

## House Bill No. 65

An act relating to foreclosure proceedings; amending s. 45.031, F.S.; revising procedures and requirements for judicial sales; creating s. 45.032, F.S.; providing for disbursement of surplus funds after a judicial sale; providing definitions; establishing a rebuttable presumption of entitlement to surplus funds in certain filings; providing legislative intent; providing requirements and procedures for disbursement of surplus funds by the clerk of court; providing for appointment of a surplus trustee under certain circumstances; providing for notice of appointment; providing for termination of appointment; providing for treatment of surplus funds as unclaimed property under certain circumstances; providing construction relating to title of property in a foreclosure sale; creating s. 45.033, F.S.; providing for a sale or assignment of rights to surplus funds in a property subject to foreclosure; establishing a rebuttable presumption of entitlement to surplus funds; providing requirements for proof; providing legislative intent; providing requirements for rebutting the presumption; providing requirements for transfers or assignments of surplus funds; providing duties and authority of a court in payment of surplus funds under a transfer or assignment; providing for non-application to certain instruments; specifying absence of effect on title or marketability of certain property or validity of certain liens; creating s. 45.034, F.S.; providing qualifications for appointment as a surplus trustee by the Department of Financial Services; providing requirements for appointment as a surplus trustee; providing for application and renewal fees; providing duties of the department in certifying surplus trustees; requiring the department to establish a rotation system for assignment of cases to surplus trustees; providing duties of a surplus trustee; providing entitlement of a surplus trustee to certain service charges and fees; creating s. 45.035, F.S.; specifying service charges for clerks of court for administering judicial sales and surplus funds; creating s. 501.2078, F.S.; providing definitions; providing a civil penalty for knowingly using unfair or deceptive homeowner victimization methods, acts, or practices in residential foreclosure proceedings; specifying higher priority of an order of restitution or reimbursement over imposition of a civil penalty; providing for deposit of civil penalties into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs; allocating such funds for certain purposes; specifying nonapplication to certain encumbrances, deeds, or actions; amending s. 702.035, F.S.; specifying different newspaper legal notice and process requirements for counties above a certain population size; limiting certain costs chargeable in a foreclosure proceeding; amending s. 201.02, F.S.; correcting a cross-reference; providing effective dates.

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

Section 1. Section 45.031, Florida Statutes, is 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 ss. 45.031-45.035 ~~following procedure~~ may be followed as an alternative to any other sale procedure if so ordered by the court.:

(1) ~~FINAL JUDGMENT SALE BY CLERK.~~—

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

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

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

(b) If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment 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 PHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

(c) A copy of the final judgment shall be furnished by the clerk by first class mail to the last known address of every party to the action or to the attorney of record for such party. Any irregularity in such mailing, including the failure to include this statement in any final judgment or order, shall not affect the validity or finality of the final judgment or order or any sale held pursuant to the final judgment or order. Any sale held more than 35 days after the final judgment or order shall not affect the validity or finality of the final judgment or order or any sale held pursuant to such judgment or order thereto.

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

- (a) A description of the property to be sold.
- (b) The time and place of sale.
- (c) A statement that the sale will be made pursuant to the order or final judgment.
- (d) The caption of the action.
- (e) The name of the clerk making the sale.
- (f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim within 60 days after the sale.

~~The clerk shall receive a service charge of up to \$60 for services in making, recording, and certifying the sale and title that shall be assessed as costs. The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.~~

(3)(2) CONDUCT OF SALE; DEPOSIT REQUIRED.—The sale shall be conducted at public auction at the time and place set forth in the final judgment. The clerk shall receive the service charge imposed in s. 45.035 for services in making, recording, and certifying the sale and title that shall be assessed as costs. At the time of the sale, the successful high bidder shall post with the clerk a deposit equal to 5 percent of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the clerk shall readvertise the sale

as provided in this section and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

~~(4)~~<sup>(3)</sup> **CERTIFICATION OF SALE.**—After a sale of the property the clerk shall promptly file a certificate of sale and serve a copy of it on each party ~~not in default~~ in substantially the following form:

(Caption of Action)

#### 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)~~<sup>(4)</sup> **CERTIFICATE OF TITLE.**—If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party ~~not in default~~ 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 for filing objections.

