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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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05/02/2017 02:58 PM

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Senator Stargel moved the following:

Senate Amendment (with title amendment)

Between lines 1942 and 1943

insert:

Section 37. Section 43.19, Florida Statutes, is repealed.

Section 38. Paragraph (a) of subsection (1), paragraph (f) of subsection (2), and paragraph (b) of subsection (7) of section 45.031, Florida Statutes, are amended to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed



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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
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

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

28

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

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

39 (f) A statement that any person claiming an interest in the
40 surplus from the sale, if any, other than the property owner as



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41 of the date of the lis pendens must file a claim before the
42 clerk reports the surplus as unclaimed ~~within 60 days after the~~
43 ~~sale.~~

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

48 (7) DISBURSEMENTS OF PROCEEDS.—

49 (b) The certificate of disbursements shall be in
50 substantially the following form:

51
52 (Caption of Action)

53
54 CERTIFICATE OF DISBURSEMENTS

55
56 The undersigned clerk of the court certifies that he or she
57 disbursed the proceeds received from the sale of the property as
58 provided in the order or final judgment to the persons and in
59 the amounts as follows:

60 Name Amount

61
62 Total disbursements: \$....

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

64
65 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
66 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
67 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
68 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
69 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS



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70 UNCLAIMED 60-DAYS, ONLY THE OWNER OF RECORD AS OF THE DATE OF
71 THE LIS PENDENS MAY CLAIM THE SURPLUS.

72
73 WITNESS my hand and the seal of the court on, ...(year)....
74(Clerk)..
75 By ...(Deputy Clerk)...

76 Section 39. Subsection (5) of section 45.032, Florida
77 Statutes, is renumbered as subsection (4), and paragraph (d) of
78 subsection (1), subsection (3), and present subsection (4) of
79 that section are amended, to read:

80 45.032 Disbursement of surplus funds after judicial sale.-

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

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

84 (3) During the period that ~~60 days after~~ the clerk holds
85 ~~issues a certificate of disbursements,~~ the clerk shall hold the
86 surplus pending a court order:-

87 (a) If the owner of record claims the surplus before the
88 date that the clerk reports it as unclaimed ~~during the 60-day~~
89 ~~period~~ and there is no subordinate lienholder, the court shall
90 order the clerk to deduct any applicable service charges from
91 the surplus and pay the remainder to the owner of record. The
92 clerk may establish a reasonable requirement that the owner of
93 record prove his or her identity before receiving the
94 disbursement. The clerk may assist an owner of record in making
95 a claim. An owner of record may use the following form in making
96 a claim:

97
98 (Caption of Action)



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OWNER'S CLAIM FOR
MORTGAGE FORECLOSURE SURPLUS

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 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



128 MONEY TO WHICH I (WE) MAY BE ENTITLED.
129 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER
130 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
131 PROSECUTED CRIMINALLY FOR PERJURY.
132
133 ... (Signatures) ...
134
135 Sworn to (or affirmed) and subscribed before me this
136 day of, ... (year), by ... (name of person making
137 statement)
138 ... (Signature of Notary Public - State of Florida) ...
139 ... (Print, Type, or Stamp Commissioned Name of Notary
140 Public) ...
141
142 Personally Known OR Produced Identification
143 Type of Identification Produced.....
144 (b) If any person other than the owner of record claims an
145 interest in the proceeds prior to the date that the clerk
146 reports the surplus as unclaimed ~~during the 60-day period~~ or if
147 the owner of record files a claim for the surplus but
148 acknowledges that one or more other persons may be entitled to
149 part or all of the surplus, the court shall set an evidentiary
150 hearing to determine entitlement to the surplus. At the
151 evidentiary hearing, an equity assignee has the burden of
152 proving that he or she is entitled to some or all of the surplus
153 funds. The court may grant summary judgment to a subordinate
154 lienholder prior to or at the evidentiary hearing. The court
155 shall consider the factors in s. 45.033 when hearing a claim
156 that any person other than a subordinate lienholder or the owner



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157 of record is entitled to the surplus funds.
158 (c) One year after the sale, any surplus remaining with the
159 clerk of the court that has not been disbursed as provided
160 herein is subject to s. 717.113 and must be reported and
161 remitted to the department in accordance with ss. 717.117 and
162 717.119, provided there is no pending court proceeding regarding
163 entitlement to the surplus. At the conclusion of any court
164 proceeding and any appeal regarding entitlement to the surplus,
165 the clerk of the court shall report and remit the unclaimed
166 property to the department if directed by a court order, to
167 another entity if directed by the court order, or, if not
168 directed by the court order, in the name of the owner of record.
169 For purposes of establishing entitlement to the surplus after
170 the property has been remitted to the department, only the owner
171 of record reported by the clerk of the court, or the
172 beneficiary, as defined in s. 731.201, of a deceased owner of
173 record reported by the clerk, is entitled to the surplus. A
174 surplus of less than \$10 escheats to ~~If no claim is filed during~~
175 ~~the 60-day period,~~ the clerk shall appoint a surplus trustee
176 ~~from a list of qualified surplus trustees as authorized in s.~~
177 ~~45.034. Upon such appointment, the clerk shall prepare a notice~~
178 ~~of appointment of surplus trustee and shall furnish a copy to~~
179 ~~the surplus trustee. The form of the notice may be as follows:~~

