

By the Committees on Rules; and Judiciary; and Senator Grimsley

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1                   A bill to be entitled  
2           An act relating to clerks of the 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"; specifying procedures for the  
10          clerk to use in handling surpluses that remain  
11          unclaimed; specifying the entities eligible for the  
12          surplus once the funds have been remitted to the  
13          Department of Financial Services; conforming  
14          provisions to changes made by the act; amending s.  
15          45.033, F.S.; conforming a provision to changes made  
16          by the act; repealing s. 45.034, F.S., relating to  
17          qualifications and appointment of a surplus trustee in  
18          foreclosure actions; amending s. 45.035, F.S.;  
19          revising service charges that a clerk may receive and  
20          deduct from surplus amounts; amending s. 318.1451,  
21          F.S.; requiring all driver improvement course  
22          providers to transmit, within a specified timeframe,  
23          the individual completion certificate and citation  
24          number through the Florida Courts E-Filing Portal  
25          governed by the Florida Courts E-Filing Authority to  
26          the clerk of the circuit court in the county where the  
27          citation was issued; amending s. 717.113, F.S.;  
28          providing that certain funds remaining after a  
29          judicial sale and held in a court registry are not

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30 payable or distributable and are not subject to  
31 certain reporting requirements; amending ss. 717.124,  
32 717.138, and 717.1401, F.S.; conforming cross-  
33 references; providing an effective date.  
34

35 Be It Enacted by the Legislature of the State of Florida:  
36

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 Section 43.19, Florida Statutes, is repealed.

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

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

46 (1) FINAL JUDGMENT.—

47 (a) In the order or final judgment, the court shall direct  
48 the clerk to sell the property at public sale on a specified day  
49 that shall be not less than 20 days or more than 35 days after  
50 the date thereof, on terms and conditions specified in the order  
51 or judgment. A sale may be held more than 35 days after the date  
52 of final judgment or order if the plaintiff or plaintiff's  
53 attorney consents to such time. The final judgment shall contain  
54 the following statement in conspicuous type:  
55

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

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59 FINAL JUDGMENT.

60  
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 the  
72 surplus from the sale, if any, other than the property owner as  
73 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~~.

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  
84 (Caption of Action)

85  
86 CERTIFICATE OF DISBURSEMENTS



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117 ~~issues a certificate of disbursements, the clerk shall hold the~~  
 118 surplus pending a court order~~:-~~

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

129  
 130 (Caption of Action)

131  
 132 OWNER'S CLAIM FOR  
 133 MORTGAGE FORECLOSURE SURPLUS

134  
 135 State of ....

136 County of ....

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

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

141  
 142 ... (Legal description of real property) ...

143  
 144 2. I (we) do not owe any money on any mortgage on the  
 145 property that was foreclosed other than the one that was paid

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146 off by the foreclosure.

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

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

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

153 6. My (our) new address is: .....

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

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

161 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER  
 162 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE  
 163 PROSECUTED CRIMINALLY FOR PERJURY.

164  
 165 ...(Signatures)...

166  
 167 Sworn to (or affirmed) and subscribed before me this ....  
 168 day of ....., ...(year)...., by ...(name of person making  
 169 statement)....

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

171 ...(Print, Type, or Stamp Commissioned Name of Notary  
 172 Public)...

173  
 174 Personally Known .... OR Produced Identification ....

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175 Type of Identification Produced.....

176

177 (b) If any person other than the owner of record claims an  
 178 interest in the proceeds prior to the date that the clerk  
 179 reports the surplus as unclaimed ~~during the 60-day period~~ or if  
 180 the owner of record files a claim for the surplus but  
 181 acknowledges that one or more other persons may be entitled to  
 182 part or all of the surplus, the court shall set an evidentiary  
 183 hearing to determine entitlement to the surplus. At the  
 184 evidentiary hearing, an equity assignee has the burden of  
 185 proving that he or she is entitled to some or all of the surplus  
 186 funds. The court may grant summary judgment to a subordinate  
 187 lienholder prior to or at the evidentiary hearing. The court  
 188 shall consider the factors in s. 45.033 when hearing a claim  
 189 that any person other than a subordinate lienholder or the owner  
 190 of record is entitled to the surplus funds.

