

County of Contra Costa Policy Regarding Claims for Excess Proceeds

PURPOSE

- I. California Revenue and Taxation Code section 4675 describes how excess proceeds from sales of tax-defaulted properties by a county tax collector must be distributed. This statute also identifies the information and proof necessary to establish a claimant's rights to all or any portion of excess proceeds.
- II. The Contra Costa County Board of Supervisors through Resolution ~~2015/68~~ has authorized the Contra Costa County Treasurer-Tax Collector to distribute excess proceeds in accordance with the rules and procedures set forth in this policy. [Cal. Rev. & Tax. Code, § 4675.1.]
- ~~II.~~ III. The Contra Costa County Board of Supervisors approved amendments to this policy through Resolution 2017/_____.

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RULES AND PROCEDURES

1. NOTIFICATION

- a. When excess proceeds from the sale of tax-defaulted property exceed one hundred fifty dollars (\$150), the Treasurer-Tax Collector's Office has ninety (90) days to notify potential claimants of the right to claim excess proceeds. (A sample notice, "Notice of Excess Proceeds to Interested Parties", is attached as Attachment 1.)
- b. The law requires the Treasurer-Tax Collector's Office to mail notice to the last known mailing address of interested parties as identified by statute, (e.g., the last named owner on the assessment roll and lienholders). The Treasurer-Tax Collector's Office shall make a reasonable effort to obtain the name and last known mailing address of interested parties. [Cal. Rev. & Tax. Code, §§ 4675, 4676(c).]
- c. If the last known address of an interested party cannot be obtained, the law requires the Treasurer-Tax Collector's Office to publish notice of the right to claim excess proceeds in a newspaper of general circulation in the County, unless the cost to publish is equal to or greater than the amount of the excess proceeds.

2. **CLAIM REQUIREMENTS:** As described below, each claimant must submit a completed Contra Costa County Treasurer-Tax Collector's Excess Proceeds Claim Form and supporting documentation, which provides information and proof of the claimant's right to all or any portion of excess proceeds.

2.1 **CLAIM FORM**

- a. Along with Notice of Excess Proceeds to Interested Parties, the Treasurer-Tax Collector's Office will mail a Contra Costa County Treasurer-Tax Collector's Excess Proceeds Claim Form ("Claim Form") to the interested parties it has located after making a reasonable search. (A sample Claim Form is attached as Attachment 2.)
- b. An interested party or other claimant must use the Claim Form to make a claim for excess proceeds.
- c. If an interested party or other claimant does not receive the Claim Form or needs additional copies, the Claim Form may be obtained:
 - i. by downloading it from the Contra Costa County website at www.cctax.us; or
 - ii. upon request via standard USPS mail (if a claimant provides a self-addressed, stamped envelope for delivery), email or fax.
- d. Failure to receive a Claim Form from the Treasurer-Tax Collector's Office is not an excuse for failing to properly and timely submit a claim on a Claim Form and supporting documentation.

2.2 **INFORMATION ON FORM**

- a. The Claim Form must include the following information:
 1. Assessor Parcel Number.
 2. Last assessee/owner of record.
 3. Property address.
 4. Date of tax sale.
 5. Date the tax deed was recorded.
 6. Final date to submit claim for excess proceeds.
 7. The amount or percentage of excess proceeds of the claim (the amount of available excess proceeds from each tax sale is available on the County of Contra Costa Treasurer-Tax Collector's website at www.cctax.us > Gen'l Tax Information > Public Auction Information).
 8. Claimant's filing status, i.e.,:
 - i. Person or entity, such as a business, trust or other legal entity,

- who held title to the tax-defaulted property (“Person with Title of Record”);
 - ii. Lienholder of Record;
 - iii. Qualified Heir of Person with Title of Record; or
 - iv. Assignee of an Interested Party.
9. Claimant’s name, address, telephone number, email address and signature.
- b. The Claim Form must be verified under penalty of perjury and properly notarized. [Cal. Civ. Code, § 1189.]