The following property in ... County, Florida:

(description)

was sold to.

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

...(Clerk)...

By ...(Deputy Clerk)...

~~(6)~~<sup>(5)</sup> **CONFIRMATION; RECORDING.**—When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to

the purchaser named in the certificate without the necessity of any further proceedings or instruments.

(6) ~~RECORDING.~~—The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.—

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party ~~not in default~~, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

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

(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 <u>disbursements:</u> \$ . . . . .	_____
<u>Surplus retained by clerk, if any:</u> \$ . . . . .	_____

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 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, 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 served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

(d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the surplus shall be distributed as provided ss. 45.031-45.035.

(8) VALUE OF PROPERTY.—The amount of the bid for the property at the sale shall be conclusively presumed to be sufficient consideration for the sale. Any party may serve an objection to the amount of the bid within 10 days after the clerk files the certificate of sale. If timely objections to the bid are served, the objections shall be heard by the court. Service of objections to the amount of the bid does not affect or cloud the title of the purchaser in any manner. If the case is one in which a deficiency judgment may be sought and application is made for a deficiency, the amount bid at the sale may be considered by the court as one of the factors in determining a deficiency under the usual equitable principles.

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

Section 2. Section 45.032, Florida Statutes, is created to read:

45.032 Disbursement of surplus funds after judicial sale.—

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

(a) “Owner of record” means the person or persons who appear to be the owner of the property that is the subject of the foreclosure proceeding on the date of the filing of the lis pendens. In determining an owner of record, a person need not perform a title search and examination but may rely on the plaintiff’s allegation of ownership in the complaint when determining the owner of record.

(b) “Subordinate lienholder” means the holder of a subordinate lien shown on the face of the pleadings as an encumbrance on the property. The lien held by the party filing the foreclosure lawsuit is not a subordinate lien. A subordinate lienholder includes, but is not limited to, a subordinate mortgage, judgment, assessment lien, or construction lien. However, the holder of a subordinate lien shall not be deemed a subordinate lienholder if the holder was paid in full from the proceeds of the sale.

(c) “Surplus funds” or “surplus” means the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements.

(d) “Surplus trustee” means a person qualifying as a surplus trustee pursuant to s. 45.034.

(2) There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove to the court that such person is entitled to the funds. At any hearing regarding such entitlement, the court

shall consider the factors set forth in s. 45.033 in determining whether an assignment is sufficient to overcome the presumption. It is the intent of the Legislature to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.

(3) During the 60 days after the clerk issues a certificate of disbursements, the clerk shall hold the surplus pending a court order.

(a) If the owner of record claims the surplus during the 60-day period and there is no subordinate lienholder, the court shall order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record. The clerk may establish a reasonable requirement that the owner of record prove his or her identity before receiving the disbursement. The clerk may assist an owner of record in making a claim. An owner of record may use the following form in making a claim:

(Caption of Action)

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, 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 MONEY TO WHICH I (WE) MAY BE ENTITLED.

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

...(Signatures)...

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

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

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

Personally Known .... OR Produced Identification ....

Type of Identification Produced . . . . .

(b) If any person other than the owner of record claims an interest in the proceeds during the 60-day period or if the owner of record files a claim for the surplus but acknowledges that one or more other persons may be entitled to part or all of the surplus, the court shall set an evidentiary hearing to determine entitlement to the surplus. At the evidentiary hearing, an equity assignee has the burden of proving that he or she is entitled to some or all of the surplus funds. The court may grant summary judgment to a subordinate lienholder prior to or at the evidentiary hearing. The court shall consider the factors in s. 45.033 when hearing a claim that any person other than a subordinate lienholder or the owner of record is entitled to the surplus funds.

(c) If no claim is filed during the 60-day period, the clerk shall appoint a surplus trustee from a list of qualified surplus trustees as authorized in s. 45.034. Upon such appointment, the clerk shall prepare a notice of appointment of surplus trustee and shall furnish a copy to the surplus trustee. The form of the notice may be as follows:

(Caption of Action)

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.

(5) Proceedings regarding surplus funds in a foreclosure case do not in any manner affect or cloud the title of the purchaser at the foreclosure sale of the property.