191 (c) One year after the sale, any surplus remaining with the  
 192 clerk of the court which has not been disbursed as provided in  
 193 this section is presumed unclaimed as set forth in s. 717.113  
 194 and must be reported and remitted to the department in  
 195 accordance with ss. 717.117 and 717.119, unless there is a  
 196 pending court proceeding regarding entitlement to the surplus.  
 197 At the conclusion of any court proceeding and any appeal  
 198 regarding entitlement to the surplus, the clerk of the court  
 199 shall, if directed by the court order, report and remit the  
 200 unclaimed property to the department or to another entity, as  
 201 applicable, or, if not directed by the court order, to the owner  
 202 of record. For purposes of establishing entitlement to the  
 203 surplus after the property has been remitted to the department,

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204 only the owner of record reported by the clerk of the court or  
 205 the beneficiary of a deceased owner of record reported by the  
 206 clerk is entitled to the surplus. A surplus of less than \$10  
 207 escheats to the clerk. For purposes of this paragraph, the term  
 208 "beneficiary" has the same meaning as in s. 731.201. ~~If no claim~~  
 209 is filed during the 60-day period, the clerk shall appoint a  
 210 surplus trustee from a list of qualified surplus trustees as  
 211 authorized in s. 45.034. Upon such appointment, the clerk shall  
 212 prepare a notice of appointment of surplus trustee and shall  
 213 furnish a copy to the surplus trustee. The form of the notice  
 214 may be as follows:

215  
 216 ~~(Caption of Action)~~

217  
 218 NOTICE OF APPOINTMENT  
 219 OF SURPLUS TRUSTEE

220  
 221 The undersigned clerk of the court certifies that he or she  
 222 disbursed the proceeds received from the sale of the property as  
 223 provided in the order or final judgment to the persons named in  
 224 the certificate of disbursements, and that surplus funds of  
 225 \$... remain and are subject to disbursement to the owner of  
 226 record. You have been appointed as surplus trustee for the  
 227 purpose of finding the owner of record in order for the clerk to  
 228 disburse the surplus, after deducting costs, to the owner of  
 229 record.

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

231 ~~... (Clerk)...~~

232 ~~By ... (Deputy Clerk)...~~

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233

234 ~~(4) If the surplus trustee is unable to locate the owner of~~  
235 ~~record entitled to the surplus within 1 year after appointment,~~  
236 ~~the appointment shall terminate and the clerk shall notify the~~  
237 ~~surplus trustee that his or her appointment was terminated.~~  
238 ~~Thirty days after termination of the appointment of the surplus~~  
239 ~~trustee, the clerk shall treat the remaining funds as unclaimed~~  
240 ~~property to be deposited with the Chief Financial Officer~~  
241 ~~pursuant to chapter 717.~~

242 Section 4. Paragraph (d) of subsection (3) of section  
243 45.033, Florida Statutes, is amended to read:

244 45.033 Sale or assignment of rights to surplus funds in a  
245 property subject to foreclosure.—

246 (3) A voluntary transfer or assignment shall be a transfer  
247 or assignment qualified under this subsection, thereby entitling  
248 the transferee or assignee to the surplus funds or a portion or  
249 percentage of the surplus funds, if:

250 ~~(d) The transferor or assignee is qualified as a surplus~~  
251 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~  
252 ~~45.034.~~

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

254 Section 6. Paragraphs (b) and (d) of subsection (2) of  
255 section 45.035, Florida Statutes, are amended to read:

256 45.035 Clerk's fees.—In addition to other fees or service  
257 charges authorized by law, the clerk shall receive service  
258 charges related to the judicial sales procedure set forth in ss.  
259 45.031-45.034 and this section:

