

By the Committee on Judiciary; and Senator Garcia

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1 A bill to be entitled
2 An act relating to alternative judicial procedures;
3 amending s. 45.031, F.S.; requiring, rather than
4 authorizing, that specified sales procedures be
5 followed for certain sales of real or personal
6 property unless a court orders the use of other sales
7 procedures; revising the timeframe during which the
8 court directs the clerk to sell property at a public
9 sale; specifying that if objections are not filed
10 within a specified timeframe after a certain report is
11 filed, disbursements stand as reported; requiring that
12 a hearing be held if specified objections are timely
13 filed; creating s. 45.0311, F.S.; providing a short
14 title; providing legislative purpose; requiring
15 parties that want to use an alternative sales
16 procedure to file a motion with the court where the
17 action is pending; providing requirements for such
18 motion; requiring that alternative sales procedures
19 meet specified minimum requirements; requiring that
20 certain funds be placed in an escrow or trust account
21 if not held by the clerk of the court; specifying that
22 such funds, if held by the clerk, are subject to a
23 certain service charge and may not be waived by a
24 court; requiring that the person who conducts the sale
25 promptly file a certain certificate of sale and serve
26 a copy of such certificate on all parties involved;
27 requiring that objections to the sale be filed within
28 a specified timeframe; requiring a court to hold a
29 hearing on such objections; requiring the filing of a

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30 additional certificates within certain timeframes in
31 specified circumstances; providing the procedures for
32 selecting a backup bidder if the original winning
33 bidder fails to make the final payment before the sale
34 closing date; requiring the person conducting the sale
35 to file a certain notice; requiring the clerk to file
36 such certificate of title and serve copies to all
37 parties involved; providing that when certificates of
38 title are filed, the sale stands confirmed and title
39 passes to the purchaser without additional proceedings
40 or instruments; requiring the clerk to record the
41 certificate of title; providing that certain persons
42 are authorized to disburse sale proceeds as authorized
43 by a court order, but surplus funds must be deposited
44 with the clerk together with court fees; providing
45 applicability; creating s. 45.0312, F.S.; authorizing
46 persons to serve as auctioneers or in other roles,
47 under specified conditions; providing qualifications
48 for such persons; authorizing persons to serve as
49 escrow agents under specified conditions; providing
50 qualifications for such person; defining the term
51 "relative"; specifying what constitutes independence;
52 authorizing civil actions under specified conditions;
53 providing criminal penalties for persons who
54 intentionally violate specified provisions or certain
55 court orders; providing an effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
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59 Section 1. Section 45.031, Florida Statutes, is amended to
60 read:

61 45.031 Judicial sales procedure.—In any sale of real or
62 personal property under an order or a judgment, the procedures
63 provided in this section and ss. 45.0315-45.035 must ~~may~~ be
64 followed unless the court orders the use of alternate sales
65 procedures under s. 45.0311 or s. 45.03112 ~~as an alternative to~~
66 ~~any other sale procedure if so ordered by the court.~~

67 (1) FINAL JUDGMENT.—

68 (a) In the order or final judgment, the court shall direct
69 the clerk to sell the property at public sale on a specified day
70 that is no ~~shall be not~~ less than 45 ~~20~~ days or more than 60 ~~35~~
71 days after the date thereof, on terms and conditions specified
72 in the order or judgment. A sale may be held more than 35 days
73 after the date of final judgment or order if the plaintiff or
74 plaintiff's attorney consents to such time. The final judgment
75 must ~~shall~~ contain the following statement in conspicuous type:

76
77 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY
78 BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF
79 PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE
80 PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

81
82 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT
83 TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST
84 FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE
85 THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU
86 FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED
87 TO ANY REMAINING FUNDS.

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(b) If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment must ~~shall~~ additionally contain the following statement in conspicuous type:

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, ... (INSERT INFORMATION FOR APPLICABLE COURT)... WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT ... (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER)... TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY

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117 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL
118 AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO
119 CONTACT ... (NAME OF LOCAL OR NEAREST LEGAL AID
120 OFFICE)... FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS
121 POSSIBLE AFTER RECEIPT OF THIS NOTICE.
122

123 (c) A copy of the final judgment must ~~shall~~ be furnished by
124 the clerk by first-class mail to the last known address of every
125 party to the action or to the attorney of record for such party.
126 Any irregularity in such mailing, including the failure to
127 include this statement in any final judgment or order, does
128 ~~shall~~ not affect the validity or finality of the final judgment
129 or order or any sale held pursuant to the final judgment or
130 order. Any sale held more than 60 ~~35~~ days after the final
131 judgment or order does ~~shall~~ not affect the validity or finality
132 of the final judgment or order or any sale held pursuant to such
133 judgment or order.

