

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 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 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. **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 [tips for phone and video 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 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.

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.

Tips for filling out the Notice of Hearing (NJP General 008)

Fill out the **Notice of Hearing** with details from the court clerk. You can try to get that information over the phone, or in-person when you file your papers. When choosing a date, leave yourself enough time to have the other party served.

Many counties require you to use their own form. Ask the clerk if they use a special Notice of Hearing form. If not, use ours.

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) Clerk's action required: 1 [] Need interpreter (language) _____
And Respondent / Defendant: _____	

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
Street or mailing address

[] 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*)

WashingtonLawHelp.org
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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)

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 _____.