

By the Committee on Banking and Insurance; and Senator Brandes

597-02141-17

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A bill to be entitled

An act relating to unclaimed funds held by the clerks of court; repealing s. 43.19, F.S., relating to the deposit of unclaimed funds with the Chief Financial Officer to the credit of the State School Fund; amending s. 45.032, F.S.; deleting a definition; requiring the clerk to report as unclaimed property a surplus under certain circumstances; specifying who is entitled to a surplus under certain circumstances; conforming provisions to changes made by the act; amending s. 45.033, F.S.; conforming a provision to changes made by the act; repealing s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions; amending s. 45.035, F.S.; revising service charges that a clerk may receive and deduct from surplus; amending ss. 717.124, 717.138, and 717.1401, F.S.; conforming cross-references; providing an effective date.

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

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 Section 43.19, Florida Statutes, is repealed.

Section 2. Paragraph (d) of subsection (1), paragraph (c) of subsection (3), and subsection (4) of section 45.032, Florida Statutes, are amended to read:

45.032 Disbursement of surplus funds after judicial sale.—

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

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

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30 (3) During the 60 days after the clerk issues a certificate
31 of disbursements, the clerk shall hold the surplus pending a
32 court order.

33 (c) If the remainder of the surplus has not been paid to
34 the owner of record or any subordinate lienholder, it is subject
35 to s. 717.113 and shall be reported and remitted to the
36 Department of Financial Services in accordance with ss. 717.117
37 and 717.119. For purposes of establishing entitlement to the
38 property, only the owner of record reported by the clerk, or the
39 estate or beneficiary as defined in s. 731.201 of a deceased
40 owner of record reported by the clerk, is entitled to the
41 surplus. Any surplus of less than \$10 escheats to no claim is
42 filed during the 60-day period, the clerk shall appoint a
43 surplus trustee from a list of qualified surplus trustees as
44 authorized in s. 45.034. Upon such appointment, the clerk shall
45 prepare a notice of appointment of surplus trustee and shall
46 furnish a copy to the surplus trustee. The form of the notice
47 may be as follows:

48
49 ~~(Caption of Action)~~

50
51 ~~NOTICE OF APPOINTMENT~~
52 ~~OF SURPLUS TRUSTEE~~

53
54 ~~The undersigned clerk of the court certifies that he or she~~
55 ~~disbursed the proceeds received from the sale of the property as~~
56 ~~provided in the order or final judgment to the persons named in~~
57 ~~the certificate of disbursements, and that surplus funds of~~
58 ~~\$.... remain and are subject to disbursement to the owner of~~

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59 ~~record. You have been appointed as surplus trustee for the~~
 60 ~~purpose of finding the owner of record in order for the clerk to~~
 61 ~~disburse the surplus, after deducting costs, to the owner of~~
 62 ~~record.~~

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

64 ~~. . . (Clerk) . . .~~

65 ~~By . . . (Deputy Clerk) . . .~~

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

75 Section 3. Paragraph (d) of subsection (3) of section
 76 45.033, Florida Statutes, is amended, and paragraph (e) of that
 77 subsection is redesignated as paragraph (d), to read:

78 45.033 Sale or assignment of rights to surplus funds in a
 79 property subject to foreclosure.—

80 (3) A voluntary transfer or assignment shall be a transfer
 81 or assignment qualified under this subsection, thereby entitling
 82 the transferee or assignee to the surplus funds or a portion or
 83 percentage of the surplus funds, if:

84 ~~(d) The transferor or assignee is qualified as a surplus~~
 85 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
 86 ~~45.034.~~

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

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

91 45.035 Clerk's fees.—In addition to other fees or service
92 charges authorized by law, the clerk shall receive service
93 charges related to the judicial sales procedure set forth in ss.
94 45.031-45.034 and this section:

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

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

100 ~~(d) The clerk is entitled to a service charge of \$15 for~~
101 ~~appointing a surplus trustee, furnishing the surplus trustee~~
102 ~~with a copy of the final judgment and the certificate of~~
103 ~~disbursements, and disbursing to the surplus trustee the~~
104 ~~trustee's cost advance.~~

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

107 717.124 Unclaimed property claims.—

108 (8) This section applies to all unclaimed property reported
109 and remitted to the Chief Financial Officer, including, but not
110 limited to, property reported pursuant to ss. ~~43.19~~, 45.032,
111 732.107, 733.816, and 744.534.

112 Section 7. Section 717.138, Florida Statutes, is amended to
113 read:

114 717.138 Rulemaking authority.—The department shall
115 administer and provide for the enforcement of this chapter. The
116 department has authority to adopt rules pursuant to ss.

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117 120.536(1) and 120.54 to implement the provisions of this
118 chapter. The department may adopt rules to allow for electronic
119 filing of fees, forms, and reports required by this chapter. The
120 authority to adopt rules pursuant to this chapter applies to all
121 unclaimed property reported and remitted to the Chief Financial
122 Officer, including, but not limited to, property reported and
123 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
124 744.534.

125 Section 8. Section 717.1401, Florida Statutes, is amended
126 to read:

127 717.1401 Repeal.—This chapter shall not repeal, but shall
128 be additional and supplemental to the existing provisions of ss.
129 43.18, ~~43.19~~, and 402.17 and chapter 716.

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