

Recover surplus funds after a non-judicial 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 sold in foreclosure 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, talk to a lawyer.

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 you to sign a deed transferring title to the foreclosed property.

If you were the victim of a scam, you may file a complaint with the state Attorney General’s consumer protection division office (<https://www.atg.wa.gov/consumer-protection>). You should also try to talk to a lawyer.

2. Step-by-step

1. **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. **Presente sus originales** en la Secretaría del Tribunal Superior. Entregue al funcionario los originales de todos los formularios que va a presentar **excepto** que pregunte al funcionario qué hacer con los originales de sus órdenes propuestas, si las hay. Siga las instrucciones del funcionario.

Pida al funcionario de la secretaría del juzgado que timbre sus copias para mostrar la fecha en que usted presentó y registró los originales. Quédese con las copias que el funcionario timbre. El funcionario se queda con el original.

Entregue copias de cortesía al juez, si es necesario en su condado.

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. **Dígale al secretario del juez que desea una copia de la orden.** Siga las instrucciones del secretario sobre cómo obtener copias.
11. **After the hearing,** follow the judge's order about what to do next.

3. Hearing

Prepárese para la audiencia

Intente ir al juzgado antes del día de su audiencia o consulte la página web de la secretaría judicial para ver si puede ver una audiencia por Internet. Observe cómo el juez realiza las audiencias. Trate de preparar algunos apuntes sobre los puntos principales que va a querer presentar en su audiencia.

Organice su documentación. Planee llevar su juego de documentos judiciales y sus copias de cualquier papel que las otras partes le hayan dado en respuesta. Lleve copias adicionales de cualquier orden propuesta que quiera que firme el juez.

Llegue temprano a su audiencia. Intente planificar antes del día de la audiencia cómo va a ir y cuánto tardará. Dese tiempo para pasar por seguridad y llegar a la sala correcta. Si no llega a tiempo, el juez podría cancelar la audiencia o la otra parte podría ganar.

Lleve su documentación, un bloc de papel y una pluma de tinta oscura para tomar apuntes. Trate de no llevar a sus niños si puede hacer otros arreglos para ellos. Por lo general, los jueces no permiten que niños se sienten en la sala del juzgado.

Cuando llegue a la sala del juzgado, diga a la persona a cargo (al secretario del juez o al alguacil) su nombre y el nombre y número de su caso. Tome asiento. Cuando el juez entre a la sala, póngase de pie.

Si su audiencia es en línea, siga estos consejos para las audiencias por teléfono y por video.

Su caso será uno de varios programados para la misma hora. Escuche al juez y espere a que diga su nombre. Cuando digan su nombre, diga que está presente. Permanezca en la sala hasta que llamen su caso para la audiencia.

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 talk with a 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.

La cantidad de la exención para la residencia familiar es la cantidad que sea mayor entre (a) \$125,000; o (b) la mediana del precio de venta de una vivienda unifamiliar en su condado el año calendario previo (<https://wcrer.be.uw.edu/housing-market-data-toolkit/annual-median-price/>).

El patrimonio (su capital) es la cantidad de dinero con la que usted se quedaría después de vender su vivienda y pagar la hipoteca y otros gravámenes.

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)

Llene el formulario de la **orden** de la manera que usted quiere que el juez la firme. Esta es una **orden propuesta** que usted le pedirá al juez que firme en la audiencia. Si no está seguro sobre algo en la Orden, déjelo en blanco para que el juez lo 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.

Superior Court of Washington, County of _____

In re Trustee's Sale of the real property of
(*Grantor's name*):

No. _____
Motion and Declaration to Disburse Surplus
Funds from Foreclosure Trustee's Sale
(No mandatory form)

**Motion and Declaration to Disburse Surplus Funds
from Foreclosure Trustee's Sale**

Use this form to get money back if your home was sold at a foreclosure auction for more than you owed on the mortgage. Use this with a proposed Order to Disburse Surplus Funds from Foreclosure Trustee's Sale (NJP Housing 682), Affidavit of Mailing (NJP Housing 683), and Supplemental Affidavit of Mailing (NJP Housing 684).

You must schedule a hearing on your Motion. Use Notice of Hearing (NJP General 008) or a local court form.

1. Grantor

My name is _____. I am the former owner (the "Grantor") of property that was sold at a Trustee's Sale resulting in surplus funds (the "Property"). The Property address is:

Street address _____ city _____ state _____ zip _____

2. Request

I ask the court to order the Superior Court Clerk to disburse to me surplus funds from the trustee's sale of the Property, as allowed by RCW 61.24.080(3).

3. Statement of Issue

I am entitled to disbursement of \$_____ from funds held by the Superior Court Clerk from the Trustee's Sale of the Property according to RCW 61.24.080. This is the entire amount of the surplus deposited with the Court, less any clerk's fee.

