

CHAPTER 2018-71

Committee Substitute for Committee Substitute for House Bill No. 1361

An act relating to clerks of court; repealing s. 43.19, F.S., relating to the disposition of certain money paid into a court which is unclaimed; amending s. 45.031, F.S.; revising the time periods within which certain persons must file claims for certain unclaimed surplus funds; amending s. 45.032, F.S.; deleting provisions defining and specifying the powers of a “surplus trustee”; authorizing specified entities to claim surplus funds that remain after a judicial sale; specifying procedures for those entities to receive such funds; specifying procedures for the clerk to use in handling surpluses that remain unclaimed; specifying the entities eligible for the surplus once the funds have been remitted to the Department of Financial Services; conforming provisions to changes made by the act; amending s. 45.033, F.S.; conforming a provision to changes made by the act; repealing s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions; amending s. 45.035, F.S.; revising service charges that a clerk may receive and deduct from surplus amounts; amending s. 318.1451, F.S.; requiring a driver improvement course provider to transmit, within a specified time period, the individual completion certificate and citation number through the Florida Courts E-Filing Portal to the clerk of the circuit court in the county where the citation was issued; amending s. 717.113, F.S.; exempting certain funds remaining after a judicial sale and held in a court registry from becoming payable or distributable and subject to certain reporting requirements; amending ss. 717.124, 717.138, and 717.1401, F.S.; conforming cross-references; providing an effective date.

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

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 Section 43.19, Florida Statutes, is repealed.

Section 2. Paragraph (a) of subsection (1), paragraph (f) of subsection (2), and paragraph (b) of subsection (7) of section 45.031, Florida Statutes, are 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 this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(1) FINAL JUDGMENT.—

(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, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

(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:

(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 before the clerk reports the surplus as unclaimed ~~within 60 days after the sale~~.

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.

(7) DISBURSEMENTS OF PROCEEDS.—

(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 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 ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS UNCLAIMED ~~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)...

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

45.032 Disbursement of surplus funds after judicial sale.—

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

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

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

(a) If the owner of record claims the surplus before the date that the clerk reports it as unclaimed 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, tax warrant, 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 prior to the date that the clerk reports the surplus as unclaimed 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) One year after the sale, any surplus remaining with the clerk of the court that has not been disbursed as provided herein is presumed unclaimed as set forth in s. 717.113 and must be reported and remitted to the department in accordance with ss. 717.117 and 717.119, unless there is a pending court proceeding regarding entitlement to the surplus. At the conclusion of any court proceeding and any appeal regarding entitlement to the surplus, the clerk of the court shall report and remit the unclaimed property to the department if directed by a court order, to another entity if directed by the court order, or, if not directed by the court order, to the owner of record. For purposes of establishing entitlement to the surplus after the property has been remitted to the department, only the owner of record reported by the clerk of the court, or the beneficiary, as defined in s. 731.201, of a deceased owner of record reported by the clerk, is entitled to the surplus. A surplus of less than \$10 escheats to 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.~~

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

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

(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:

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

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

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

(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:

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

~~(d) The clerk is entitled to a service charge of \$15 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 7. Paragraph (f) of subsection (6) of section 318.1451, Florida Statutes, is amended to read:

318.1451 Driver improvement schools.—

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

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

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

717.113 Property held by courts and public agencies.—All intangible property held for the owner by any court, government or governmental subdivision or agency, public corporation, or public authority that has not been claimed by the owner for more than 1 year after it became payable or distributable is presumed unclaimed. Except as provided in s. 45.032(3)(c), money held in the court registry and for which no court order has been issued to determine an owner does not become payable or distributable and is not subject to reporting under this chapter. Notwithstanding the provisions of this section, funds deposited in the Minerals Trust Fund pursuant to s. 377.247 are presumed unclaimed only if the funds have not been claimed by the owner for more than 5 years after the date of first production from the well.

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

717.124 Unclaimed property claims.—

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

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

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

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

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

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

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

Approved by the Governor March 21, 2018.

Filed in Office Secretary of State March 21, 2018.