

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"; authorizing specified entities to
8 claim surplus funds that remain after a judicial sale;
9 specifying procedures for those entities to receive
10 such funds; specifying procedures for the clerk to use
11 in handling surpluses that remain unclaimed;
12 specifying the entities eligible for the surplus once
13 the funds have been remitted to the Department of
14 Financial Services; conforming provisions to changes
15 made by the act; amending s. 45.033, F.S.; conforming
16 a provision to changes made by the act; repealing s.
17 45.034, F.S., relating to qualifications and
18 appointment of a surplus trustee in foreclosure
19 actions; amending s. 45.035, F.S.; revising service
20 charges that a clerk may receive and deduct from
21 surplus amounts; amending s. 717.113, F.S.; exempting
22 certain funds remaining after a judicial sale and held
23 in a court registry from becoming payable or
24 distributable and subject to certain reporting
25 requirements; amending ss. 717.124, 717.138, and

26 717.1401, F.S.; conforming cross-references; providing
 27 an effective date.

28

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

30

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 Section 43.19, Florida Statutes, is repealed.

32 Section 2. Subsection (5) of section 45.032, Florida
 33 Statutes, is renumbered as subsection (4), and paragraph (d) of
 34 subsection (1), paragraph (c) of subsection (3), and present
 35 subsection (4) of that section are amended, to read:

36 45.032 Disbursement of surplus funds after judicial sale.—

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

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

40 (3) During the 60 days after the clerk issues a
 41 certificate of disbursements, the clerk shall hold the surplus
 42 pending a court order.

43 (c) After completing the process set forth in paragraphs
 44 (3) (a) and (b), and prior to reporting and remitting the
 45 remaining surplus to the Department of Financial Services, the
 46 owner of record, a subordinate lienholder, an assignee who is an
 47 assignee by virtue of an involuntary transfer of assignment as
 48 described in s. 45.033(2) (b), or a voluntary assignee that has
 49 complied with s. 45.033(3) (a) and (e), may claim the remaining
 50 surplus. The person asserting entitlement shall petition and

51 obtain a court order directing the clerk to disburse the funds.
52 Any surplus remaining with the clerk of the court that has not
53 been disbursed as provided herein is subject to s. 717.113 and
54 must be reported and remitted to the department in accordance
55 with ss. 717.117 and 717.119, provided there is no pending court
56 proceeding regarding entitlement to the surplus. At the
57 conclusion of any court proceeding and any appeal regarding
58 entitlement to the surplus, the clerk of the court shall report
59 and remit the unclaimed property to the department if directed
60 by a court order, to another entity if directed by the court
61 order, or, if not directed by the court order, in the name of
62 the owner of record. For purposes of establishing entitlement to
63 the surplus after the property has been remitted to the
64 department, only the owner of record reported by the clerk of
65 the court, or the beneficiary, as defined in s. 731.201, of a
66 deceased owner of record reported by the clerk, is entitled to
67 the surplus. A surplus of less than \$10 escheats to ~~if no claim~~
68 ~~is filed during the 60-day period,~~ the clerk shall ~~appoint a~~
69 ~~surplus trustee from a list of qualified surplus trustees as~~
70 ~~authorized in s. 45.034. Upon such appointment, the clerk shall~~
71 ~~prepare a notice of appointment of surplus trustee and shall~~
72 ~~furnish a copy to the surplus trustee. The form of the notice~~
73 ~~may be as follows:~~
74
75 ~~(Caption of Action)~~

76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

~~NOTICE OF APPOINTMENT
OF SURPLUS TRUSTEE~~

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

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

101 Section 3. Paragraph (d) of subsection (3) of section
102 45.033, Florida Statutes, is amended, and paragraph (e) of that
103 subsection is redesignated as paragraph (d), to read:

104 45.033 Sale or assignment of rights to surplus funds in a
105 property subject to foreclosure.—

106 (3) A voluntary transfer or assignment shall be a transfer
107 or assignment qualified under this subsection, thereby entitling
108 the transferee or assignee to the surplus funds or a portion or
109 percentage of the surplus funds, if:

110 ~~(d) The transferor or assignee is qualified as a surplus~~
111 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
112 ~~45.034.~~

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

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

117 45.035 Clerk's fees.—In addition to other fees or service
118 charges authorized by law, the clerk shall receive service
119 charges related to the judicial sales procedure set forth in ss.
120 45.031-45.034 and this section:

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

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

126 ~~(d) The clerk is entitled to a service charge of \$15 for~~
 127 ~~appointing a surplus trustee, furnishing the surplus trustee~~
 128 ~~with a copy of the final judgment and the certificate of~~
 129 ~~disbursements, and disbursing to the surplus trustee the~~
 130 ~~trustee's cost advance.~~

131 Section 6. Section 717.113, Florida Statutes, is amended
 132 to read:

133 717.113 Property held by courts and public agencies.—All
 134 intangible property held for the owner by any court, government
 135 or governmental subdivision or agency, public corporation, or
 136 public authority that has not been claimed by the owner for more
 137 than 1 year after it became payable or distributable is presumed
 138 unclaimed. Except as provided in s. 45.032(3)(c), money held in
 139 the court registry and for which no court order has been issued
 140 to determine an owner does not become payable or distributable
 141 and is not subject to reporting under this chapter.

142 Notwithstanding the provisions of this section, funds deposited
 143 in the Minerals Trust Fund pursuant to s. 377.247 are presumed
 144 unclaimed only if the funds have not been claimed by the owner
 145 for more than 5 years after the date of first production from
 146 the well.

147 Section 7. Subsection (8) of section 717.124, Florida
 148 Statutes, is amended to read:

149 717.124 Unclaimed property claims.—

150 (8) This section applies to all unclaimed property

151 reported and remitted to the Chief Financial Officer, including,
 152 but not limited to, property reported pursuant to ss. ~~43.19,~~
 153 45.032, 732.107, 733.816, and 744.534.

154 Section 8. Section 717.138, Florida Statutes, is amended
 155 to read:

156 717.138 Rulemaking authority.—The department shall
 157 administer and provide for the enforcement of this chapter. The
 158 department has authority to adopt rules pursuant to ss.
 159 120.536(1) and 120.54 to implement the provisions of this
 160 chapter. The department may adopt rules to allow for electronic
 161 filing of fees, forms, and reports required by this chapter. The
 162 authority to adopt rules pursuant to this chapter applies to all
 163 unclaimed property reported and remitted to the Chief Financial
 164 Officer, including, but not limited to, property reported and
 165 remitted pursuant to ss. ~~43.19,~~ 45.032, 732.107, 733.816, and
 166 744.534.

167 Section 9. Section 717.1401, Florida Statutes, is amended
 168 to read:

169 717.1401 Repeal.—This chapter shall not repeal, but shall
 170 be additional and supplemental to the existing provisions of ss.
 171 43.18, ~~43.19,~~ and 402.17 and chapter 716.

172 Section 10. This act shall take effect July 1, 2017.