2.3 **SUPPORTING DOCUMENTATION**

- a. In addition to filing a completed, verified Claim Form, the claimant must also fill out and file applicable documentation described in Appendices A and B.
- b. ~~In those cases where original documents are required, the Treasurer-Tax Collector’s Office will not accept lost document affidavits in place of the original documents.~~
- c. ~~The Treasurer-Tax Collector’s Office will return original documents to the claimant(s) upon request if the claimant(s) provides a self-addressed envelope with sufficient postage, along with the completed Claim Form.~~

3. **SUBMISSION OF CLAIM**

- a. **The deadline (the “Deadline”) to file a completed claim with the Contra Costa County Treasurer-Tax Collector’s Office is one (1) year following the date of the recording of the deed to the purchaser of the tax-defaulted property.**
 - i. A claimant may not file or amend a claim after the Deadline. It is the claimant’s sole responsibility to timely submit a complete claim, including all necessary supporting documentation.
 - ii. A claimant may not rely on the Treasurer-Tax Collector’s Office to approve or request information to supplement incomplete claims.
- b. The claimant must mail completed claims, including all supporting documentation, to:

Treasurer-Tax Collector
County of Contra Costa
ATTN: EXCESS PROCEEDS

625 Court Street, Suite 100
Martinez, CA 94553

- c. Each interested party must file his or her own claim, unless:
 - i. the interested party has assigned his or her rights to another party. When the interested party has assigned his or her rights, the claim must include information and documentation establishing the assignment described in Appendices A and B (a sample Assignment of Right to Collect Excess Proceeds Form is attached as Attachment 3); or
 - ii. the claim is submitted on behalf of an interested party by an agent, attorney in fact, or person with valid powers of attorney along with the evidence establishing such a relationship with the interested party described in Appendices A and B. In those cases where the Treasurer-Tax Collector's Office determines the claim is valid and there is sufficient excess proceeds, payment will be sent to the address of the attorney, agent, or attorney in fact, but shall only be made payable to the interested party.
- d. Generally, each claimant must submit his or her claim in a separate envelope. However, multiple claimants may submit their individual claims (each claim on a separate Claim Form) in a single envelope if they are sharing supporting documentation.
- e. For each claim filed on a Claim Form and received by the Deadline, the Treasurer-Tax Collector's Office will send the claimant a letter acknowledging receipt of claim. (A sample "Acknowledgement of Claim for Excess Proceeds Received" is attached as Attachment 4.)

4. **PRELIMINARY CLAIM REVIEW**

- a. The Treasurer-Tax Collector's Office may review claims filed during the eleven (11) months following the recording of the deed to the purchaser for completeness. That preliminary review is intended as an opportunity for the Treasurer-Tax Collector's Office to make an evaluation of the claim for purposes of determining whether additional documentation is needed. However, the Treasurer-Tax Collector's Office does not guarantee any preliminary review of claims. Interested parties may contact the Treasurer-Tax Collector's Office to inquire about the status of the preliminary review and may submit missing documents or information during this period if notified by the Treasurer-Tax Collector's Office to do so. Missing documents or information will not be accepted after the Deadline.
- b. The Treasurer-Tax Collector's Office may send a claimant one (1) Preliminary claim Review letter notifying the claimant of the Office's

findings, including whether additional information needs to be provided. The Treasurer-Tax Collector's Office will send any such letters to the address for claimant shown on the Claim Form. The Preliminary Claim Review letter may ask the claimant to submit any additional documentation that the Treasurer-Tax Collector's Office determines is necessary to complete the original claim. The claimant must file any such additional documentation with the Treasurer-Tax Collector's Office before the Deadline. No time extensions will be permitted.

- c. The Treasurer-Tax Collector's Office will not perform a preliminary review of claims received during the final thirty (30) days of the one (1) year filing period.
- d. The Treasurer-Tax Collector's Office will not accept claims ~~or~~ or amendments to claims ~~and supporting documentation~~ after the Deadline.

