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CS/CS/HB 1383

2018 Legislature

1  
2 An act relating to tax deed sales; amending s.  
3 197.502, F.S.; requiring a tax certificateholder to  
4 pay specified costs required to bring the property on  
5 which taxes are delinquent to sale; requiring the tax  
6 collector to cancel a tax deed application if certain  
7 costs are not paid within a specified period for  
8 certain purposes; revising procedures for applying  
9 for, recording, and releasing tax deed applications;  
10 revising the entities that must be notified before the  
11 sale of the property; revising provisions to require  
12 property information reports for certain purposes;  
13 prohibiting a tax collector from accepting or paying  
14 for a property information report under certain  
15 circumstances; amending s. 197.522, F.S.; authorizing  
16 a clerk to rely on addresses provided by the tax  
17 collector for specified purposes; amending s. 197.582,  
18 F.S.; revising procedures for the disbursement of  
19 surplus funds by clerks; providing forms for use in  
20 noticing and claiming surplus funds; specifying  
21 methods for delivering claims to the clerk's office;  
22 providing deadlines for filing claims; providing  
23 procedures to be used by clerks in determining  
24 disbursement of surplus funds; authorizing a tax deed  
25 recipient to pay specified liens; specifying

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26 |           procedures to be used by the tax clerk if surplus  
27 |           funds are not claimed; providing an effective date.

28 |

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

30 |

31 |           Section 1. Subsections (1) and (2), paragraphs (b) and (c)  
32 | of subsection (4), and subsections (5) and (6) of section  
33 | 197.502, Florida Statutes, are amended to read:

34 |           197.502 Application for obtaining tax deed by holder of  
35 | tax sale certificate; fees.—

36 |           (1) The holder of a tax certificate at any time after 2  
37 | years have elapsed since April 1 of the year of issuance of the  
38 | tax certificate and before the cancellation of the certificate,  
39 | may file the certificate and an application for a tax deed with  
40 | the tax collector of the county where the property described in  
41 | the certificate is located. The tax collector may charge a tax  
42 | deed application fee of \$75 and for reimbursement of the costs  
43 | for providing online tax deed application services. If the tax  
44 | collector charges a combined fee in excess of \$75, applicants  
45 | may use ~~shall have the option of using~~ the online electronic tax  
46 | deed application process or may file applications without using  
47 | such service.

48 |           (2) A certificateholder, other than the county, who  
49 | applies ~~makes application~~ for a tax deed shall pay the tax  
50 | collector at the time of application all amounts required for

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51 redemption or purchase of all other outstanding tax  
52 certificates, plus interest, any omitted taxes, plus interest,  
53 any delinquent taxes, plus interest, and current taxes, if due,  
54 covering the property. In addition, the certificateholder shall  
55 pay the costs required to bring the property to sale as provided  
56 in ss. 197.532 and 197.542, including property information  
57 searches, and mailing costs, as well as the costs of resale, if  
58 applicable. If the certificateholder fails to pay the costs to  
59 bring the property to sale within 30 days after notice from the  
60 clerk, the tax collector shall cancel the tax deed application.  
61 All taxes and costs associated with a cancelled tax deed  
62 application shall earn interest at the bid rate of the  
63 certificate on which the tax deed application was based.~~and~~  
64 Failure to pay the such costs of resale, if applicable, within  
65 30 days after notice from the clerk shall result in the clerk's  
66 entering the land on a list entitled "lands available for  
67 taxes."

68 (4) The tax collector shall deliver to the clerk of the  
69 circuit court a statement that payment has been made for all  
70 outstanding certificates or, if the certificate is held by the  
71 county, that all appropriate fees have been deposited, and  
72 stating that the following persons are to be notified prior to  
73 the sale of the property:

74 (b) Any lienholder of record who has recorded a lien  
75 against the property described in the tax certificate if an

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76 | address appears on the recorded lien or if the lienholder is a  
 77 | financial institution and the financial institution has  
 78 | designated an address with the Department of State pursuant to  
 79 | s. 655.0201(2), then notice must be sent to the address on file  
 80 | with the Department of State.

81 | (c) Any mortgagee of record if an address appears on the  
 82 | recorded mortgage or if the mortgagee has designated an address  
 83 | with the Department of State pursuant to s. 655.0201(2), then  
 84 | the notice must be sent to the address on file with the  
 85 | Department of State.