260 (2) If there is a surplus resulting from the sale, the  
261 clerk may receive the following service charges, which shall be

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262 deducted from the surplus:

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

265 ~~(d) The clerk is entitled to a service charge of \$15 for~~  
266 ~~appointing a surplus trustee, furnishing the surplus trustee~~  
267 ~~with a copy of the final judgment and the certificate of~~  
268 ~~disbursements, and disbursing to the surplus trustee the~~  
269 ~~trustee's cost advance.~~

270 Section 7. Paragraph (h) of subsection (6) of section  
271 318.1451, Florida Statutes, is amended to read:

272 318.1451 Driver improvement schools.—

273 (6) The department shall adopt rules establishing and  
274 maintaining policies and procedures to implement the  
275 requirements of this section. These policies and procedures may  
276 include, but shall not be limited to, the following:

277 (h) *Miscellaneous requirements.*—The department shall  
278 require that all course providers:

279 1. Disclose all fees associated with courses offered by the  
280 provider and associated driver improvement schools and not  
281 charge any fees that are not disclosed during registration.

282 2. Provide proof of ownership, copyright, or written  
283 permission from the course owner to use the course in this  
284 state.

285 3. Ensure that any course that is offered in a classroom  
286 setting, by the provider or a school authorized by the provider  
287 to teach the course, is offered at locations that are free from  
288 distractions and reasonably accessible to most applicants.

289 4. Issue a certificate to persons who successfully complete  
290 the course.

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291       5. Within 3 days after a person successfully completes the  
292 course, transmit the individual completion certificate together  
293 with the citation number through the Florida Courts E-Filing  
294 Portal governed by the Florida Courts E-Filing Authority to the  
295 clerk of the circuit court of the county where the citation is  
296 issued.

297       Section 8. Section 717.113, Florida Statutes, is amended to  
298 read:

299       717.113 Property held by courts and public agencies.—All  
300 intangible property held for the owner by any court, government  
301 or governmental subdivision or agency, public corporation, or  
302 public authority that has not been claimed by the owner for more  
303 than 1 year after it became payable or distributable is presumed  
304 unclaimed. Except as provided in s. 45.032(3)(c), money held in  
305 the court registry for which a court order has not been issued  
306 to determine an owner does not become payable or distributable  
307 and is not subject to reporting under this chapter.

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

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

315       717.124 Unclaimed property claims.—

316       (8) This section applies to all unclaimed property reported  
317 and remitted to the Chief Financial Officer, including, but not  
318 limited to, property reported pursuant to ss. 45.032, 732.107,  
319 733.816, and 744.534 ~~ss. 43.19, 45.032, 732.107, 733.816, and~~

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320 ~~744.534.~~

321 Section 10. Section 717.138, Florida Statutes, is amended  
322 to read:

323 717.138 Rulemaking authority.—The department shall  
324 administer and provide for the enforcement of this chapter. The  
325 department has authority to adopt rules pursuant to ss.  
326 120.536(1) and 120.54 to implement the provisions of this  
327 chapter. The department may adopt rules to allow for electronic  
328 filing of fees, forms, and reports required by this chapter. The  
329 authority to adopt rules pursuant to this chapter applies to all  
330 unclaimed property reported and remitted to the Chief Financial  
331 Officer, including, but not limited to, property reported and  
332 remitted pursuant to ss. 45.032, 732.107, 733.816, and 744.534  
333 ~~ss. 43.19, 45.032, 732.107, 733.816, and 744.534.~~

334 Section 11. Section 717.1401, Florida Statutes, is amended  
335 to read:

336 717.1401 Repeal.—This chapter shall not repeal, but shall  
337 be additional and supplemental to the existing provisions of ss.  
338 43.18 and 402.17 ~~ss. 43.18, 43.19, and 402.17~~ and chapter 716.

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

340