

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. 45.031, F.S.; revising the
6 time periods within which certain persons must file
7 claims for certain unclaimed surplus funds; amending
8 s. 45.032, F.S.; deleting provisions defining and
9 specifying the powers of a "surplus trustee";
10 authorizing specified entities to claim surplus funds
11 that remain after a judicial sale; specifying
12 procedures for those entities to receive such funds;
13 specifying procedures for the clerk to use in handling
14 surpluses that remain unclaimed; specifying the
15 entities eligible for the surplus once the funds have
16 been remitted to the Department of Financial Services;
17 conforming provisions to changes made by the act;
18 amending s. 45.033, F.S.; conforming a provision to
19 changes made by the act; repealing s. 45.034, F.S.,
20 relating to qualifications and appointment of a
21 surplus trustee in foreclosure actions; amending s.
22 45.035, F.S.; revising service charges that a clerk
23 may receive and deduct from surplus amounts; amending
24 s. 717.113, F.S.; exempting certain funds remaining
25 after a judicial sale and held in a court registry

26 from becoming payable or distributable and subject to
 27 certain reporting requirements; amending ss. 717.124,
 28 717.138, and 717.1401, F.S.; conforming cross-
 29 references; providing an effective date.

30

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

32

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 Section 43.19, Florida Statutes, is repealed.

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

37 45.031 Judicial sales procedure.—In any sale of real or
 38 personal property under an order or judgment, the procedures
 39 provided in this section and ss. 45.0315-45.035 may be followed
 40 as an alternative to any other sale procedure if so ordered by
 41 the court.

42 (1) FINAL JUDGMENT.—

43 (a) In the order or final judgment, the court shall direct
 44 the clerk to sell the property at public sale on a specified day
 45 that shall be not less than 20 days or more than 35 days after
 46 the date thereof, on terms and conditions specified in the order
 47 or judgment. A sale may be held more than 35 days after the date
 48 of final judgment or order if the plaintiff or plaintiff's
 49 attorney consents to such time. The final judgment shall contain
 50 the following statement in conspicuous type:

51 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
 52 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
 53 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
 54 FINAL JUDGMENT.

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

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

65 (f) A statement that any person claiming an interest in
 66 the surplus from the sale, if any, other than the property owner
 67 as of the date of the lis pendens must file a claim before the
 68 clerk reports the surplus as unclaimed ~~within 60 days after the~~
 69 ~~sale~~.

70
 71 The court, in its discretion, may enlarge the time of the sale.
 72 Notice of the changed time of sale shall be published as
 73 provided herein.

74 (7) DISBURSEMENTS OF PROCEEDS.—

75 (b) The certificate of disbursements shall be in

76 | substantially the following form:

77 | (Caption of Action)

78 | CERTIFICATE OF DISBURSEMENTS

79 | The undersigned clerk of the court certifies that he or she
 80 | disbursed the proceeds received from the sale of the property as
 81 | provided in the order or final judgment to the persons and in
 82 | the amounts as follows:

83 | Name Amount

84 | Total disbursements: \$....

85 | Surplus retained by clerk, if any: \$....

86 | IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
 87 | THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
 88 | DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
 89 | ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
 90 | TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS
 91 | UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF
 92 | THE LIS PENDENS MAY CLAIM THE SURPLUS.

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

94 |(Clerk)...

95 | By ...(Deputy Clerk)...

96 | Section 3. Subsection (5) of section 45.032, Florida
 97 | Statutes, is renumbered as subsection (4), and paragraph (d) of
 98 | subsection (1), subsection (3), and present subsection (4) of
 99 | that section are amended, to read:

100 | 45.032 Disbursement of surplus funds after judicial sale.-

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

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

104 (3) During the period that ~~60 days after~~ the clerk holds
 105 ~~issues a certificate of disbursements,~~ the clerk shall hold the
 106 surplus pending a court order:—

107 (a) If the owner of record claims the surplus before the
 108 date that the clerk reports it as unclaimed ~~during the 60-day~~
 109 ~~period~~ and there is no subordinate lienholder, the court shall
 110 order the clerk to deduct any applicable service charges from
 111 the surplus and pay the remainder to the owner of record. The
 112 clerk may establish a reasonable requirement that the owner of
 113 record prove his or her identity before receiving the
 114 disbursement. The clerk may assist an owner of record in making
 115 a claim. An owner of record may use the following form in making
 116 a claim:

117 (Caption of Action)

118 OWNER'S CLAIM FOR

119 MORTGAGE FORECLOSURE SURPLUS

120 State of

121 County of

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

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

126 | ...(Legal description of real property)...