86 |  
 87 | The statement must be signed by the tax collector or the tax  
 88 | collector's designee. The tax collector may purchase a  
 89 | reasonable bond for errors and omissions of his or her office in  
 90 | making such statement. The search of the official records must  
 91 | be made by a direct and inverse search. "Direct" means the index  
 92 | in straight and continuous alphabetic order by grantor, and  
 93 | "inverse" means the index in straight and continuous alphabetic  
 94 | order by grantee.

95 | (5) (a) For purposes of determining who must be noticed and  
 96 | provided the information required in subsection (4), the tax  
 97 | collector must ~~may~~ contract with a title company or an abstract  
 98 | company to provide a property information report as defined in  
 99 | s. 627.7843(1) ~~the minimum information required in subsection~~  
 100 | (4), consistent with rules adopted by the department. If

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101 additional information is required, the tax collector must make  
 102 a written request to the title or abstract company stating the  
 103 additional requirements. The tax collector may select any title  
 104 or abstract company, regardless of its location, as long as the  
 105 fee is reasonable, the required ~~minimum~~ information is  
 106 submitted, and the title or abstract company is authorized to do  
 107 business in this state. The tax collector may advertise and  
 108 accept bids for the title or abstract company if he or she  
 109 considers it appropriate to do so.

110 1. The property information report must include the  
 111 letterhead of the person, firm, or company that makes the  
 112 search, and the signature of the individual who makes the search  
 113 or of an officer of the firm. The tax collector is not liable  
 114 for payment to the firm unless these requirements are met. The  
 115 report may be submitted to the tax collector in an electronic  
 116 format.

117 2. The tax collector may not accept or pay for a property  
 118 information report ~~any title search or abstract~~ if financial  
 119 responsibility is not assumed for the search. However,  
 120 reasonable restrictions as to the liability or responsibility of  
 121 the title or abstract company are acceptable. Notwithstanding s.  
 122 627.7843(3), the tax collector may contract for higher maximum  
 123 liability limits.

124 3. In order to establish uniform prices for property  
 125 information reports within the county, the tax collector must

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126 ensure that the contract for property information reports  
 127 includes ~~include~~ all requests for property information reports  
 128 ~~title searches or abstracts~~ for a given period of time.

129 (b) Any fee paid for initial property information reports  
 130 and any updates ~~for a title search or abstract~~ must be collected  
 131 at the time of application under subsection (1), and the amount  
 132 of the fee must be added to the opening bid.

133 (c) Upon receiving the tax deed application from the tax  
 134 collector, the clerk shall record a notice of tax deed  
 135 application in the official records, which constitutes notice of  
 136 the pendency of a tax deed application with respect to the  
 137 property and remains effective for 1 year from the date of  
 138 recording. A person acquiring an interest in the property after  
 139 the tax deed application notice has been recorded is deemed to  
 140 be on notice of the pending tax deed sale and no additional  
 141 notice is required. The sale of the property automatically  
 142 releases any recorded notice of tax deed application for that  
 143 property. If the property is redeemed, the clerk must record a  
 144 release of the notice of tax deed application upon payment of  
 145 the fees as authorized in s. 28.24(8) and (12). The contents of  
 146 the notice shall be the same as the contents of the notice of  
 147 publication required by s. 197.512. The cost of recording must  
 148 be collected at the time of application under subsection (1),  
 149 and added to the opening bid.

150 (d) The clerk must ~~shall~~ advertise ~~and administer~~ the sale

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151 as set forth in s. 197.512, administer the sale as set forth in  
 152 s. 197.542, and receive such fees for the issuance of the deed  
 153 and sale of the property as provided in s. 28.24.

154 (e) A notice of the application of the tax deed in  
 155 accordance with ss. 197.512 and 197.522 that is sent to the  
 156 addresses shown on the statement described in subsection (4) is  
 157 deemed conclusively sufficient to provide adequate notice of the  
 158 tax deed application and the sale at public auction.

159 (6) The opening bid:

160 (a) On county-held certificates on nonhomestead property  
 161 shall be the sum of the value of all outstanding certificates  
 162 against the property, plus omitted years' taxes, delinquent  
 163 taxes, current taxes, if due, interest, and all costs and fees  
 164 paid by the county.

