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CS/CS/HB 1361

2018 Legislature

1
2 An act relating to clerks of court; repealing s.
3 43.19, F.S., relating to the disposition of certain
4 money paid into a court which is unclaimed; amending
5 s. 45.031, F.S.; revising the time periods within
6 which certain persons must file claims for certain
7 unclaimed surplus funds; amending s. 45.032, F.S.;
8 deleting provisions defining and specifying the powers
9 of a "surplus trustee"; authorizing specified entities
10 to claim surplus funds that remain after a judicial
11 sale; specifying procedures for those entities to
12 receive such funds; specifying procedures for the
13 clerk to use in handling surpluses that remain
14 unclaimed; specifying the entities eligible for the
15 surplus once the funds have been remitted to the
16 Department of Financial Services; conforming
17 provisions to changes made by the act; amending s.
18 45.033, F.S.; conforming a provision to changes made
19 by the act; repealing s. 45.034, F.S., relating to
20 qualifications and appointment of a surplus trustee in
21 foreclosure actions; amending s. 45.035, F.S.;
22 revising service charges that a clerk may receive and
23 deduct from surplus amounts; amending s. 318.1451,
24 F.S.; requiring a driver improvement course provider
25 to transmit, within a specified time period, the

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26 individual completion certificate and citation number
 27 through the Florida Courts E-Filing Portal to the
 28 clerk of the circuit court in the county where the
 29 citation was issued; amending s. 717.113, F.S.;
 30 exempting certain funds remaining after a judicial
 31 sale and held in a court registry from becoming
 32 payable or distributable and subject to certain
 33 reporting requirements; amending ss. 717.124, 717.138,
 34 and 717.1401, F.S.; conforming cross-references;
 35 providing an effective date.

36

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

38

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 Section 43.19, Florida Statutes, is repealed.

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

43 45.031 Judicial sales procedure.—In any sale of real or
 44 personal property under an order or judgment, the procedures
 45 provided in this section and ss. 45.0315-45.035 may be followed
 46 as an alternative to any other sale procedure if so ordered by
 47 the court.

48 (1) FINAL JUDGMENT.—

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

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

57 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
 58 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
 59 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
 60 FINAL JUDGMENT.

61 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
 62 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE
 63 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS
 64 UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A TIMELY
 65 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

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

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

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76
 77 The court, in its discretion, may enlarge the time of the sale.
 78 Notice of the changed time of sale shall be published as
 79 provided herein.

80 (7) DISBURSEMENTS OF PROCEEDS.—

81 (b) The certificate of disbursements shall be in
 82 substantially the following form:

83 (Caption of Action)

84 CERTIFICATE OF DISBURSEMENTS

85 The undersigned clerk of the court certifies that he or she
 86 disbursed the proceeds received from the sale of the property as
 87 provided in the order or final judgment to the persons and in
 88 the amounts as follows:

89 Name Amount

90 Total disbursements: \$....

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

92 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
 93 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
 94 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
 95 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
 96 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS
 97 UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF
 98 THE LIS PENDENS MAY CLAIM THE SURPLUS.

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

100 ... (Clerk)...

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101 By ... (Deputy Clerk) ...

102 Section 3. Subsection (5) of section 45.032, Florida
 103 Statutes, is renumbered as subsection (4), and paragraph (d) of
 104 subsection (1), subsection (3), and present subsection (4) of
 105 that section are amended, to read:

106 45.032 Disbursement of surplus funds after judicial sale.—

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

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

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

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

123 (Caption of Action)

124 OWNER'S CLAIM FOR
 125 MORTGAGE FORECLOSURE SURPLUS

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126 State of

127 County of

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

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

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

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

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

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

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

142 6. My (our) new address is:

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

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

150 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER

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151 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
 152 PROSECUTED CRIMINALLY FOR PERJURY.
 153 ... (Signatures) ...
 154 Sworn to (or affirmed) and subscribed before me this
 155 day of, ... (year) ..., by ... (name of person making
 156 statement)
 157 ... (Signature of Notary Public - State of Florida) ...
 158 ... (Print, Type, or Stamp Commissioned Name of Notary
 159 Public) ...
 160 Personally Known OR Produced Identification
 161 Type of Identification Produced.....
 162 (b) If any person other than the owner of record claims an
 163 interest in the proceeds prior to the date that the clerk
 164 reports the surplus as unclaimed ~~during the 60-day period~~ or if
 165 the owner of record files a claim for the surplus but
 166 acknowledges that one or more other persons may be entitled to
 167 part or all of the surplus, the court shall set an evidentiary
 168 hearing to determine entitlement to the surplus. At the
 169 evidentiary hearing, an equity assignee has the burden of
 170 proving that he or she is entitled to some or all of the surplus
 171 funds. The court may grant summary judgment to a subordinate
 172 lienholder prior to or at the evidentiary hearing. The court
 173 shall consider the factors in s. 45.033 when hearing a claim
 174 that any person other than a subordinate lienholder or the owner
 175 of record is entitled to the surplus funds.