134 (2) PUBLICATION OF SALE.—Notice of sale must ~~shall~~ be
135 published on a publicly accessible website as provided in s.
136 50.0311 for at least 2 consecutive weeks before the sale or once
137 a week for 2 consecutive weeks in a newspaper of general
138 circulation, as provided in chapter 50, published in the county
139 where the sale is to be held. The second publication by
140 newspaper must ~~shall~~ be at least 5 days before the sale. The
141 notice must ~~shall~~ contain:

- 142 (a) A description of the property to be sold.
143 (b) The time and place of sale.
144 (c) A statement that the sale will be made pursuant to the
145 order or final judgment.

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146 (d) The caption of the action.

147 (e) The name of the clerk making the sale.

148 (f) A statement that any person claiming an interest in the
149 surplus from the sale, if any, other than the property owner as
150 of the date of the lis pendens must file a claim before the
151 clerk reports the surplus as unclaimed.

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153 The court may, in its discretion, extend ~~may enlarge~~ the time of
154 the sale. Notice of the changed time of sale must ~~shall~~ be
155 published as provided herein.

156 (3) CONDUCT OF SALE; DEPOSIT REQUIRED.—The sale must ~~shall~~
157 be conducted at public auction at the time and place set forth
158 in the final judgment. The clerk shall receive the service
159 charge imposed in s. 45.035 for services in making, recording,
160 and certifying the sale and title that must ~~shall~~ be assessed as
161 costs. At the time of the sale, the successful high bidder must
162 ~~shall~~ post with the clerk a deposit equal to 5 percent of the
163 final bid. The deposit must ~~shall~~ be applied to the sale price
164 at the time of payment. If final payment is not made within the
165 prescribed period, the clerk must ~~shall~~ readvertise the sale as
166 provided in this section and pay all costs of the sale from the
167 deposit. Any remaining funds must ~~shall~~ be applied toward the
168 judgment.

169 (4) CERTIFICATION OF SALE.—After a sale of the property the
170 clerk shall promptly file a certificate of sale and serve a copy
171 of it on each party in substantially the following form:

172

173 (Caption of Action)

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CERTIFICATE OF SALE

The undersigned clerk of the court certifies that notice of public sale of the property described in the order or final judgment was published in, a newspaper circulated in County, Florida, in the manner shown by the proof of publication attached, and on, ...(year)...., the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property in the amount of \$.... was submitted by, to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order or final judgment or law. WITNESS my hand and the seal of this court on, ...(year)....

...(Clerk)...

By ...(Deputy Clerk)...

(5) CERTIFICATE OF TITLE.—If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk must ~~shall~~ file a certificate of title and serve a copy of it on each party in substantially the following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she executed and filed a certificate of sale in this action on, ...(year)...., for the property described herein and that no objections to the sale have been filed within the time allowed

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204 for filing objections.

205 The following property in County, Florida:

206 (description)

207 was sold to

208

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

210 ... (Clerk)...

211 By ... (Deputy Clerk)...

212

213 (6) CONFIRMATION; RECORDING.—When the certificate of title
214 is filed the sale stands ~~shall stand~~ confirmed, and title to the
215 property passes ~~shall pass~~ to the purchaser named in the
216 certificate without the necessity of any further proceedings or
217 instruments. The certificate of title must ~~shall~~ be recorded by
218 the clerk.

219 (7) DISBURSEMENTS OF PROCEEDS.—

220 (a) On filing a certificate of title, the clerk shall
221 disburse the proceeds of the sale in accordance with the order
222 or final judgment and shall file a report of such disbursements
223 and serve a copy of it on each party, and on the Department of
224 Revenue if the department was named as a defendant in the action
225 or if the Department of Commerce or the former Agency for
226 Workforce Innovation was named as a defendant while the
227 Department of Revenue was providing reemployment assistance tax
228 collection services under contract with the Department of
229 Commerce or the former Agency for Workforce Innovation through
230 an interagency agreement pursuant to s. 443.1316.