165 (b) On an individual certificate must include, in addition  
 166 to the amount of money paid to the tax collector by the  
 167 certificateholder at the time of application, the amount  
 168 required to redeem the applicant's tax certificate and all other  
 169 costs, ~~and~~ fees paid by the applicant, and any additional fees  
 170 or costs incurred by the clerk, plus all tax certificates that  
 171 were sold subsequent to the filing of the tax deed application,  
 172 current taxes, if due, and omitted taxes, if any.

173 (c) On property assessed on the latest tax roll as  
 174 homestead property shall include, in addition to the amount of  
 175 money required for an opening bid on nonhomestead property, an

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176 amount equal to one-half of the latest assessed value of the  
 177 homestead.

178 Section 2. Subsection (3) of section 197.522, Florida  
 179 Statutes, is renumbered as subsection (4), and a new subsection  
 180 (3) is added to that section to read:

181 197.522 Notice to owner when application for tax deed is  
 182 made.—

183 (3) When sending or serving a notice under this section,  
 184 the clerk of the circuit court may rely on the addresses  
 185 provided by the tax collector based on the certified tax roll  
 186 and property information reports. The clerk of the circuit court  
 187 has no duty to seek further information as to the validity of  
 188 such addresses, because property owners are presumed to know  
 189 that taxes are due and payable annually under s. 197.122.

190 Section 3. Subsections (2) and (3) of section 197.582,  
 191 Florida Statutes, are amended, and subsections (4) through (9)  
 192 are added to that section, to read:

193 197.582 Disbursement of proceeds of sale.—

194 (2)(a) If the property is purchased for an amount in  
 195 excess of the statutory bid of the certificateholder, the  
 196 surplus ~~excess~~ must be paid over and disbursed by the clerk as  
 197 set forth in subsections (3), (5), and (6). If the opening bid  
 198 included the homestead assessment pursuant to s. 197.502(6)(c)–  
 199 If the property purchased is homestead property and the  
 200 statutory bid includes an amount equal to at least one-half of

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201 ~~the assessed value of the homestead,~~ that amount must be treated  
 202 as surplus ~~excess~~ and distributed in the same manner. The clerk  
 203 shall distribute the surplus ~~excess~~ to the governmental units  
 204 for the payment of any lien of record held by a governmental  
 205 unit against the property, including any tax certificates not  
 206 incorporated in the tax deed application and omitted taxes, if  
 207 any. ~~If the excess is not sufficient to pay all of such liens in~~  
 208 ~~full, the excess shall be paid to each governmental unit pro~~  
 209 ~~rata. If, after all liens of governmental units are paid in~~  
 210 ~~full,~~ there remains a balance of undistributed funds, the  
 211 balance must ~~shall~~ be retained by the clerk for the benefit of  
 212 persons described in s. 197.522(1)(a), except those persons  
 213 described in s. 197.502(4)(h), as their interests may appear.  
 214 The clerk shall mail notices to such persons notifying them of  
 215 the funds held for their benefit at the addresses provided in s.  
 216 197.502(4). Such notice constitutes compliance with the  
 217 requirements of s. 717.117(4). Any service charges, ~~at the rate~~  
 218 ~~prescribed in s. 28.24(10),~~ and costs of mailing notices shall  
 219 be paid out of the excess balance held by the clerk. Notice must  
 220 be provided in substantially the following form:

221  
 222 NOTICE OF SURPLUS FUNDS FROM TAX DEED SALE

223 CLERK OF COURT

224 . . . COUNTY, FLORIDA

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226        Tax Deed #.....  
 227        Certificate #.....  
 228        Property Description: .....  
 229        Pursuant to chapter 197, Florida Statutes, the above  
 230 property was sold at public sale on ...(date of sale)....., and  
 231 a surplus of \$ ...(amount).... (subject to change) will be held  
 232 by this office for 120 days beginning on the date of this notice  
 233 to benefit the persons having an interest in this property as  
 234 described in section 197.502(4), Florida Statutes, as their  
 235 interests may appear (except for those persons described in  
 236 section 197.502(4) (h), Florida Statutes).

237        To the extent possible, these funds will be used to satisfy  
 238 in full, each claimant with a senior mortgage or lien in the  
 239 property before distribution of any funds to any junior mortgage  
 240 or lien claimant or to the former property owner. To be  
 241 considered for funds when they are distributed, you must file a  
 242 notarized statement of claim with this office within 120 days of  
 243 this notice. If you are a lienholder, your claim must include  
 244 the particulars of your lien and the amounts currently due. Any  
 245 lienholder claim that is not filed within the 120-day deadline  
 246 is barred.