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176 (c) One year after the sale, any surplus remaining with
177 the clerk of the court that has not been disbursed as provided
178 herein is presumed unclaimed as set forth in s. 717.113 and must
179 be reported and remitted to the department in accordance with
180 ss. 717.117 and 717.119, unless there is a pending court
181 proceeding regarding entitlement to the surplus. At the
182 conclusion of any court proceeding and any appeal regarding
183 entitlement to the surplus, the clerk of the court shall report
184 and remit the unclaimed property to the department if directed
185 by a court order, to another entity if directed by the court
186 order, or, if not directed by the court order, to the owner of
187 record. For purposes of establishing entitlement to the surplus
188 after the property has been remitted to the department, only the
189 owner of record reported by the clerk of the court, or the
190 beneficiary, as defined in s. 731.201, of a deceased owner of
191 record reported by the clerk, is entitled to the surplus. A
192 surplus of less than \$10 escheats to ~~If no claim is filed during~~
193 ~~the 60-day period,~~ the clerk shall appoint a surplus trustee
194 ~~from a list of qualified surplus trustees as authorized in s.~~
195 ~~45.034. Upon such appointment, the clerk shall prepare a notice~~
196 ~~of appointment of surplus trustee and shall furnish a copy to~~
197 ~~the surplus trustee. The form of the notice may be as follows:~~
198
199 ~~(Caption of Action)~~

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~~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.~~

Section 4. Paragraph (d) of subsection (3) of section

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226 45.033, Florida Statutes, is amended, and paragraph (e) of that
 227 subsection is redesignated as paragraph (d), to read:

228 45.033 Sale or assignment of rights to surplus funds in a
 229 property subject to foreclosure.—

230 (3) A voluntary transfer or assignment shall be a transfer
 231 or assignment qualified under this subsection, thereby entitling
 232 the transferee or assignee to the surplus funds or a portion or
 233 percentage of the surplus funds, if:

234 ~~(d) The transferor or assignee is qualified as a surplus~~
 235 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
 236 ~~45.034.~~

237 Section 5. Section 45.034, Florida Statutes, is repealed.

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

241 45.035 Clerk's fees.—In addition to other fees or service
 242 charges authorized by law, the clerk shall receive service
 243 charges related to the judicial sales procedure set forth in ss.
 244 45.031-45.034 and this section:

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

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

250 ~~(d) The clerk is entitled to a service charge of \$15 for~~

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251 ~~appointing a surplus trustee, furnishing the surplus trustee~~
252 ~~with a copy of the final judgment and the certificate of~~
253 ~~disbursements, and disbursing to the surplus trustee the~~
254 ~~trustee's cost advance.~~

255 Section 7. Paragraph (f) of subsection (6) of section
256 318.1451, Florida Statutes, is amended to read:

257 318.1451 Driver improvement schools.—

258 (6) The department shall adopt rules establishing and
259 maintaining policies and procedures to implement the
260 requirements of this section. These policies and procedures may
261 include, but shall not be limited to, the following:

262 (f) Submission of records.—The department shall require
263 that all course providers submit course completion information
264 to the department through the department's Driver Improvement
265 Certificate Issuance System within 5 days. Course providers must
266 also submit course completion information together with the
267 citation number through the Florida Courts E-Filing Portal
268 governed by the Florida Courts E-Filing Authority to the clerk
269 of the circuit court of the county where the citation is issued
270 within 3 days after receipt of the unique course completion
271 certificate number from the Driver Improvement Certificate
272 Issuance System.

273 Section 8. Section 717.113, Florida Statutes, is amended
274 to read:

275 717.113 Property held by courts and public agencies.—All

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276 intangible property held for the owner by any court, government
277 or governmental subdivision or agency, public corporation, or
278 public authority that has not been claimed by the owner for more
279 than 1 year after it became payable or distributable is presumed
280 unclaimed. Except as provided in s. 45.032(3)(c), money held in
281 the court registry and for which no court order has been issued
282 to determine an owner does not become payable or distributable
283 and is not subject to reporting under this chapter.

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

289 Section 9. Subsection (8) of section 717.124, Florida
290 Statutes, is amended to read:

291 717.124 Unclaimed property claims.—

292 (8) This section applies to all unclaimed property
293 reported and remitted to the Chief Financial Officer, including,
294 but not limited to, property reported pursuant to ss. ~~43.19,~~
295 45.032, 732.107, 733.816, and 744.534.

296 Section 10. Section 717.138, Florida Statutes, is amended
297 to read:

298 717.138 Rulemaking authority.—The department shall
299 administer and provide for the enforcement of this chapter. The
300 department has authority to adopt rules pursuant to ss.

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301 120.536(1) and 120.54 to implement the provisions of this
302 chapter. The department may adopt rules to allow for electronic
303 filing of fees, forms, and reports required by this chapter. The
304 authority to adopt rules pursuant to this chapter applies to all
305 unclaimed property reported and remitted to the Chief Financial
306 Officer, including, but not limited to, property reported and
307 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
308 744.534.

309 Section 11. Section 717.1401, Florida Statutes, is amended
310 to read:

311 717.1401 Repeal.—This chapter shall not repeal, but shall
312 be additional and supplemental to the existing provisions of ss.
313 43.18, ~~43.19~~, and 402.17 and chapter 716.

314 Section 12. This act shall take effect July 1, 2019.