231 (b) The certificate of disbursements must ~~shall~~ be in
232 substantially the following form:

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(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

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 and in the amounts as follows:

Name	Amount
------	--------

Total disbursements: \$....

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

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

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

(c) If no objections to the report are filed ~~served~~ within 10 days after the report ~~it~~ is filed, the disbursements by the clerk ~~shall~~ stand approved as reported. If timely objections to

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262 the report are filed, the party who filed such objections must
263 ~~served~~, they shall be heard by the court. Filing or service of
264 objections to the report does not affect or cloud the title of
265 the purchaser of the property in any manner.

266 (d) If any ~~there are~~ funds remain ~~remaining~~ after payment
267 of all disbursements required by the final judgment of
268 foreclosure and shown on the certificate of disbursements, the
269 surplus must ~~shall~~ be distributed as provided in this section
270 and ss. 45.0315-45.035.

271 (8) VALUE OF PROPERTY.—The amount of the bid for the
272 property at the sale is ~~shall be~~ conclusively presumed to be
273 sufficient consideration for the sale. Any party may file ~~serve~~
274 an objection to the amount of the bid within 10 days after the
275 clerk files the certificate of sale. If timely objections to the
276 bid are filed, the party who filed such objections must ~~served~~,
277 ~~the objections shall~~ be heard by the court. Filing or service of
278 objections to the amount of the bid does not affect or cloud the
279 title of the purchaser in any manner. If the case is one in
280 which a deficiency judgment may be sought and application is
281 made for a deficiency, the amount bid at the sale may be
282 considered by the court as one of the factors in determining a
283 deficiency under the usual equitable principles.

284 (9) EXECUTION SALES.—This section does ~~shall~~ not apply to
285 property sold under executions.

286 (10) ELECTRONIC SALES.—The clerk may conduct the sale of
287 real or personal property under an order or judgment pursuant to
288 this section by electronic means. Such electronic sales must
289 ~~shall~~ comply with the procedures provided in this chapter,
290 except that electronic proxy bidding must ~~shall~~ be allowed and

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291 the clerk may require bidders to advance sufficient funds to pay
292 the deposit required by subsection (3). The clerk shall provide
293 access to the electronic sale by computer terminals open to the
294 public at a designated location and shall accept an advance
295 credit proxy bid from the plaintiff of any amount up to the
296 maximum allowable credit bid of the plaintiff. A clerk who
297 conducts such electronic sales may receive electronic deposits
298 and payments related to the sale.

299 Section 2. Section 45.0311, Florida Statutes, is created to
300 read:

301 45.0311 Alternative judicial sales procedures.—

302 (1) SHORT TITLE.—The section may be cited as the
303 “Transparency in Alternative Judicial Sales Procedures Act.”

304 (2) PURPOSE.—The purpose of this section is to:

305 (a) Recognize that alternatives to the judicial sales
306 procedures under s. 45.031 are beneficial in certain
307 proceedings, due to the nature of the real or personal property
308 to be sold under an order or a judgment, to maximize the
309 potential sales proceeds, including the net proceeds thereof,
310 for the benefit of all parties, including the property owner.

311 (b) Recognize that transparency is necessary for all
312 alternative procedures to prevent overreach by any party, avoid
313 fraud, and maximize the sales price while minimizing expenses
314 and delays.

315 (c) Recognize that persons facilitating alternative sales
316 and handling deposits and sales proceeds, including surplus
317 proceeds, must be qualified, independent, and not related to any
318 party or the attorneys for a party and must be subject to the
319 provisions of this section and the jurisdiction of the court.

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320 (3) REQUEST FOR ALTERNATIVE JUDICIAL SALES PROCEDURES.—Any
321 party, including the property owner, may file a motion for the
322 use of alternative sales procedures in the court where the
323 action is pending. The motion must contain, at a minimum, all of
324 the following:

325 (a) A description of the property to be sold.

326 (b) A short narrative addressing why the court should
327 authorize alternative sales procedures for the sale of real or
328 personal property and how such alternative sales procedures
329 would maximize the sales price, including the net proceeds of
330 the sale.

331 (c) The requested sales procedures, including the manner,
332 date, time, place, method of sale, advertising, and manner of
333 publication.