5. **FINAL CLAIMS REVIEW**

- a. After the Deadline, the Treasurer-Tax Collector's Office will perform a final review of the claim.
- b. Except as provided in subsection (e) below, the Treasurer-Tax Collector, or designee, will decide, in his or her sole discretion, whether the claim and supporting documentation sufficiently evidence existence of a recorded document supporting claimant's right to excess proceeds.
- c. The Treasurer-Tax Collector's Office will either approve or deny the claim, in whole or in part, and notify the claimant of the decision.
- d. For each claim approved by the Treasurer-Tax-Collector's Office, the Treasurer-Tax Collector's Office will determine the order of claimant's priority to the excess proceeds. [See Cal. Rev. & Tax. Code, § 4675.]
- e. In certain instances, the Treasurer-Tax Collector's Office may choose to file a legal action known as an "interpleader" to ask the Contra Costa County Superior Court to decide who should receive the excess proceeds. For example, this might occur when the validity of a claim or the priority of claimants to excess proceeds is unclear and there is a potential dispute among claimants.

6. **DISTRIBUTION OF EXCESS PROCEEDS:** After the Treasurer-Tax Collector's Office has distributed excess proceeds from a tax sale under Sections 4672, 4672.1, 4672.2, 4672.3, 4673 and 4673.1 of the Revenue and Taxation Code, it will distribute the remaining excess proceeds as follows:

- a. The Treasurer-Tax Collector's Office will first deduct from the excess proceeds an amount equal to the costs of obtaining the name and last known mailing address of interested parties and of mailing or publishing required notices and distribute that amount to the Contra Costa County General Fund. [Cal. Rev. & Tax. Code, § 4676(d).]
- b. If there are sufficient excess proceeds after the above-described distributions and those claims that have higher priority, a claimant will be paid amount of his or her claim that is approved by the Treasurer-Tax Collector's Office. [Cal. Rev. & Tax. Code, § 4675(e).]
- c. The Treasurer-Tax Collector's Office will transfer any remaining excess proceeds that are not claimed by the time to do so under Revenue and Taxation Code section 4675(e) to the Contra Costa County General Fund. [Cal. Rev. & Tax. Code, § 4674.]

APPENDIX A

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1. **PERSON(S) WITH TITLE OF RECORD:** The person(s) or entity who held record title to the tax-defaulted property must submit the following documents:

- a. ~~Original~~ or certified copies of the or certified copies of the recorded documents (e.g., deed, court order) supporting claimant's right to excess proceeds as the person(s) or entity that held record title to the tax-defaulted property. ~~Except as stated in (b) below, certified copies of these documents may be submitted in place of the original recorded document if accompanied by additional documentation sufficient to support the claim (e.g., at least two utility and/or tax bills for the property in the claimant(s)'s name, such as power, television, internet subscriptions, and original tax bills).~~
- b. If title to the property was in a recorded trust, the original trust document or Certification of Trust indicating that the claimant(s) is/are the trustee(s) or successor trustee(s) of the trust authorized to file claims on behalf of the trust.
- c. If a business held record title to the tax-defaulted property, the claimant must submit documents that show the business and claimant's right to make a claim. For the documents required of various business entities, please refer to Appendix B.

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2. **QUALIFIED HEIR OR SUCCSSOR OF PERSON(S) OR ENTITY WITH TITLE OF RECORD OR OTHER INTERESTED PARTY:** Qualified heir(s) of a person who held record title to the tax-defaulted property or other interested party must submit the following:

- a. Documentation proving claimant is an heir to a person(s) who held record title to the tax-defaulted property or other interested party (e.g., court order, petition for letters of administration).
- b. If applicable, a notarized probate affidavit. [Cal. Prob. Code, §§ 13100-13116.] A form affidavit is available for download on the Contra Costa County Treasurer-Tax Collector's website at www.cctax.us > Gen'l Tax Information > Public Auction Information and a sample is attached as Attachment 5.
- c. If applicable, the last will and testament and any codicils thereto of a person(s) who held record title to the tax-defaulted property or other interested party.
- d. If the interested party is a business, the claimant must submit documents that show the business and claimant's right to make a claim. For the documents required of various business entities, please refer to Appendix B.

