type of Identification Produced.....

95

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

109 (c) If no claim is filed during the 60-day period, or if
110 surplus funds remain after payment to any subordinate lienholder
111 that filed a claim within the 60-day period, the clerk shall
112 immediately report as unclaimed property any surplus in an
113 amount of \$10 or more to the Department of Financial Services on
114 such forms as the department shall prescribe by rule pursuant to
115 s. 717.138. In reporting the unclaimed property, the clerk shall
116 include his or her name, address, county, and judicial circuit
117 number; the case number; the name of each owner of record as
118 defined in paragraph (1)(a); the owner's last known address at
119 which service of the final judgment, pursuant to s.

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120 45.031(1)(a), was made; the surplus amount; and at least one of
 121 the following: the street name and number, city, state, and zip
 122 code of the real property sold at the judicial sale; the parcel
 123 identification of the real property sold at the judicial sale;
 124 or the real estate number of the real property sold at the
 125 judicial sale. For purposes of establishing entitlement to the
 126 property, only the owner of record reported by the clerk, or the
 127 estate or beneficiary as defined in s. 731.201 of a deceased
 128 owner of record reported by the clerk, is entitled to the
 129 surplus. Any surplus of less than \$10 escheats to the clerk
 130 ~~appoint a surplus trustee from a list of qualified surplus~~
 131 ~~trustees as authorized in s. 45.034. Upon such appointment, the~~
 132 ~~clerk shall prepare a notice of appointment of surplus trustee~~
 133 ~~and shall furnish a copy to the surplus trustee. The form of the~~
 134 ~~notice may be as follows:~~

135
 136 ~~(Caption of Action)~~

137
 138 ~~NOTICE OF APPOINTMENT~~
 139 ~~OF SURPLUS TRUSTEE~~

140
 141 ~~The undersigned clerk of the court certifies that he or she~~
 142 ~~disbursed the proceeds received from the sale of the property as~~
 143 ~~provided in the order or final judgment to the persons named in~~
 144 ~~the certificate of disbursements, and that surplus funds of~~
 145 ~~\$. . . . remain and are subject to disbursement to the owner of~~
 146 ~~record. You have been appointed as surplus trustee for the~~
 147 ~~purpose of finding the owner of record in order for the clerk to~~
 148 ~~disburse the surplus, after deducting costs, to the owner of~~

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149 ~~record.~~

150 ~~WITNESS my hand and the seal of the court on, ... (year)....~~

151 ~~... (Clerk)...~~

152 ~~By ... (Deputy Clerk)...~~

153

154 ~~(4) If the surplus trustee is unable to locate the owner of~~
 155 ~~record entitled to the surplus within 1 year after appointment,~~
 156 ~~the appointment shall terminate and the clerk shall notify the~~
 157 ~~surplus trustee that his or her appointment was terminated.~~

158 ~~Thirty days after termination of the appointment of the surplus~~
 159 ~~trustee, the clerk shall treat the remaining funds as unclaimed~~
 160 ~~property to be deposited with the Chief Financial Officer~~
 161 ~~pursuant to chapter 717.~~

162 Section 3. Paragraph (d) of subsection (3) of section
 163 45.033, Florida Statutes, is amended, and paragraph (e) of that
 164 subsection is redesignated as paragraph (d), to read:

165 45.033 Sale or assignment of rights to surplus funds in a
 166 property subject to foreclosure.—

167 (3) A voluntary transfer or assignment shall be a transfer
 168 or assignment qualified under this subsection, thereby entitling
 169 the transferee or assignee to the surplus funds or a portion or
 170 percentage of the surplus funds, if:

171 ~~(d) The transferor or assignee is qualified as a surplus~~
 172 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
 173 ~~45.034.~~

174 Section 4. Section 45.034, Florida Statutes, is repealed.

175 Section 5. Paragraphs (b) and (d) of subsection (2) of
 176 section 45.035, Florida Statutes, are amended, and paragraph (c)
 177 of that subsection is redesignated as paragraph (b), to read:

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178 45.035 Clerk's fees.—In addition to other fees or service
179 charges authorized by law, the clerk shall receive service
180 charges related to the judicial sales procedure set forth in ss.
181 45.031-45.034 and this section:

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

185 ~~(b) The clerk is entitled to a service charge of \$15 for~~
186 ~~notifying a surplus trustee of his or her appointment.~~

187 ~~(d) The clerk is entitled to a service charge of \$15 for~~
188 ~~appointing a surplus trustee, furnishing the surplus trustee~~
189 ~~with a copy of the final judgment and the certificate of~~
190 ~~disbursements, and disbursing to the surplus trustee the~~
191 ~~trustee's cost advance.~~

192 Section 6. Subsection (8) of section 717.124, Florida
193 Statutes, is amended to read:

194 717.124 Unclaimed property claims.—

195 (8) This section applies to all unclaimed property reported
196 and remitted to the Chief Financial Officer, including, but not
197 limited to, property reported pursuant to ss. ~~43.19~~, 45.032,
198 732.107, 733.816, and 744.534.

199 Section 7. Section 717.138, Florida Statutes, is amended to
200 read:

201 717.138 Rulemaking authority.—The department shall
202 administer and provide for the enforcement of this chapter. The
203 department has authority to adopt rules pursuant to ss.
204 120.536(1) and 120.54 to implement the provisions of this
205 chapter. The department may adopt rules to allow for electronic
206 filing of fees, forms, and reports required by this chapter. The

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207 authority to adopt rules pursuant to this chapter applies to all
208 unclaimed property reported and remitted to the Chief Financial
209 Officer, including, but not limited to, property reported and
210 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
211 744.534.

212 Section 8. Section 717.1401, Florida Statutes, is amended
213 to read:

214 717.1401 Repeal.—This chapter shall not repeal, but shall
215 be additional and supplemental to the existing provisions of ss.
216 43.18, ~~43.19~~, and 402.17 and chapter 716.

217 Section 9. This act shall take effect July 1, 2017.