247        A copy of this notice must be attached to your statement of  
 248 claim. After the office examines the filed claim statements, it  
 249 will notify you if you are entitled to any payment.

250        Dated: .....

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251 Clerk of Court

252

253 (b) The mailed notice must include a form for making a  
 254 claim under subsection (3). Service charges at the rate set  
 255 forth in s. 28.24(10) and the costs of mailing must be paid out  
 256 of the surplus funds held by the clerk. If the clerk or  
 257 comptroller certifies that the surplus funds are not sufficient  
 258 to cover the service charges and mailing costs, the clerk shall  
 259 receive the total amount of surplus funds as a service charge.  
 260 ~~Excess proceeds shall be held and disbursed in the same manner~~  
 261 ~~as unclaimed redemption moneys in s. 197.473.~~ For purposes of  
 262 identifying unclaimed property pursuant to s. 717.113, excess  
 263 proceeds shall be presumed payable or distributable on the date  
 264 the notice is sent. ~~If excess proceeds are not sufficient to~~  
 265 ~~cover the service charges and mailing costs, the clerk shall~~  
 266 ~~receive the total amount of excess proceeds as a service charge.~~

267 (3) A person receiving the notice under subsection (2) has  
 268 120 days from the date of the notice to file a written claim  
 269 with the clerk for the surplus proceeds. A claim in  
 270 substantially the following form is deemed sufficient:

271

272 CLAIM TO RECEIVE SURPLUS PROCEEDS OF A TAX DEED SALE

273 Complete and return to: .....

274 By mail: .....

275 By e-mail: .....

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276        Note: The Clerk of the Court must pay all valid liens  
 277 before distributing surplus funds to a titleholder.  
 278        Claimant's name: .....  
 279        Contact name, if applicable: .....  
 280        Address: .....  
 281        Telephone Number: ..... Email Address: .....  
 282        Tax No. ....  
 283        Date of sale (if known): .....  
 284        .... I am not making a claim and waive any claim I might have to  
 285 the surplus funds on this tax deed sale.  
 286        .... I claim surplus proceeds resulting from the above tax deed  
 287 sale.  
 288        I am a (check one)....Lienholder; ....Titleholder.  
 289        (1) LIENHOLDER INFORMATION (Complete if claim is based on  
 290 a lien against the sold property).  
 291        (a) Type of Lien: ....Mortgage; ....Court Judgment;  
 292 ....Other  
 293        Describe in detail: .....  
 294        If your lien is recorded in the county's official records,  
 295 list the following, if known:  
 296        Recording date: ....; Instrument #....; Book #....; Page  
 297 #.....  
 298        (b) Original amount of lien: \$.....  
 299        (c) Amounts due: \$.....  
 300        1. Principal remaining due: \$.....

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301       2. Interest due: \$.....

302       3. Fees and costs due, including late fees: \$.....

303       (describe costs in detail, include additional sheet if needed);

304       4. Attorney fees: \$.....(provide amount claimed):

305       \$.....

306       (2) TITLEHOLDER INFORMATION (Complete if claim is based on

307       title formerly held on sold property.)

308       (a) Nature of title (check one): .....Deed;

309       .....Court Judgment; .....Other (describe in detail)

310       .....

311       (b) If your former title is recorded in the county's

312       official records, list the following, if known: Recording

313       date:.....; Instrument#:.....Book #:.....; Page

314       #:.....

315       (c) Amount of surplus tax deed sale proceeds claimed:

316       \$.....

317       (d) Does the titleholder claim the subject property was

318       homestead property? ....Yes ....No.

319       (3) I hereby swear or affirm that all of the above

320       information is true and correct.

321       Date: .....

322       Signature: .....

323       STATE OF FLORIDA

324       .....COUNTY.