3. **LIENHOLDER(S) OF RECORD**

a. **MORTGAGE LENDERS AND DEED OF TRUST BENEFICIARIES:**

Mortgage lenders and deed of trust beneficiaries must submit the following information:

- i. The original or certified copy of the promissory note and all amendments or other modifications (if any) on the tax-defaulted property.
~~a) — Copies of any promissory note(s) and/or modifications of the promissory note(s) are unacceptable.~~
b) a) The only alternative to providing an original or certified copy of the promissory note is a court order pursuant to California Civil Code section 3415, which establishes the existence and terms of a lost note.
- ii. The original or certified copy of the Deed of Trust/Mortgage.
- iii. The original or certified copy of assignments (if any).
- iv. A statement setting forth:
 - a) the original amount of the obligation;
 - b) any advances or modifications to the original obligation;
 - c) the total amount of payments received and date(s) received; and
 - d) the amount still due and payable as of the date of the sale of the tax defaulted property;
 - e) if the note was in default according to its terms at the time of the tax sale (other than for defaulted taxes), documentation evidencing all collection efforts by the claimant; and
- v. If the mortgage lender or deed of trust beneficiary is a business, the claimant must submit documents that show the business and claimant's right to make a claim. For the documents required of various business entities, please refer to Appendix B.

b. **JUDGMENT CREDITORS:** A judgment creditor must submit the following information:

- i. Documents showing the judgment debtor was the person(s) who possessed record ownership of the tax-defaulted property at the time of the tax sale.
- ii. A certified copy of the judgment(s).
- iii. Any statement or orders setting forth any modification(s) to the judgment.
- iv. A statement setting forth:
 - a) the total amount of payments received and date(s) received; and

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- b) the amount still due and payable as of the date of the sale of the tax defaulted property.
- v. If the judgment creditor is a business, the claimant must submit documents that show the business and claimant's right to make a claim. For the documents required of various business entities, please refer to Appendix B.

4. **ASSIGNEE(S) OF AN INTERESTED PARTY**: An assignee of an interested party must submit the following information:

- a. A completed "Assignment of Right to Collect Excess Proceeds" form. The form is available for download on the Contra Costa County website at www.cctax.us > Gen'l Tax Information > Public Auction Information.
- b. The "Assignment of Right to Collect Excess Proceeds" form must be:
 - i. verified under penalty of perjury;
 - ii. executed by all parties to the assignment;
 - iii. notarized [Cal. Civ. Code, § 1189]; and
 - iv. must contain the following information:
 - a) proof that the amount and source of excess proceeds was disclosed to the interested party;
 - b) that the interested party was advised of his or her right to file a claim for excess proceeds on his or her own behalf directly with the County at no cost; and
 - c) contact information of the interested party, including name, address phone number and email.
- c. If the assignee of an interested party is a business, the claimant must submit documents that show the business and claimant's right to make a claim. For the documents required of various business entities, please refer to Appendix B.

Any attempted assignment that does not comply with these requirements shall have no effect and will be disallowed.

APPENDIX B

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CLAIMS FILED ON BEHALF OF A BUSINESS

1. Each Claim Form filed on behalf of a business must be signed by an individual with corporate authority for the business, such as an officer, general partner, or the sole proprietor, depending on the legal status of the business.
2. Each claim filed on behalf of a business must provide proof of the Federal Employer Identification Number (FEIN) assigned to the business. Suggested documents include:
 - i. "Letter of Confirmation" from the IRS showing assignment of the FEIN
 - ii. Copy of tax receipt statement, such as:
 - a. IRS Form 1098, statement of interest paid; or
 - b. IRS Form 1099-INT or 1099-DIV, statement of interest or dividends earned; or
 - c. IRS assignment of FEIN interact confirmation page;Tax returns, IRS Form SS-4 application or W-9 will not be accepted to verify FEIN.
3. In addition to the above-required information, claimants must also file the following documentation, as applicable:

i. CORPORATION

A claimant making a claim on behalf of a corporation must provide proof that the claimant is an officer of the corporation who has authority to make a claim on behalf of the corporation. The documentation also must show the legal standing of the corporation. Suggested documents include the following:

