

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED  (Y/N)  
ADOPTED AS AMENDED  (Y/N)  
ADOPTED W/O OBJECTION  (Y/N)  
FAILED TO ADOPT  (Y/N)  
WITHDRAWN  (Y/N)  
OTHER

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Clemons offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove lines 32-52 and insert:

6 Section 2. Paragraph (a) of subsection (1), paragraph (f)  
7 of subsection (2), and paragraph (b) of subsection (7) of  
8 section 45.031, Florida Statutes, is amended to read:

9 45.031 Judicial sales procedure.—In any sale of real or  
10 personal property under an order or judgment, the procedures  
11 provided in this section and ss. 45.0315-45.035 may be followed  
12 as an alternative to any other sale procedure if so ordered by  
13 the court.

14 (1) FINAL JUDGMENT.—

15 (a) In the order or final judgment, the court shall direct  
16 the clerk to sell the property at public sale on a specified day

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17 that shall be not less than 20 days or more than 35 days after  
18 the date thereof, on terms and conditions specified in the order  
19 or judgment. A sale may be held more than 35 days after the date  
20 of final judgment or order if the plaintiff or plaintiff's  
21 attorney consents to such time. The final judgment shall contain  
22 the following statement in conspicuous type:

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

27 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS  
28 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE  
29 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS  
30 UNCLAIMED 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A TIMELY  
31 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

32 (2) PUBLICATION OF SALE.—Notice of sale shall be published  
33 once a week for 2 consecutive weeks in a newspaper of general  
34 circulation, as defined in chapter 50, published in the county  
35 where the sale is to be held. The second publication shall be at  
36 least 5 days before the sale. The notice shall contain:

37 (f) A statement that any person claiming an interest in  
38 the surplus from the sale, if any, other than the property owner  
39 as of the date of the lis pendens must file a claim before the

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40 clerk reports the surplus as unclaimed ~~within 60 days after the~~  
41 ~~sale.~~

42  
43 The court, in its discretion, may enlarge the time of the sale.  
44 Notice of the changed time of sale shall be published as  
45 provided herein.

46 (7) DISBURSEMENTS OF PROCEEDS.—

47 (b) The certificate of disbursements shall be in  
48 substantially the following form:

49 (Caption of Action)

50 CERTIFICATE OF DISBURSEMENTS

51 The undersigned clerk of the court certifies that he or she  
52 disbursed the proceeds received from the sale of the property as  
53 provided in the order or final judgment to the persons and in  
54 the amounts as follows:

55 Name Amount

56 Total disbursements: \$....

57 Surplus retained by clerk, if any: \$....

58 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER  
59 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE  
60 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~  
61 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED

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62 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS  
63 UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF  
64 THE LIS PENDENS MAY CLAIM THE SURPLUS.

65 WITNESS my hand and the seal of the court on ....., ...(year)....  
66 .....(Clerk)..  
67 By ...(Deputy Clerk)...

68 Section 3. Subsection (5) of section 45.032, Florida  
69 Statutes, is renumbered as subsection (4), and paragraph (d) of  
70 subsection (1), subsection (3), and present subsection (4) of  
71 that section are amended, to read:

72 45.032 Disbursement of surplus funds after judicial sale.-

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

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

76 (3) During the period that ~~60 days after~~ the clerk holds  
77 ~~issues a certificate of disbursements, the clerk shall hold~~ the  
78 surplus pending a court order.

79 (a) If the owner of record claims the surplus before the  
80 date that the clerk reports it as unclaimed ~~during the 60-day~~  
81 ~~period~~ and there is no subordinate lienholder, the court shall  
82 order the clerk to deduct any applicable service charges from  
83 the surplus and pay the remainder to the owner of record. The  
84 clerk may establish a reasonable requirement that the owner of  
85 record prove his or her identity before receiving the

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86 disbursement. The clerk may assist an owner of record in making  
87 a claim. An owner of record may use the following form in making  
88 a claim:

89 (Caption of Action)

90 OWNER'S CLAIM FOR  
91 MORTGAGE FORECLOSURE SURPLUS

92 State of ....

93 County of ....

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

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

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

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

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

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

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

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108 6. My (our) new address is: .....

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

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

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

119 ...(Signatures)...

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

123 ...(Signature of Notary Public - State of Florida)...

124 ...(Print, Type, or Stamp Commissioned Name of Notary  
125 Public)...

126 Personally Known .... OR Produced Identification ....

127 Type of Identification Produced.....

128 (b) If any person other than the owner of record claims an  
129 interest in the proceeds prior to the date that the clerk  
130 reports the surplus as unclaimed ~~during the 60-day period~~ or if

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131 the owner of record files a claim for the surplus but  
132 acknowledges that one or more other persons may be entitled to  
133 part or all of the surplus, the court shall set an evidentiary  
134 hearing to determine entitlement to the surplus. At the  
135 evidentiary hearing, an equity assignee has the burden of  
136 proving that he or she is entitled to some or all of the surplus  
137 funds. The court may grant summary judgment to a subordinate  
138 lienholder prior to or at the evidentiary hearing. The court  
139 shall consider the factors in s. 45.033 when hearing a claim  
140 that any person other than a subordinate lienholder or the owner  
141 of record is entitled to the surplus funds.

142 (c) One year after the sale, any surplus remaining with  
143 the clerk of the court that has not been disbursed as provided  
144 herein is subject to s. 717.113 and

145  
146  
147 -----  
148 **T I T L E A M E N D M E N T**

149 Remove line 5 and insert:  
150 is unclaimed; amending s. 45.031, F.S.; changing notices  
151 regarding the time to claim a mortgage surplus; amending s.  
152 45.032, F.S.; deleting