

Recover surplus funds after a nonjudicial foreclosure without a lawyer

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If your home was sold in foreclosure and whoever bought it at auction paid more than you owed on the mortgage, you may be entitled to the extra money (the surplus funds). Use this guide to try to recover those funds.

1. Fast facts

What are surplus funds?

These are the funds remaining after the property is <u>sold in foreclosure</u> and the mortgage has been paid off. Surplus funds can result from several types of foreclosures. **We discuss only non-judicial foreclosures here**. For help recovering surplus funds after other types of foreclosures, <u>talk to a lawyer</u>.



Do I need a lawyer?

If you get a written notice (**Notice of Deposit of Surplus Funds Resulting from Foreclosure**) saying there are surplus funds left over after the sale of your home, think about contacting a lawyer for help, or representing yourself.

Advice or representation from a lawyer can save time and be helpful. But you may be able to do this yourself.

Watch out for scams

Entities will try to "help" you recover the surplus funds **and** charge you a very high fee. They might tell you the process takes a long time, isn't certain, and is complicated. **None of this is true**.

If you plan to hire a lawyer to help you recover the surplus funds, ask for proof of the amount of the surplus funds. Don't pay more than the reasonable rate for the lawyer's time that it takes the lawyer to handle the case. Be cautious about any offer that gives the lawyer a percent of the surplus funds or requires to you sign a deed transferring title to the foreclosed property.

If you were the victim of a scam, you may file a complaint with the <u>state</u>

Attorney General's consumer protection division office

(https://www.atg.wa.gov/consumer-protection). You should also try to <u>talk to a</u> lawyer.

2. Step-by-step



- Figure out what type of foreclosure occurred. Common foreclosures include judicial foreclosures, non-judicial foreclosures, and judicial foreclosure after you didn't pay your property taxes.
- 2. **Fill out the forms**, except for the Affidavit of Mailing.

Contact the court clerk's office where the case is filed. Ask the clerk when you can schedule a hearing on your motion and for help with the other details on the Notice of Hearing form. You can also wait to fill this part out until you go to court to file your papers.

3. **Make copies.** You need one copy of each completed form for yourself, one for the judge, and one for every other party.

Organize the copies in sets, so there's one set for each person who needs a copy. You don't have to give any other party a copy of the Affidavit of Mailing. Put each set of papers into an envelope addressed to each party, with your return address. You'll use these sets for service.

4. **File the originals** with the Superior Court Clerk. Give the clerk the originals of all your forms for filing **except** you should ask the clerk what to do with the originals of any proposed orders. Follow the clerk's instructions.

Ask the clerk to stamp your copies to show the date you filed the originals. Take the stamped copies back from the clerk. The clerk keeps the original.



Deliver working copies to the judge, if required in your county.

5. Serve the other party (or parties) with copies of everything you filed, and any proposed order. You can mail the copies via both regular and certified return receipt at least 20 days before the hearing on your motion.

You can mail the papers yourself, but it's better to have someone else do it. Ask an adult friend or relative to do it for you. If the other party has a lawyer, have the papers served on the lawyer.

If you found out about the surplus funds after getting the Notice of Deposit of Surplus Funds Resulting from Foreclosure, read the notice carefully. Names and addresses listed on it might look similar. Look closely for small differences, for example: Cherry Lane SE vs. Cherry Ln S.E.

You must mail a copy of your motion to each address on the notice, no matter how similar the name or address appears to another listed recipient.

- 6. **Have the server fill out the Affidavit of Mailing. Make 2 copies.** File the original with the Superior Court Clerk. Bring your copies to the hearing.
- 7. **Fill out and file the Supplemental Affidavit of Mailing** one to 2 weeks before your hearing. Make a copy for yourself.



- 8. **Confirm your hearing, if needed.** In some counties, you must contact the clerk's office to confirm that you want your hearing to happen on the day it is scheduled. Ask the court clerk for instructions.
- 9. **Go to your hearing.** Read chapter 3 for how to get ready for and what to expect at your hearing.
- 10. **Tell the judge's clerk you want a copy of the order.** Follow the clerk's instructions about getting copies.
- 11. **After the hearing,** follow the judge's order about what to do next.

3. Hearing

Get ready for the hearing

Try to go to court before the day of your hearing or check the court clerk's website to see if you can watch a hearing online. Watch how the court generally does hearings. Try to make some notes to yourself about the main points to make at your hearing.

Organize your paperwork. Plan to bring your set of court papers and your copies of any papers the other parties gave you in response. Bring extra copies of any proposed orders you want the judge to sign.