- a. The articles of incorporation.
- b. The most recent Statement of Information filed with the California Secretary of State (or equivalent from state in which business operates). If the business e-filed the Statement of Information, provide a copy of the Statement of Information and a copy of the payment receipt provided by the California Secretary of State.
- c. A corporation resolution.
- d. Certificate of Dissolution.
- e. Other documents that prove claimant is a corporate officer who has authority to make a claim on behalf of the corporation.

Please note that a parent corporation, regardless of the percentage of shares owned, is not an interested party of its subsidiary's recorded lien or title of record because the parent corporation is merely a shareholder of its subsidiary corporation; it does not own the corporate property of its subsidiary.

ii. LIMITED LIABILITY COMPANY

A claimant making a claim on behalf of a limited liability company must provide proof claimant is a manager or officer of the limited liability company who has authority to make a claim on behalf of the company. The documentation also must show the legal standing of the limited liability company. Suggested documents include the following:

- a. Company's resolution.
- b. Company's operating agreement.
- c. Articles of Organization.
- d. The most recent Statement of Information filed with the Secretary of State (or equivalent from state in which business operates). If the business e-filed the Statement of Information, provide a copy of the Statement of Information and a copy of the payment receipt provided by the Secretary of State.
- e. Certificate of Dissolution, if applicable.
- f. Other documents that prove claimant is a manager or officer of the limited liability company.

iii. LIMITED PARTNERSHIP

A claimant making a claim on behalf of a limited partnership must provide proof that claimant is a general partner of the limited partnership who has authority to make a claim on behalf of the partnership. The documentation also must show the legal standing of the limited partnership. Suggested documents include the following:

- a. Certificate of Limited Partnership filed with the California Secretary of State (or equivalent from state in which business operates). If the business e-filed, provide a copy of the document and a copy of the payment receipt provided by the California Secretary of State.
- b. Partnership Agreement.
- c. Certificate of Dissolution.
- d. Other documents that prove that the claimant is a general partner of the Limited Partnership.

iv. GENERAL PARTNERSHIP

A claimant making a claim on behalf of a general partnership must provide proof that claimant is a general partner of the general partnership who has

authority to make a claim on behalf of the partnership. The documentation also must show the legal standing of the general partnership. Suggested documents include the following:

- a. Statement of Partnership Authority.
- b. Partnership Agreement.
- c. Certificate of Dissolution, if applicable.
- d. Other documents if they prove claimant is a general partner of the general partnership.

v. SOLE PROPRIETORSHIP

A claimant making a claim on behalf of a sole proprietorship must provide the following documentation:

- a. Current or final federal tax return, including Schedule C.
- b. Most current business license or facility permit.
- c. Fictitious Business Name filing (filed with County), if applicable.
- d. Other documents if they prove that claimant is the sole proprietor of the business.

vi. MERGED BUSINESS

If you are making a claim for a business that has merged with or sold to another business, please provide a copy of the merger or purchase agreement, along with the other required information.

vii. SUSPENDED BUSINESS

If you are claiming for a business that was previously suspended by either the California Secretary of State or the California Franchise Tax Board (FTB), provide proof that the business is no longer suspended, which may include:

- a. A Certificate of Good Standing if the business was suspended by the California Secretary of State. You can obtain the certificate by contacting the California Secretary of State Information Services Office at (916) 657-5448, or by following the instructions located on the California Secretary of State's website.
- b. A copy of an Entity Status Letter if the business was suspended by the FTB. You can obtain the letter by contacting the FTB at: Franchise Tax Board, P.O. Box 942857, Sacramento, CA 94244-2250, or by visiting the FTB's website.