

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 disposition of certain money paid into a court which
5 is unclaimed; amending s. 45.032, F.S.; deleting
6 provisions defining and specifying the powers of a
7 "surplus trustee"; requiring the clerk to report as
8 unclaimed property a surplus under certain
9 circumstances; providing reporting requirements;
10 requiring the Department of Financial Services to
11 prescribe a form by rule; specifying the entities who
12 are entitled to a surplus under certain circumstances;
13 conforming provisions to changes made by the act;
14 amending s. 45.033, F.S.; conforming a provision to
15 changes made by the act; repealing s. 45.034, F.S.,
16 relating to qualifications and appointment of a
17 surplus trustee in foreclosure actions; amending s.
18 45.035, F.S.; revising service charges that a clerk
19 may receive and deduct from surplus amounts; amending
20 ss. 717.124, 717.138, and 717.1401, F.S.; conforming
21 cross-references; providing an 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 Section 43.19, Florida Statutes, is repealed.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 renumbered 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~~
 33 ~~surplus trustee pursuant to s. 45.034.~~

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

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

47
 48 (Caption of Action)

49
 50 OWNER'S CLAIM FOR

MORTGAGE FORECLOSURE SURPLUS

51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75

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, 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

76 | HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE
77 | TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY
78 | MONEY TO WHICH I (WE) MAY BE ENTITLED.

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

82 |
83 | ... (Signatures) ...

84 |
85 | Sworn to (or affirmed) and subscribed before me this
86 | day of, ... (year) ..., by ... (name of person making
87 | statement)

88 | ... (Signature of Notary Public - State of Florida) ...
89 | ... (Print, Type, or Stamp Commissioned Name of Notary
90 | Public) ...

91 |
92 | Personally Known OR Produced Identification
93 | Type of Identification Produced.....

94 |
95 | (b) If any person other than the owner of record claims an
96 | interest in the proceeds during the 60-day period or if the
97 | owner of record files a claim for the surplus but acknowledges
98 | that one or more other persons may be entitled to part or all of
99 | the surplus, the court shall set an evidentiary hearing to
100 | determine entitlement to the surplus. At the evidentiary

101 hearing, an equity assignee has the burden of proving that he or
102 she is entitled to some or all of the surplus funds. The court
103 may grant summary judgment to a subordinate lienholder prior to
104 or at the evidentiary hearing. The court shall consider the
105 factors in s. 45.033 when hearing a claim that any person other
106 than a subordinate lienholder or the owner of record is entitled
107 to the surplus funds.

108 (c) If no claim is filed during the 60-day period, or if
109 any surplus funds remain after each subordinate lienholder who
110 filed a claim within the 60-day period has been paid, the clerk
111 shall immediately report as unclaimed property any surplus
112 amount of \$10 or more to the Department of Financial Services on
113 such forms as the department prescribes by rule pursuant to s.
114 717.138. In reporting the unclaimed property, the clerk shall
115 include his or her name, address, county, and judicial circuit
116 number; the case number; the name of each owner of record as
117 defined in paragraph (1) (a); the owner's last known address at
118 which service of the final judgment, pursuant to s.
119 45.031(1) (a), was made; the surplus amount; and at least one of
120 the following: the street name and number, city, state, and zip
121 code of the real property sold at the judicial sale; the parcel
122 identification of the real property sold at the judicial sale;
123 or the real estate number of the real property sold at the
124 judicial sale. For purposes of establishing entitlement to the
125 property, only the owner of record reported by the clerk, or the

126 estate or beneficiary as defined in s. 731.201, of a deceased
 127 owner of record reported by the clerk, is entitled to the
 128 surplus. Any surplus of less than \$10 escheats to the clerk. ~~the~~
 129 ~~clerk shall appoint a surplus trustee from a list of qualified~~
 130 ~~surplus trustees as authorized in s. 45.034. Upon such~~
 131 ~~appointment, the clerk shall prepare a notice of appointment of~~
 132 ~~surplus trustee and shall furnish a copy to the surplus trustee.~~
 133 ~~The form of the notice may be as follows:~~

134
 135 ~~(Caption of Action)~~

136
 137 NOTICE OF APPOINTMENT
 138 OF SURPLUS TRUSTEE
 139

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

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

151 By ... (Deputy Clerk) ...

152
 153 ~~(4) If the surplus trustee is unable to locate the owner~~
 154 ~~of record entitled to the surplus within 1 year after~~
 155 ~~appointment, the appointment shall terminate and the clerk shall~~
 156 ~~notify the surplus trustee that his or her appointment was~~
 157 ~~terminated. Thirty days after termination of the appointment of~~
 158 ~~the surplus trustee, the clerk shall treat the remaining funds~~
 159 ~~as unclaimed property to be deposited with the Chief Financial~~
 160 ~~Officer pursuant to chapter 717.~~

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

164 45.033 Sale or assignment of rights to surplus funds in a
 165 property subject to foreclosure.—

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

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

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

174 Section 5. Paragraphs (b) and (d) of subsection (2) of
 175 section 45.035, Florida Statutes, are amended, and paragraph (c)

176 of that subsection is redesignated as paragraph (b), to read:

177 45.035 Clerk's fees.—In addition to other fees or service
 178 charges authorized by law, the clerk shall receive service
 179 charges related to the judicial sales procedure set forth in ss.
 180 45.031-45.034 and this section:

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

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

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

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

193 717.124 Unclaimed property claims.—

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

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

200 717.138 Rulemaking authority.—The department shall

201 administer and provide for the enforcement of this chapter. The
202 department has authority to adopt rules pursuant to ss.
203 120.536(1) and 120.54 to implement the provisions of this
204 chapter. The department may adopt rules to allow for electronic
205 filing of fees, forms, and reports required by this chapter. The
206 authority to adopt rules pursuant to this chapter applies to all
207 unclaimed property reported and remitted to the Chief Financial
208 Officer, including, but not limited to, property reported and
209 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
210 744.534.

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

213 717.1401 Repeal.—This chapter shall not repeal, but shall
214 be additional and supplemental to the existing provisions of ss.
215 ~~43.18, 43.19~~, and 402.17 and chapter 716.

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

217