325       Sworn to or affirmed and signed before me on ...(date)

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326 | .....by ... (name of affiant).....  
 327 | NOTARY PUBLIC or DEPUTY CLERK  
 328 | ...(Print, Type, or Stamp Commissioned Name of Notary)...  
 329 | Personally known, or  
 330 | Produced identification; .....  
 331 | Identification Produced: .....  
 332 | (4) A claim may be:  
 333 | (a) Mailed using the United States Postal Service. The  
 334 | filing date is the postmark on the mailed claim;  
 335 | (b) Delivered using either a commercial delivery service  
 336 | or in person. The filing date is the day of delivery; or  
 337 | (c) Sent by fax or e-mail, as authorized by the clerk. The  
 338 | filing date is the date the clerk receives the fax or e-mail.  
 339 | (5) Except for claims by a property owner, claims that are  
 340 | not filed on or before close of business on the 120th day after  
 341 | the date of the mailed notice as required by s. 197.582(2), are  
 342 | barred. A person, other than the property owner, who fails to  
 343 | file a proper and timely claim is barred from receiving any  
 344 | disbursement of the surplus funds. The failure of any person  
 345 | described in s. 197.502(4), other than the property owner, to  
 346 | file a claim for surplus funds within the 120 days constitutes a  
 347 | waiver of interest in the surplus funds and all claims thereto  
 348 | are forever barred.  
 349 | (6) Within 90 days after the claim period expires, the  
 350 | clerk may either file an interpleader action in circuit court,

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351 if potentially conflicting claims to the funds exist, or pay the  
 352 surplus funds according to the clerk's determination of the  
 353 priority of claims using the information provided by the  
 354 claimants under subsection (3). Fees and costs incurred by the  
 355 clerk in determining whether an interpleader action should be  
 356 filed shall be paid from the surplus funds. If the clerk files  
 357 an interpleader action, the court shall determine the  
 358 distribution of funds based upon the priority of liens filed.  
 359 The clerk may move the court to award reasonable fees and  
 360 costs from the interpleaded funds. An action to require payment  
 361 of surplus funds is not ripe until the claim and review periods  
 362 expire. The failure of a person described in s. 197.502(4),  
 363 other than the property owner, to file a claim for surplus funds  
 364 within the 120 days constitutes a waiver of all interest in the  
 365 surplus funds and all claims for them are forever barred.

366 (7) A holder of a recorded governmental lien, other than a  
 367 federal government lien or ad valorem tax lien, must file a  
 368 request for disbursement of surplus funds within 120 days after  
 369 the mailing of the notice of surplus funds. The clerk or  
 370 comptroller must disburse payments to each governmental unit to  
 371 pay any lien of record held by a governmental unit against the  
 372 property, including any tax certificate not incorporated in the  
 373 tax deed application and any omitted taxes, before disbursing  
 374 the surplus funds to nongovernmental claimants.

375 (8) The tax deed recipient may directly pay off all liens

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376 to governmental units that could otherwise have been requested  
377 from surplus funds, and, upon filing a timely claim under  
378 subsection (3) with proof of payment, the tax deed recipient may  
379 receive the same amount of funds from the surplus funds for all  
380 amounts paid to each governmental unit in the same priority as  
381 the original lienholder.

382 (9) If the clerk does not receive claims for surplus funds  
383 within the 120 day claim period, as required in subsection (5),  
384 there is a conclusive presumption that the legal titleholder of  
385 record described in s. 197.502(4)(a) is entitled to the surplus  
386 funds. The clerk must process the surplus funds in the manner  
387 provided in chapter 717, regardless of whether the legal  
388 titleholder is a resident of the state or not.

389 ~~(3) If unresolved claims against the property exist on the~~  
390 ~~date the property is purchased, the clerk shall ensure that the~~  
391 ~~excess funds are paid according to the priorities of the claims.~~  
392 ~~If a lien appears to be entitled to priority and the lienholder~~  
393 ~~has not made a claim against the excess funds, payment may not~~  
394 ~~be made on any lien that is junior in priority. If potentially~~  
395 ~~conflicting claims to the funds exist, the clerk may initiate an~~  
396 ~~interpleader action against the lienholders involved, and the~~  
397 ~~court shall determine the proper distribution of the~~  
398 ~~interpleaded funds. The clerk may move the court for an award of~~  
399 ~~reasonable fees and costs from the interpleaded funds.~~

400 Section 4. This act applies to tax deed applications filed

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401 | on or after October 1, 2018, with the tax collector pursuant to  
402 | s. 197.502, Florida Statutes.

403 |       Section 5. This act shall take effect July 1, 2018.