127 | 2. I (we) do not owe any money on any mortgage on the
128 | property that was foreclosed other than the one that was paid
129 | off by the foreclosure.

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

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

134 | 5. I (we) have not sold or assigned my (our) right to the
135 | mortgage surplus.

136 | 6. My (our) new address is:

137 | 7. If there is more than one owner entitled to the
138 | surplus, we have agreed that the surplus should be paid
139 | jointly, or to:, at the following address:

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

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

147 | ...(Signatures)...

148 | Sworn to (or affirmed) and subscribed before me this
149 | day of, ...(year)...., by ...(name of person making
150 | statement).....

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

152 ...(Print, Type, or Stamp Commissioned Name of Notary

153 Public)...

154 Personally Known OR Produced Identification

155 Type of Identification Produced.....

156 (b) If any person other than the owner of record claims an

157 interest in the proceeds prior to the date that the clerk

158 reports the surplus as unclaimed ~~during the 60-day period~~ or if

159 the owner of record files a claim for the surplus but

160 acknowledges that one or more other persons may be entitled to

161 part or all of the surplus, the court shall set an evidentiary

162 hearing to determine entitlement to the surplus. At the

163 evidentiary hearing, an equity assignee has the burden of

164 proving that he or she is entitled to some or all of the surplus

165 funds. The court may grant summary judgment to a subordinate

166 lienholder prior to or at the evidentiary hearing. The court

167 shall consider the factors in s. 45.033 when hearing a claim

168 that any person other than a subordinate lienholder or the owner

169 of record is entitled to the surplus funds.

170 (c) One year after the sale, any surplus remaining with

171 the clerk of the court that has not been disbursed as provided

172 herein is presumed unclaimed as set forth in s. 717.113 and must

173 be reported and remitted to the department in accordance with

174 ss. 717.117 and 717.119, unless there is a pending court

175 proceeding regarding entitlement to the surplus. At the

176 conclusion of any court proceeding and any appeal regarding
 177 entitlement to the surplus, the clerk of the court shall report
 178 and remit the unclaimed property to the department if directed
 179 by a court order, to another entity if directed by the court
 180 order, or, if not directed by the court order, to the owner of
 181 record. For purposes of establishing entitlement to the surplus
 182 after the property has been remitted to the department, only the
 183 owner of record reported by the clerk of the court, or the
 184 beneficiary, as defined in s. 731.201, of a deceased owner of
 185 record reported by the clerk, is entitled to the surplus. A
 186 surplus of less than \$10 escheats to ~~If no claim is filed during~~
 187 ~~the 60-day period, the clerk shall appoint a surplus trustee~~
 188 ~~from a list of qualified surplus trustees as authorized in s.~~
 189 ~~45.034. Upon such appointment, the clerk shall prepare a notice~~
 190 ~~of appointment of surplus trustee and shall furnish a copy to~~
 191 ~~the surplus trustee. The form of the notice may be as follows:~~

192
 193 ~~(Caption of Action)~~

194
 195 ~~NOTICE OF APPOINTMENT~~
 196 ~~OF SURPLUS TRUSTEE~~

197
 198 ~~The undersigned clerk of the court certifies that he or she~~
 199 ~~disbursed the proceeds received from the sale of the property as~~
 200 ~~provided in the order or final judgment to the persons named in~~

201 ~~the certificate of disbursements, and that surplus funds of~~
 202 ~~\$. . . . remain and are subject to disbursement to the owner of~~
 203 ~~record. You have been appointed as surplus trustee for the~~
 204 ~~purpose of finding the owner of record in order for the clerk to~~
 205 ~~disburse the surplus, after deducting costs, to the owner of~~
 206 ~~record.~~

207 ~~WITNESS my hand and the seal of the court on, . . . (year)~~
 208 ~~. . . (Clerk)~~
 209 ~~By . . . (Deputy Clerk)~~