Section 3. Section 45.033, Florida Statutes, is created to read:

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

(1) There is established a rebuttable presumption that the owner of record of real property on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove entitlement to the surplus funds pursuant to this section. It is the intent of the Legislature to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.

(2) The presumption may be rebutted only by:

(a) The grantee or assignee of a voluntary transfer or assignment establishing a right to collect the surplus funds or any portion or percentage of the surplus funds by proving that the transfer or assignment qualifies as a voluntary transfer or assignment as provided in subsection (3); or

(b) The grantee or assignee proving that the grantee or assignee is a grantee or assignee by virtue of an involuntary transfer or assignment of the right to collect the surplus. An involuntary transfer or assignment may be as a result of inheritance or as a result of the appointment of a guardian.

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

(a) The transfer or assignment is in writing and the instrument:

1. If executed prior to the foreclosure sale, includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.

2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.

3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.

(b) The transfer or assignment is filed with the court on or before 60 days after the filing of the certificate of disbursements.

(c) There are funds available to pay the transfer or assignment after payment of timely filed claims of subordinate lienholders.

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

(e) The total compensation paid or payable, or earned or expected to be earned, by the transferee or assignee does not exceed 12 percent of the surplus.

(4) The court shall honor a transfer or assignment that complies with the requirements of subsection (3), in which case the court shall order the clerk to pay the transferor or assignee from the surplus.

(5) If the court finds that a voluntary transfer or assignment does not qualify under subsection (3) but that the transfer or assignment was procured in good faith and with no intent to defraud the transferor or assignor, the court may order the clerk to pay the claim of the transferee or assignee after payment of timely filed claims of subordinate lienholders.

(6) If a voluntary transfer or assignment of the surplus is set aside, the owner of record shall be entitled to payment of the surplus after payment of timely filed claims of subordinate lienholders, but the transferee or assignee may seek in a separate proceeding repayment of any consideration paid for the transfer or assignment.

(7) This section does not apply to a deed, mortgage, or deed in lieu of foreclosure unless a person other than the owner of record is claiming that a deed or mortgage entitles the person to surplus funds. Nothing in this section affects the title or marketability of the real property that is the subject of the deed or other instrument. Nothing in this section affects the validity of a lien evidenced by a mortgage.

Section 4. Effective upon this act becoming a law, section 45.034, Florida Statutes, is created to read:

45.034 Qualifications and appointment of a surplus trustee in foreclosure actions.—

(1) A surplus trustee is a third-party trustee approved pursuant to this section by the Department of Financial Services. A surplus trustee must be willing to accept cases on a statewide basis; however, a surplus trustee may employ subcontractors that are not qualified as a surplus trustee provided the surplus trustee remains primarily responsible for the duties set forth in this section.

(2) A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure pursuant to ss. 45.031-45.035.

(3) To be a surplus trustee, an entity must apply for certification with the Department of Financial Services. The application must contain:

(a) The name and address of the entity and of one or more principals of the entity.

(b) A certificate of good standing from the Secretary of State indicating that the entity is an entity registered in this state.

(c) A statement under oath by a principal of the entity certifying that the entity, or a principal of the entity, has a minimum of 12 months' experience in the recovery of surplus funds in foreclosure actions.

(d) Proof that the entity holds a valid Class "A" private investigator license pursuant to chapter 493.

(e) Proof that the entity carries a minimum of \$500,000 in liability insurance, cash reserves, or bonding.

(f) A statement from an attorney licensed to practice in this state certifying that the attorney is a principal of the entity or is employed by the entity on a full-time basis and that the attorney will supervise the management of the entity during the entity's tenure as a surplus trustee.

(g) A statement under oath by a principal of the entity certifying that the principal understands his or her duty to immediately notify the department if the principal ever fails to qualify as an entity entitled to be a surplus trustee.

(h) A nonrefundable application fee of \$25.

(4) The Department of Financial Services shall certify any surplus trustee that applies and qualifies. Applications must be filed by June 1, and all applications that qualify shall be certified by the department by June 30 and shall be effective for 1 year commencing July 1. The department shall renew a certification upon receipt of the \$25 fee and a statement under oath from a principal of the surplus trustee certifying that the surplus trustee continues to qualify under this section.

(5) The Department of Financial Services shall develop a rotation system for assignment of cases to all qualified surplus trustees.