Get to your hearing early. Try to figure out before the day of the hearing how you will get there and how long it will take. Give yourself time to get through security, and to the right courtroom. If you aren't there on time, the judge could cancel the hearing, or the other party may win.

Bring your paperwork, a pad of paper, and a dark pen to take notes. Dress neatly. Try not to bring your children if you can make other arrangements for them. The judge usually won't let them sit in the courtroom.

When you get to the courtroom, tell the person in charge in the courtroom (the clerk or bailiff) your name and your case name and number. Take a seat. When the judge walks in the room, stand.

If your hearing is online, follow these <u>tips for phone and video</u> hearings.

Your case will be one of several that are scheduled for the same time on the court calendar (called a docket). Listen to the judge and wait for them to call your name. When they call your name, tell the court you are present. Stay in court until they call your case for hearing.

When your case is called

Briefly explain to the judge why you're entitled to the surplus funds. If the judge agrees with you, the judge will sign your proposed order granting your request for the surplus funds.



Another party could show up and object. There might be other liens on the property. These other liens might have priority over you to the surplus funds. Usually, these priority liens are junior mortgages or home-equity lines-of-credit.

A lien is a written and recorded claim against your property by someone to whom you owe money. The person or institution you owe money to records the lien with the county.

A judge should be able to determine lien priority, but you should <u>talk with a</u> lawyer if a party objects to your claim for surplus funds.

Most other liens can only recover surplus funds after the property owner receives the amount covered by Washington homestead protections.

The homestead exemption amount is the greater of (a) \$125,000; or (b) the county median sale price of a single-family home in the preceding calendar year (https://wcrer.be.uw.edu/housing-market-data-toolkit/annual-median-price/).

Equity is the amount of money you would keep after you sold your home and paid off the mortgage and other liens.

After the judge signs the order, the clerk signs a check and sends it to the address you provided. This can take several weeks. You can ask the clerk if you can pick up the check in person or arrange for another method to get it.



4. Forms

Form attached:

Motion and Declaration to Disburse Surplus Funds from Foreclosure

Trustee's Sale (NJP Housing 681)

Form attached:

Order to Disburse Surplus Funds from Foreclosure Trustee's Sale [Proposed] (NJP Housing 682)

Form attached:

Notice of Hearing (general civil) (NJP General 008)

Form attached:

Affidavit of Mailing (Disburse Surplus Funds) (NJP Housing 683)

Form attached:

Supplemental Affidavit of Mailing (Disburse Surplus Funds) (NJP Housing 684)

Tips for filling out Motion and Declaration to Disburse Surplus Funds (NJP Housing 681)

The Motion explains what you're asking the court for. You're the Grantor. Include the name of your spouse or co-owner, if any.

If a divorce decree is applicable, attach it to your Motion and Declaration.



10. Homestead. In the first blank, you'll put the median sale price in your county of a single-family home in the preceding calendar year (https://wcrer.be.uw.edu/housing-market-data-toolkit/annual-median-price/). If that figure is more than \$125,000, you'll also put it in the second blank as the amount of your homestead exemption. If it's less than \$125,000, you'll put 125,000 in that second blank.

Tips for filling out Order to Disburse Surplus Funds (NJP Housing 682)

Fill out the **order** form the way you want the judge to sign it. This is a **proposed order** you'll ask the judge to sign at the hearing. If you're not sure about something in the order, leave it blank for the judge to complete.

Tip for filling out Affidavit of Mailing (NJP Housing 683)

You should have this Affidavit notarized.

()Tips for filling out Supplemental Affidavit of Mailing (NJP Housing 684)

This should be the last thing you file with the court. You should file it once you've received return mail, or responses from your initial mailing.

WashingtonLawHelp.org gives general information. It is not legal advice. Find organizations that provide free legal help on our <u>Get legal help</u> page. Recover surplus funds after a non-judicial foreclosure without

a lawyer Page 9

	Superior Court of Washington,	County of		
	e Trustee's Sale of the real property of	No		
(Grantor's name):		Motion and Declaration to Disburse Surplus Funds from Foreclosure Trustee's Sale		
		(No mandatory fo	orm)	
	Motion and Declaration	n to Disburs	e Surplus	Funds
	from Foreclos		•	
mortg	his form to get money back if your home was sold a age. Use this with a proposed Order to Disburse Su ing 682), Affidavit of Mailing (NJP Housing 683), and	ırplus Funds from Fore	closure Trustee's	Sale (NJP
You r	nust schedule a hearing on your Motion. Use Noti	ice of Hearing (NJP Ge	eneral 008) or a loc	cal court form.
1.	Grantor			
	My name is "Grantor") of property that was sold at a "Property"). The Property address is:	 Trustee's Sale resi	I am the forme ulting in surplus	er owner (the s funds (the
	Street address	city	state	zip
2.	Request			
	I ask the court to order the Superior Cou trustee's sale of the Property, as allowed			funds from the
3.	Statement of Issue			
	I am entitled to disbursement of \$	ne Property accord	ing to RCW 61	.24.080. This is
4.	Evidence relied upon			
	 Notice of Deposit of Surplus Funds from Trustee's Sale Pursuant to RCW 61.24.080 			
	 Mv declaration in this motion. 			