334 (d) An express statement of whether the sale will be
335 conducted by the clerk of the circuit court or another person.

336 (e) An express statement of whether bids, deposits, and
337 sales proceeds will be received and handled by the clerk of the
338 circuit court or another person.

339 (f) For all persons to be employed under s. 43.0312 to
340 conduct an aspect of the sale or to handle deposits or sales
341 proceeds, including any surplus proceeds, the declaration
342 required by s. 45.0312 for such person addressing his or her
343 qualifications. This declaration may be attached to the motion.

344 (g) If the movant is not the property owner, a separate
345 written joinder or the consent from the property owner, either
346 of which must be contemporaneous to and reference this motion.

347 (h) In the body or as an attachment thereto, a proposed
348 notice for publication of the sale and bidding procedures for

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349 the sale.

350 (4) MINIMUM REQUIREMENTS FOR ALTERNATIVE SALES.—An
351 alternative sales procedure must meet all of the following
352 minimum requirements:

353 (a) A hearing must be held in response to a motion filed
354 under subsection (3) and the hearing date must be at least 20
355 days after the date the motion is filed.

356 (b) The property owner must be joined or have consented to
357 the motion under subsection (3) at the time of filing or by the
358 end of the hearing required under paragraph (a).

359 (c) There may be only one set of bidding procedures. Each
360 bidder must follow the same procedures and receive the same
361 information relating to the sale of the real or personal
362 property. Preferences or advantages may not be given to any
363 party, person, or bidder.

364 (d) Publication of the notice of sale must meet or exceed
365 the requirements of s. 45.031(2) and include the requirements of
366 the sale and the requirements of this subsection.

367 (e) Credit bid rights must be limited to the amount owed to
368 the creditor or lienholder as provided in the order or final
369 judgment that determined such amount. Any overbid amount must be
370 paid in cash.

371 (f) As a prerequisite to bidding, a deposit of 5 percent of
372 a bidder's presale high bid amount must be posted in cash, by
373 wire transfer, or by cashier's check, and a process must be in
374 place for returning such funds to a bidder that is not the
375 winning bidder.

376 (g) The highest cash bidder must win the bid.

377 (h) The winning bidder must post a deposit of 5 percent of

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378 the winning bid before 5 p.m. of the day after the auction sale,
379 and such deposit is forfeited if the bidder fails to make the
380 final payment by the required closing date.

381 (i) The date to close and consummate the sale must be
382 within 30 days after the date of the sale auction, and the
383 winning bidder forfeits his or her bid if the final payment is
384 not made by such date.

385 (j) The sale must be held at least 45 days after the entry
386 of the court's order authorizing an alternative sales procedure
387 under this section.

388 (k) The place of sale must be the county where the action
389 is pending, unless the filing party and property owner consent
390 in writing to a specific location outside of the county which is
391 open and freely available to the public, without any
392 restriction, at the time of the sale and which includes Internet
393 access.

394 (l) The bid instructions must specify whether backup
395 bidders are authorized and the terms and conditions for such
396 bidders.

397 (m) The winning bidder must pay all fees of the clerk of
398 the court, including registry fees that may not be waved by the
399 court, on the high bid amount, as prescribed by ss. 28.24(11)
400 and 45.035(1).

401
402 The requirements of this subsection may not be waived.

403 (5) POSSESSION OF DEPOSITS AND PAYMENTS.—

404 (a) If the bidder's deposit, the bid amount, or any other
405 funds paid by a bidder or a party are not held by the clerk of
406 the court, the funds or cashier's check must be held in an

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407 escrow or trust account by a person appointed by the court
 408 pursuant to s. 45.0312.

409 (b) For all deposits and sales held by a clerk, the funds
 410 are subject to the service charge in s. 28.24 and may not be
 411 waived by the court.

412 (6) CERTIFICATION OF SALE.—After a sale of a property
 413 pursuant to this section, the person who conducted the sale, or
 414 its attorney, must promptly file a certificate of sale and serve
 415 a copy on each party in substantially the following form:

416

417 (Caption of Action)

418

419 CERTIFICATE OF JUDICIAL SALE

420

421 The undersigned clerk of the court certifies that notice of
 422 public sale of the property described in the order and the
 423 approved sale notice were published by(include all
 424 locations of publication)...., in the manner shown by attached,
 425 and on, ...(year)...., the property was offered for public
 426 sale to the highest and best bidder for cash. The highest and
 427 best bid received for the property in the amount of \$.... was
 428 submitted by, to whom the property was sold, and such
 429 bidder paid \$.... as of this date(insert deadline to close
 430 sale).... . The proceeds of the sale are retained for
 431 distribution in accordance with the order or final judgment or
 432 ss. 45.0311 and 45.0315-45.035, Florida Statutes. WITNESS my
 433 hand and the seal of this court on, ...(year)....