(6) The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. Upon locating the owner of record, the surplus trustee shall file a petition with the court on behalf of the owner of record seeking disbursement of the surplus funds. If more than one person appears to be the owner of record, the surplus trustee shall obtain agreement between such persons as to the payment of the surplus, or file an interpleader. The interpleader may be filed as part of the foreclosure case.

(7) A surplus trustee is entitled to the following service charges and fees which shall be disbursed by the clerk and payable from the surplus:

(a) Upon obtaining a court order, a cost advance of 2 percent of the surplus.

(b) Upon obtaining a court order disbursing the surplus to the owner of record, a service charge of 10 percent of the surplus.

Section 5. Section 45.035, Florida Statutes, is created to read:

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

(1) The clerk shall receive a service charge of \$60 for services in making, recording, and certifying the sale and title, which service charge shall be assessed as costs and shall be advanced by the plaintiff before the sale.

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

(a) The clerk may withhold the sum of \$25 from the surplus which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.

(b) The clerk is entitled to a service charge of \$10 for notifying a surplus trustee of his or her appointment.

(c) The clerk is entitled to a service charge of \$10 for each disbursement of surplus proceeds.

(d) The clerk is entitled to a service charge of \$10 for appointing a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.

Section 6. Section 501.2078, Florida Statutes, is created to read:

501.2078 Violations involving individual homeowners during the course of residential foreclosure proceedings; civil penalties.—

(1) As used in this section:

(a) "Homeowner" means any individual who is the owner of the property subject to a residential foreclosure proceeding.

(b) "Residential foreclosure proceeding" means any action in a court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling.

(c) "Victimize" means any course of action intended to dupe, swindle, or cheat a homeowner subject to a residential foreclosure proceeding. The factors that a court shall review when determining whether a course of action is victimizing a homeowner are:

1. The compensation received relative to the risk and the amount of work involved.
2. The number of homeowners involved.
3. The relative bargaining position of the parties.
4. The relative knowledge and sophistication of the parties.
5. Representations made in the inducement.
6. The timing of the agreement.

(2) Any person, other than a financial institution as defined in s. 655.005, who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation.

(3) Any order of restitution or reimbursement based on a violation of this part committed against a homeowner in a residential foreclosure proceeding has priority over the imposition of any civil penalty for such violation pursuant to this section.

(4) Civil penalties collected pursuant to this section shall be deposited into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs and allocated solely to the Department of Legal Affairs for the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit homeowners in residential foreclosure proceedings or to further enforcement efforts.

(5) This section does not apply to:

(a) The act of encumbering the dwelling subject to a residential foreclosure proceeding with a substitute or additional lien.

(b) A deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.

(c) A foreclosure sale, eminent domain proceeding, forfeiture, or any other legal process.

Section 7. Section 702.035, Florida Statutes, is amended to read:

702.035 Legal notice concerning foreclosure proceedings.—Whenever a legal advertisement, publication, or notice relating to a foreclosure proceeding is required to be placed in a newspaper, it is the responsibility of the petitioner or petitioner's attorney to place such advertisement, publication, or notice. For counties with more than 1 million total population as reflected in the most recent Official Decennial Census of the United States Census Bureau as shown on the official website of the United States Census Bureau, any notice of publication required by this section shall be deemed to have

been published in accordance with the law if the notice is published in a newspaper that has been entered as a periodical matter at a post office in the county in which the newspaper is published, is published a minimum of 5 days a week, and has been in existence and published a minimum of 5 days a week for 1 year or is a direct successor to a newspaper that has been in existence for 1 year that has been published a minimum of 5 days a week. The advertisement, publication, or notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by the clerk of the court. Only the actual costs charged by the newspaper for the advertisement, publication, or notice may be charged as costs in the action.

Section 8. Subsection (9) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(9) A certificate of title issued by the clerk of court under s. 45.031(5)(4) in a judicial sale of real property under an order or final judgment issued pursuant to a foreclosure proceeding is subject to the tax imposed by subsection (1). However, the amount of the tax shall be computed based solely on the amount of the highest and best bid received for the property at the foreclosure sale. This subsection is intended to clarify existing law and shall be applied retroactively.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

Approved by the Governor June 12, 2006.

Filed in Office Secretary of State June 12, 2006.