I declare: I am over age 18 and competent to testify. I make this declaration based on my own personal knowledge of the facts.

5.	Ownership		
	I purchased the Property on (<i>date</i>):		
	I owned the Property subject to a deed of trust dated The deed of trust was recorded as follows:		
	County where recorded:		
	Date of recording:		
	Recorded document number:		
6.	Primary Residence		
	I moved into the Property on (<i>date</i>):		
	I lived at the Property as my primary residence until (<i>date</i>):		
7.	Trustee's Sale		
	Due to financial hardship, I defaulted on the mortgage payments.		
	The Property was sold at a Trustee's sale on(date):		
	The total sale price was \$		
	After subtracting the trustee's total costs, the trustee deposited the net surplus with the court of \$		
	See Notice of Deposit of Surplus Funds Pursuant to RCW 61.24.080 Resulting From a Non-Judicial Foreclosure, filed with the court under this case number.		
8.	Notice		
	I'm providing notice to all parties who received notice of the deposit of surplus funds. I		

will file Proof of Mailing separately. (If I'm listed on the trustee's Proof of Service of Notice of Deposit of Surplus Funds, I don't require separate notice here as the moving party.)

9. **Authority and Argument**

RCW 61.24.080(3) provides that a party seeking disbursement of surplus funds resulting from a trustee's sale shall file a motion, giving notice at least 20 days before the hearing to all parties to whom the trustee mailed notice of the surplus. I am giving the required notice and am entitled to disbursement of the surplus funds.

10. Homestead

The Property is my homestead. I was the owner and lived in the property as my primary residence until forced to vacate by the non-judicial foreclosure.

RCW 6.13.030(1) provides that the homestead exemption amount is the greater of \$125,000 or the previous year's median sale price of a single-family home in the county where the home is located, whichever is greater. RCW 6.13.030(2) provides that the

"court shall use data from t previous year's median sal	ne Washington center for real es	state" to determine the		
previous years median sai	e price.	ington center for real estate" to determine the		
	price of a home in this county w ington Center for Real Estate R			
	bit A to this Motion a copy of dat I from wcrer.be.uw.edu/housing			
Consequently, my homestored with the consequently, my homestored with the constant of the consequence of the	ad exemption is \$h the court.	, which covers the		
11. Proposed Order				
I am providing a proposed	order with this motion.			
Person making this motion fills	out below:			
I declare under penalty of perjury provided on this form are true.	nder the laws of the state of Wa	ashington that the facts I have		
Signed at (city and state):		Date:		
>				
Person making this motion signs h	ere Print name here			
I agree to accept legal papers for	nis case at (<i>check all that apply</i>)):		
[] the following address (this doe	s not have to be your home add	ress):		
Street or mailing address	city	state zip		
[] Email:				

[

	Superior Court of Washington	, County of		
In re	Trustee's Sale of the real property of	No.		
(Grantor's name):		Order to Disburse Surplus Funds from Foreclosure Trustee's Sale		
		(No mandatory	form)	
		Clerk's action r	equired: 2	
mortga Sale (N	Order to Disk from Foreclo his form to get money back if your home was sold age. Use this together with a Motion and Declaration NJP Housing 681), Affidavit of Mailing (NJP Housing 19 684).	Sure Trusted at a foreclosure auction to Disburse Surplu	ee's Sale ion for more than yo is Funds from Forec	losure Trustee's
1.	Basis			
1.	Grantor (name): made a Motion to Disburse Surplus Funds from Foreclosure Trustee's Sale after foreclosure of the property located at:			
	Street address	city	state	zip
	Grantor has given proper notice to all in or Hand Delivery.	nterested parties a	s shown by the f	Proof of Mailing
	The court held a hearing on (<i>date</i>): this order.	The	court finds good	l cause to issue
2.	Order			
	Clerk's action: Upon presentation of this order, the Superior Court Clerk of this county is directed to disburse the surplus funds from the sale of the property to the Grantor named in section 1 above.			
	The amount disbursed shall be \$, less	any clerk's fees	
	The Clerk shall issue a check made pa	yable to the Grant	or.	