434

... (...)

435

By ... (...)

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437 (7) OBJECTIONS TO SALE.—Objections to the sale must be
438 filed within 10 days after filing the certificate of judicial
439 sale. If timely objections to the certificate of judicial sale
440 are filed, the court must hear from the party who filed such
441 objections.

442 (8) CERTIFICATE OF RECEIPT OF SALE PROCEEDS.—If the sale is
443 conducted by a person other than the clerk, such person must
444 file a certificate of receipt of sales proceeds at the same time
445 the certificate of judicial sale is filed and must file
446 additional certificates of receipt of sales proceeds within 1
447 business day after the receipt of additional sums from the high
448 bidder or backup bidder.

449 (9) BACKUP BIDDER.—If the high bidder fails to make the
450 final payment by the required sale closing date, the deposit is
451 forfeited and must first be used to pay all costs of the sale,
452 after which any remaining sums must be applied toward the
453 judgment. In such a circumstance, the person conducting the sale
454 shall notify the backup bidder that he or she must timely make
455 payment by the deadline for backup bidders and file a
456 certificate of forfeiture and an amended certificate of sale
457 identifying the backup bidder as the winning bidder and the sale
458 price and details applicable to such bidder.

459 (10) CERTIFICATE OF TITLE.—If no objections to the sale are
460 timely filed or the court has not entered an order overruling
461 any objection to the sale, and if the purchase price and clerk
462 fees have been paid, the person conducting the sale must file a
463 notice that confirms that the sale is consummated, names the
464 bidder purchasing the property, and states that a certificate of

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465 title is ready to be issued by the clerk of the circuit court.
466 After filing such notice, or, for sales conducted by the clerk
467 of the court, after receipt of the purchase price and clerk
468 fees, the clerk shall file a certificate of title and serve a
469 copy of such title on each party in substantially the following
470 form:

471
472 (Caption of Action)

473
474 CERTIFICATE OF TITLE

475
476 The undersigned clerk of the court certifies that in
477 accordance with the certificate of sale and consummation of sale
478 filed in this action on, ...(year)..., for:

479 The following property in ... County, Florida:

480 (description)

481 was sold to, and that no
482 objections to the sale have been filed within the time allowed
483 for filing objections or have been determined.

484
485 WITNESS my hand and the seal of the court on, ...(year)....

486 ...(Clerk)...

487 By ...(Deputy Clerk)...

488
489 (11) CONFIRMATION; RECORDING.—When the certificate of title
490 is filed, the sale stands confirmed and the title to the
491 property passes to the purchaser named in such certificate
492 without the need of any other proceeding or instrument. The
493 clerk of the circuit court shall record the certificate of

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494 title.

495 (12) DISBURSEMENT OF PROCEEDS.—If the sale is conducted by
496 a person other than the clerk of the circuit court, such person
497 is authorized to disburse the sale proceeds as expressly
498 authorized by the court order, but any surplus funds must be
499 deposited with the clerk of the court together with court fees
500 under ss. 28.24 and 45.031(1). For sales conducted by the clerk,
501 s. 45.031(7) governs.

502 (13) SURPLUS FUNDS.—The requirements related to
503 distribution of surplus funds by the clerk as provided in ss.
504 45.031(1), 45.032, 45.033, and 45.035(2) apply and may not be
505 waived by a court.

506 (14) VALUE OF PROPERTY.—Section 45.031(8) applies to sales
507 conducted under this section.

508 (15) REDEMPTION OF RIGHTS.—Section 45.0315 applies to sales
509 conducted under this section.