4. Evidence relied upon

- Notice of Deposit of Surplus Funds from Trustee's Sale Pursuant to RCW 61.24.080
- My 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 (date): _____.

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 (date): _____.

I lived at the Property as my primary residence until (date): _____.

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 the Washington center for real estate" to determine the previous year's median sale price.

Last year, the median sale price of a home in this county was \$ _____, as determined by the Washington Center for Real Estate Research (WCFRER) of the University of Washington.

- I am attaching as **Exhibit A** to this Motion a copy of data compiled by the WCFRER, downloaded and printed from wcrer.be.uw.edu/housing-market-data-toolkit/annual-median-price/).

Consequently, my homestead exemption is \$ _____, which covers the entire surplus deposited with the court.

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 under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at (*city and state*): _____ Date: _____



Person making this motion signs here _____ *Print name here* _____

I agree to accept legal papers for this case at (*check all that apply*):

[] the following address (*this does not have to 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
(Grantor's name):

No. _____

Order to Disburse Surplus Funds from
Foreclosure Trustee's Sale

(No mandatory form)

Clerk's action required: 2

Order to Disburse Surplus Funds from Foreclosure Trustee's Sale

Use this form to get money back if your home was sold at a foreclosure auction for more than you owed on the mortgage. Use this together with a Motion and Declaration to Disburse Surplus Funds from Foreclosure Trustee's Sale (NJP Housing 681), Affidavit of Mailing (NJP Housing 683), and Supplemental Affidavit of Mailing (NJP Housing 684).

1. Basis

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 interested parties as shown by the Proof of Mailing or Hand Delivery.

The court held a hearing on (date): _____. The court finds good cause to issue this order.

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 payable to the Grantor.

(Check one):

- The Grantor shall pick up the check in person.
- The clerk shall mail the check to Grantor at the following address:

Mailing address

city

state

zip

Ordered.

Date

Judge or Commissioner

Presented by the Grantor

Grantor sign here

Grantor print name

Court of Washington, County of _____

Petitioner / Plaintiff:

No. _____

Notice of Hearing

(No mandatory form)

And Respondent / Defendant:

Clerk's action required: 1

[] Need interpreter (language) _____

Notice of Hearing

To the Court Clerk and all parties:

1. A court hearing has been scheduled:



for: _____ at: _____ (check one) [] a.m. [] p.m.
date time

at: _____ in _____
court's address room or department

docket / calendar or judge / commissioner's name

[] Online or phone: _____

2. The purpose of this hearing is (specify): _____

as requested by the (check one) [] Petitioner/Plaintiff [] Respondent/Defendant



Person asking for hearing signs here

Print name here (and WSBA #, if lawyer)

Date

I agree to accept legal papers for this case at (check all that apply):

[] the following address (this does **not** have to be your home address):

city

state

zip

[] Email: _____

Superior Court of Washington, County of _____

In re Trustee's Sale of the real property of
(Grantor's name):

No. _____

Affidavit of Mailing (Motion to Disburse
Surplus Funds)

(No mandatory form)

Affidavit of Mailing (Motion to Disburse Surplus Funds)

Use this form together with a Motion and Declaration to Disburse Surplus Funds from Foreclosure Trustee's Sale (NJP Housing 681) and proposed Order (NJP Housing 682).

Server declares:

1. **My name is:** _____
I am competent to be a witness in this case.

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. **Mailing.** On (date): _____, I served the documents listed above by both **first class** and **certified mail (return receipt requested)** to the following people at their last known addresses as shown on the Trustee's Affidavit of Mailing:
(List all names and addresses from the "Notice of Deposit of Surplus Funds Resulting from Foreclosure" submitted to the court by the Trustee)

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (city and state): _____ Date: _____

1

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)

**Supplemental Affidavit of Mailing
(Motion to Disburse Surplus Funds)**

Use this form to provide more information after filing an Affidavit of Mailing (Motion to Disburse Surplus Funds) (NJP Housing 683).

Server declares:

1. **My name is:** _____.
I am competent to be a witness in this case.
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. **Mailing.** On (date): _____, I served the documents listed above by both **first class** and **certified mail (return receipt requested)** to the following people at their last known addresses as shown on the Trustee's Affidavit of Mailing:
(List all names and addresses from the "Notice of Deposit of Surplus Funds Resulting from Foreclosure" submitted to the court by the Trustee)

4. **Signed return cards.** As of today's date, I have received signed return cards showing receipt of certified mail from the following people:

(List names and attach copies of the signed cards, if any. If none, say "None.")

5. **Returned un-opened certified mail.** As of today's date, certified mail to the following people has been returned to me un-opened:

(List names, if any. If none, say "None.")

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 "None.")

7. **No other mailings or signed return cards were returned to me.**

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

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 _____.