180
181 ~~(Caption of Action)~~

182
183 NOTICE OF APPOINTMENT
184 OF SURPLUS TRUSTEE



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215 percentage of the surplus funds, if:

216 ~~(d) The transferor or assignee is qualified as a surplus~~
217 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
218 ~~45.034.~~

219 Section 41. Section 45.034, Florida Statutes, is repealed.

220 Section 42. Paragraphs (b) and (d) of subsection (2) of
221 section 45.035, Florida Statutes, are amended, and paragraph (c)
222 of that subsection is redesignated as paragraph (b), to read:

223 45.035 Clerk's fees.—In addition to other fees or service
224 charges authorized by law, the clerk shall receive service
225 charges related to the judicial sales procedure set forth in ss.
226 45.031-45.034 and this section:

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

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

232 ~~(d) The clerk is entitled to a service charge of \$15 for~~
233 ~~appointing a surplus trustee, furnishing the surplus trustee~~
234 ~~with a copy of the final judgment and the certificate of~~
235 ~~disbursements, and disbursing to the surplus trustee the~~
236 ~~trustee's cost advance.~~

237 Section 43. Section 717.113, Florida Statutes, is amended
238 to read:

239 717.113 Property held by courts and public agencies.—All
240 intangible property held for the owner by any court, government
241 or governmental subdivision or agency, public corporation, or
242 public authority that has not been claimed by the owner for more
243 than 1 year after it became payable or distributable is presumed



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244 unclaimed. Except as provided in s. 45.032(3)(c), money held in
245 the court registry and for which no court order has been issued
246 to determine an owner does not become payable or distributable
247 and is not subject to reporting under this chapter.

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

253 Section 44. Subsection (8) of section 717.124, Florida
254 Statutes, is amended to read:

255 717.124 Unclaimed property claims.—

256 (8) This section applies to all unclaimed property reported
257 and remitted to the Chief Financial Officer, including, but not
258 limited to, property reported pursuant to ss. ~~43.19~~, 45.032,
259 732.107, 733.816, and 744.534.

260 Section 45. Section 717.138, Florida Statutes, is amended
261 to read:

262 717.138 Rulemaking authority.—The department shall
263 administer and provide for the enforcement of this chapter. The
264 department has authority to adopt rules pursuant to ss.
265 120.536(1) and 120.54 to implement the provisions of this
266 chapter. The department may adopt rules to allow for electronic
267 filing of fees, forms, and reports required by this chapter. The
268 authority to adopt rules pursuant to this chapter applies to all
269 unclaimed property reported and remitted to the Chief Financial
270 Officer, including, but not limited to, property reported and
271 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
272 744.534.



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273 Section 46. Section 717.1401, Florida Statutes, is amended
274 to read:

275 717.1401 Repeal.—This chapter shall not repeal, but shall
276 be additional and supplemental to the existing provisions of ss.
277 43.18, ~~43.19~~, and 402.17 and chapter 716.

278
279 ===== T I T L E A M E N D M E N T =====

280 And the title is amended as follows:

281 Delete line 169

282 and insert:

283 627.351, F.S.; conforming cross-references; repealing
284 s. 43.19, F.S., relating to the disposition of certain
285 money paid into a court which is unclaimed; amending
286 s. 45.031, F.S.; revising the time periods within
287 which certain persons must file claims for certain
288 unclaimed surplus funds; amending s. 45.032, F.S.;
289 deleting provisions defining and specifying the powers
290 of a "surplus trustee"; authorizing specified entities
291 to claim surplus funds that remain after a judicial
292 sale; specifying procedures for those entities to
293 receive such funds; specifying procedures for the
294 clerk to use in handling surpluses that remain
295 unclaimed; specifying the entities eligible for the
296 surplus once the funds have been remitted to the
297 department; conforming provisions to changes made by
298 the act; amending s. 45.033, F.S.; conforming a
299 provision to changes made by the act; repealing s.
300 45.034, F.S., relating to qualifications and
301 appointment of a surplus trustee in foreclosure



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302 actions; amending s. 45.035, F.S.; revising service
303 charges that a clerk may receive and deduct from
304 surplus amounts; amending s. 717.113, F.S.; exempting
305 certain funds remaining after a judicial sale and held
306 in a court registry from becoming payable or
307 distributable and subject to certain reporting
308 requirements; amending ss. 717.124, 717.138, and
309 717.1401, F.S.; conforming cross-references; providing