510 Section 3. Section 45.0312, Florida Statutes, is created to
511 read:

512 45.0312 Appointment of auctioneers and escrow agents for
513 alternative judicial sales.—

514 (1) AUCTIONEERS AND SALE PROFESSIONALS.—Subject to court
515 approval, after a motion and a hearing held no later than 20
516 days after notice for such hearing, a person may serve as an
517 auctioneer, or in another professional role necessary to the
518 alternative sales procedure authorized by the court under s.
519 45.0311, only if such person:

520 (a) Is an auctioneer licensed under part VI of chapter 468,
521 a real estate broker licensed under chapter 475 and in good
522 standing for the preceding 5 years, an attorney who is a member

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523 in good standing with The Florida Bar and has been practicing
524 for at least 5 years, or a title insurer authorized to transact
525 business in this state pursuant to s. 624.401 and in good
526 standing for the preceding 5 years;

527 (b) Is insured individually or under an entity policy for
528 errors and omissions with a minimum of \$250,000 per incident and
529 a deductible of no more than \$10,000, or a fidelity bond of no
530 less than \$50,000 or such higher coverage or bond amounts as the
531 court may require;

532 (c) Declares in writing under penalty of perjury that he or
533 she is eligible under this subsection and independent as
534 required by subsection (3); and

535 (d) Has such additional qualifications as the court
536 requires.

537 (2) ESCROW AGENTS.—Subject to court approval, after a
538 motion and a hearing held no less than 20 days after notice for
539 such hearing, a person may serve as an escrow agent for the
540 handling of deposits and sales proceeds necessary to the
541 alternative sales procedures authorized by the court under s.
542 45.0311 only if such person:

543 (a) Is a qualified public depository as defined in s.
544 280.02;

545 (b) Is a title insurance agent licensed pursuant to s.
546 626.8417, a title insurance agency licensed pursuant to s.
547 626.8418, or a title insurer authorized to transact business in
548 this state pursuant to s. 624.401; has been in good standing for
549 the preceding 5 years; and such person's trust and escrow
550 accounts are maintained with a qualified public depository as
551 defined in s. 280.02;

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552 (c) Is an attorney who is a member in good standing of The
553 Florida Bar who has been practicing law for at least 5 years;
554 such person's trust account is maintained with a qualified
555 public depository as defined in s. 280.02; and such person is
556 insured individually or under an entity policy for errors and
557 omissions with a minimum of \$250,000 per incident and a
558 deductible of no more than \$10,000 or a fidelity bond of no less
559 than \$50,000, or such higher coverage or bond amounts as the
560 court may require; and

561 (d) Declares in writing under penalty of perjury that such
562 person is eligible under this subsection and independent as
563 required by subsection (3).

564 (3) INDEPENDENCE.—

565 (a) As used in this subsection, the term "relative" means
566 an individual who is related to another as father, mother, son,
567 daughter, brother, sister, uncle, aunt, first cousin, nephew,
568 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
569 daughter-in-law, brother-in-law, sister-in-law, stepfather,
570 stepmother, stepson, stepdaughter, stepbrother, stepsister, half
571 brother, or half sister.

572 (b) To be independent for the purposes of this section, a
573 person may not:

574 1. Be a party to the action, an attorney representing a
575 party in the action, or an employee of a party or the attorney
576 of a party in the action.

577 2. Be a relative of a party to the action, or an employee,
578 an officer, a director, an affiliate, or a subsidiary thereof;
579 or an attorney representing a party in the action, or a
580 relative, an employee, an officer, a director, or an affiliate

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581 or an associate thereof.

582 3. Have any financial relationship to the action, to the
583 real or personal property being sold, or to a party or attorney
584 described in paragraph (a) or a relative as described in
585 paragraph (b), other than the payment of the fees authorized by
586 court order.

587 (4) ACTIONS FOR FAILURE TO FOLLOW COURT ORDER AND
588 ALTERNATIVE SALES PROCEDURES.—

589 (a) An action for actual damages for a material violation
590 of this section may be brought by the property owner or any
591 party to the action for the failure of a person approved by the
592 court under this section to follow the alternative judicial
593 sales procedures in s. 45.0311 or this section, or court orders
594 entered pursuant to s. 45.0311 or this section.

595 (b) Notwithstanding any other law, a person approved by the
596 court under this section who intentionally violates s. 45.0311,
597 this section, or any court order entered under s. 45.0311 or
598 this section commits a felony of the third degree, punishable as
599 provided in s. 775.082, s. 775.083, or s. 775.084.

600 Section 4. This act shall take effect July 1, 2025.