(C	Check one):				
	The Grantor shall pick up th	e check in person.			
	The clerk shall mail the check to Grantor at the following address:				
	Mailing address	city	state	zip	
Ordered.					
	•				
Date	Ju	udge or Commissioner			
Presented	d by the Grantor				
)					
Grantor s	ign here	Grantor print name			

Court of Washing	ton, County of	
Petitioner / Plaintiff:	No	
	Notice of Hearing	
	(No mandatory form)	
And Respondent / Defendant:	Clerk's action required: 1	
	[] Need interpreter (language)	
Notice of	of Hearing	
To the Court Clerk and all parties:		
1. A court hearing has been scheduled:		
	me (check one) [] a.m. [] p.m.	
at: at: court's address	ininroom or department	
docket / calendar or judge / commiss	ioner's name	
[] Online or phone:		
2. The purpose of this hearing is (special	f./\·	
	titioner/Plaintiff [] Respondent/Defendant	
Person asking for hearing signs here Prir	nt name here (and WSBA #, if lawyer) Date	
agree to accept legal papers for this case at (check all that apply):	
] the following address (this does not have to	o be your home address):	
Street or mailing address	city state zip	
] Email:		

	Superior Court of Washington,	County of		
In re	Trustee's Sale of the real property of	No		
(Grar	ntor's name):	Affidavit of Mailing (Motion to Disburse Surplus Funds)		
		(No mandatory form)		
	Affidavit of Mailing (Moti	on to Disburse Surplus Funds)		
NJP H	s form together with a Motion and Declaration to ousing 681) and proposed Order (NJP Housing 6	Disburse Surplus Funds from Foreclosure Trustee's Sale		
	declares:			
1.	My name is: I am competent to be a witness in this c	ase.		
2.	Documents served. I served copies of the following documents:			
	 Motion and Declaration to Disburse Surplus Funds from Foreclosure Trustee's Sale 			
	 Order to Disburse Surplus Funds from Foreclosure Trustee's Sale (PROPOSED) 			
	 Notice of Hearing 			
	• (Other documents, if any):			
3.	above by both first class and certified	, I served the documents listed mail (return receipt requested) to the following shown on the Trustee's Affidavit of Mailing:		
	(List all names and addresses from the from Foreclosure" submitted to the cour	"Notice of Deposit of Surplus Funds Resulting t by the Trustee)		

I declare under penalty of perjury under the on this form are true.	ne laws of the state of Washington that the statements
Signed at (city and state):	Date:
• · · · · · · · · · · · · · · · · · · ·	_
Server signs here	Print name
Notarization	
State of Washington County of	
Signed or attested before me on (date) by (name)	
	Signature of Notary
	Notary Public for the State of Washington.
	My commission expires

	Superior Court of Washington,	County of		
In re Trustee's Sale of the real property of (Grantor's name):		No Supplemental Affidavit of Mailing (Motion to Disburse Surplus Funds) (No mandatory form)		
		I Affidavit of Mailing ourse Surplus Funds)		
	is form to provide more information after filing an lousing 683).	Affidavit of Mailing (Motion to Disburse Surplus Funds)		
Serve	r declares:			
1.	My name is: I am competent to be a witness in this of	ase.		
2.	Documents served. I served copies of	the following documents:		
	 Motion and Declaration to Disburse Surplus Funds from Foreclosure Trustee's Sale 			
	 Order to Disburse Surplus Funds from Foreclosure Trustee's Sale (PROPOSED) 			
	 Notice of Hearing 			
	(Other documents, if any):			
3.		, I served the documents listed mail (return receipt requested) to the following shown on the Trustee's Affidavit of Mailing:		
	(List all names and addresses from the from Foreclosure" submitted to the cour	"Notice of Deposit of Surplus Funds Resulting t by the Trustee)		

	cards. As of today's date, I have received signed return cards showing ed mail from the following people:
(List names and	attach copies of the signed cards, if any. If none, say "None.")
	pened certified mail. As of today's date, certified mail to the following n returned to me un-opened:
(List names, if a	ny. If none, say "None.")

4.

5.

6.	Returned un-opened first class mail. As of today's date, first class mail to the following people has been returned to me un-opened:				
	(List names, if any. If none, say "	(List names, if any. If none, say "None.")			
7.	No other mailings or signed re	turn cards were returned to me.			
	clare under penalty of perjury under in the state of the	the laws of the state of Washington that the statement	S		
Sign	ed at (city and state):	Date:			
)					
Serv	er signs here	Print name			
Nota	rization				
	e of Washington nty of				
	•				
_	ed or attested before me on (<i>date</i>) <i>name</i>)				
Dy (II	<u> </u>	·			
		•			
		Signature of Notary			
		Notary Public for the State of Washington.			
		My commission expires			