211 ~~(4) If the surplus trustee is unable to locate the owner~~
 212 ~~of record entitled to the surplus within 1 year after~~
 213 ~~appointment, the appointment shall terminate and the clerk shall~~
 214 ~~notify the surplus trustee that his or her appointment was~~
 215 ~~terminated. Thirty days after termination of the appointment of~~
 216 ~~the surplus trustee, the clerk shall treat the remaining funds~~
 217 ~~as unclaimed property to be deposited with the Chief Financial~~
 218 ~~Officer pursuant to chapter 717.~~

219 Section 4. Paragraph (d) of subsection (3) of section
 220 45.033, Florida Statutes, is amended, and paragraph (e) of that
 221 subsection is redesignated as paragraph (d), to read:

222 45.033 Sale or assignment of rights to surplus funds in a
 223 property subject to foreclosure.—

224 (3) A voluntary transfer or assignment shall be a transfer
 225 or assignment qualified under this subsection, thereby entitling

226 | the transferee or assignee to the surplus funds or a portion or
 227 | percentage of the surplus funds, if:

228 | ~~(d) The transferor or assignee is qualified as a surplus~~
 229 | ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
 230 | ~~45.034.~~

231 | Section 5. Section 45.034, Florida Statutes, is repealed.

232 | Section 6. Paragraphs (b) and (d) of subsection (2) of
 233 | section 45.035, Florida Statutes, are amended, and paragraph (c)
 234 | of that subsection is redesignated as paragraph (b), to read:

235 | 45.035 Clerk's fees.—In addition to other fees or service
 236 | charges authorized by law, the clerk shall receive service
 237 | charges related to the judicial sales procedure set forth in ss.
 238 | 45.031-45.034 and this section:

239 | (2) If there is a surplus resulting from the sale, the
 240 | clerk may receive the following service charges, which shall be
 241 | deducted from the surplus:

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

244 | ~~(d) The clerk is entitled to a service charge of \$15 for~~
 245 | ~~appointing a surplus trustee, furnishing the surplus trustee~~
 246 | ~~with a copy of the final judgment and the certificate of~~
 247 | ~~disbursements, and disbursing to the surplus trustee the~~
 248 | ~~trustee's cost advance.~~

249 | Section 7. Section 717.113, Florida Statutes, is amended
 250 | to read:

251 717.113 Property held by courts and public agencies.—All
 252 intangible property held for the owner by any court, government
 253 or governmental subdivision or agency, public corporation, or
 254 public authority that has not been claimed by the owner for more
 255 than 1 year after it became payable or distributable is presumed
 256 unclaimed. Except as provided in s. 45.032(3)(c), money held in
 257 the court registry and for which no court order has been issued
 258 to determine an owner does not become payable or distributable
 259 and is not subject to reporting under this chapter.

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

265 Section 8. Subsection (8) of section 717.124, Florida
 266 Statutes, is amended to read:

267 717.124 Unclaimed property claims.—

268 (8) This section applies to all unclaimed property
 269 reported and remitted to the Chief Financial Officer, including,
 270 but not limited to, property reported pursuant to ss. ~~43.19,~~
 271 45.032, 732.107, 733.816, and 744.534.

272 Section 9. Section 717.138, Florida Statutes, is amended
 273 to read:

274 717.138 Rulemaking authority.—The department shall
 275 administer and provide for the enforcement of this chapter. The

276 department has authority to adopt rules pursuant to ss.
277 120.536(1) and 120.54 to implement the provisions of this
278 chapter. The department may adopt rules to allow for electronic
279 filing of fees, forms, and reports required by this chapter. The
280 authority to adopt rules pursuant to this chapter applies to all
281 unclaimed property reported and remitted to the Chief Financial
282 Officer, including, but not limited to, property reported and
283 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
284 744.534.

285 Section 10. Section 717.1401, Florida Statutes, is amended
286 to read:

287 717.1401 Repeal.—This chapter shall not repeal, but shall
288 be additional and supplemental to the existing provisions of ss.
289 43.18, ~~43.19~~, and 402.17 and chapter 716.

290 Section 11. This act shall take effect July 1, 2018.