

# Napa County Policy Regarding the Submission of Claims for Excess Proceeds

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## **1. PURPOSE**

- A. The purpose of this policy is to clearly define the process and requirements for claims for excess proceeds filed by parties of interest, as defined by California Revenue and Taxation Code section 4675, regarding a property that has been sold by the Napa County Treasurer-Tax Collector (TTC) at a sale of tax-defaulted property.
- B. California Revenue and Taxation Code section 4675(d) provides that any claim for excess proceeds shall contain any information and proof deemed necessary by the Board of Supervisors to establish a claimant's rights to all or any portion of excess proceeds. Through this policy the Board of Supervisors establishes the necessary information and proof necessary to satisfactorily establish a claimant's right to all or any portion of excess proceeds.
- C. Pursuant to California Revenue and Taxation Code section 4675.1, the Napa County TTC is authorized to establish a claimant's right to all or any portion of excess proceeds for those cases not covered by this policy.

## **2. NOTIFICATION**

- A. When excess proceeds from the sale of tax-defaulted property exceeds one hundred fifty dollars (\$150) the Napa County TTC shall provide notice of the right to claim the excess proceeds no later than ninety (90) days after the sale of the property.
- B. Notice shall be mailed to the last known mailing address of the parties of interest. The Napa County TTC shall make a reasonable effort to obtain the name and last known mailing address of parties of interest by conducting an examination of the assessment of the property beginning with the year of delinquency to and including that of the last equalized roll. The Napa County TTC shall also mail a Napa County TTC Excess Proceeds Claim Form and Instructions (as further detailed in Section 3.1) with the notice. The claim form and instructions are also available for download on the Napa County TTC website.
- C. If, after a reasonable effort has been made, the last known address of a party of interest cannot be found, the Napa County TTC shall publish notice of the right to claim excess proceeds in a newspaper of general circulation in the county. Publication is not required if the cost to publish is equal to or greater than the amount of the excess proceeds. Publication shall be made in the manner required by California Revenue and Taxation Code section 4676(c).

## **3. CLAIM REQUIREMENTS**

California Revenue and Taxation Code section 4675 requires claims for excess proceeds must be filed within one (1) year from the date of recording of the deed to the purchaser and requires

any claim for excess proceeds to contain all information and proof deemed necessary by the Board of Supervisors to establish a claimant's rights to all or any portion of excess proceeds. To this end the Napa County Board of Supervisors has determined that the following information and proof is required on the claim form and as supporting documentation in order to establish a claimant's rights to all or any portion of excess proceeds.

### **3.1 INFORMATION ON FORM**

- A. Napa County TTC Excess Proceeds Claim Form. A claimant must use the Excess Proceeds Claim Form developed by the Napa County TTC office. The Excess Proceeds Claim Form is mailed to parties of interest, along with notice and instructions, and is also available for download on the Napa County TTC website.
- B. The Excess Proceeds Claim Form will also be provided upon request via standard USPS mail, email, or fax.
- C. Failure to provide any information required on the Excess Proceeds Claim Form will result in denial of the claim.
- D. The Excess Proceeds Claim Form must contain the following information:
  - 1. Assessor Parcel number;
  - 2. Last Assessee/Owner of Record;
  - 3. Property Address;
  - 4. Date of tax sale;
  - 5. Date tax deed recorded;
  - 6. Final date to submit claim;
  - 7. Amount or percentage of claim from available excess proceeds;
  - 8. Filing status (e.g. Lienholder of Record; Owner of Record; Qualified Heir of Owner of Record; Assignee of a Party of Interest);
  - 9. Name, address, and telephone number; and
  - 10. Photo Identification.
    - a. Driver's license, State identity card, Military identification card, passport, etc.
    - b. Legal entities must also include photo identification of authorized signer.
    - c. If claimant's name is different from the lienholder or person with title of record, provide documentation that verifies your name change, such as marriage license or court order.
  - 11. The claim form must be verified under penalty of perjury and notarized. Affirmation must be in accordance with Government Code Section 8202.

### **3.2 SUPPORTING DOCUMENTATION**

The following documentation is required to prove a claim for excess proceeds. All documentation must be submitted with the valid claim form.

Additionally, Napa County does not accept lost document affidavits in lieu of the original documents. Copies of any promissory note(s) and/or modifications of the promissory note(s) are unacceptable as such instruments are negotiable certificates that may be sold, assigned, transferred or pledged by indorsement to the original instrument itself without a separate assignment of the security. The only alternative to providing an original promissory note is a

court order pursuant to California Civil Code section 3415 which establishes the existence and terms of a lost note.

Where original documents are submitted they will be returned to the claimant(s) upon request.

**A. MORTGAGE LENDERS AND DEED OF TRUST BENEFICIARIES**

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

1. The original promissory note and all modifications (if any) (or court order pursuant to California Civil Code section 3415);
2. The original or recorded copy of the Deed of Trust/Mortgage;
3. The original or recorded copy of assignments (if any); and
4. A statement setting forth all of the following:
  - 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;
  - d. the amount still due and payable as of the date of the sale of the tax defaulted property; and
  - e. if the note was in default according to its terms at the time of sale (other than for defaulted taxes) you must also submit documentation evidencing all collection efforts.

**B. JUDGMENT CREDITORS**

Judgment creditors must submit all of the following:

1. Proof that the judgment debtor is the person(s) who possessed record ownership of the property sold at the tax sale;
2. A recorded copy of the judgment(s);
3. Statement or Orders setting forth any modifications(s) to the Judgment;
4. Total amount of payments received and date(s) received; and
5. Amount still due and payable as of the date of the sale of the tax defaulted property.

**C. PERSON(S) WITH TITLE OF RECORD**

1. Person(s) with title of record must submit original recorded documents (e.g., deed, death certificate, court order) to support your claim. Copies of these documents may be accepted only if accompanied by additional documentation sufficient to support your claim (e.g., utility bills for the property in the claimant(s)'s name such as power, television, internet subscriptions, and original tax bills). If copies are submitted, rather than original recorded documents, the supporting documentation must prove that the claimant was the person with title of record at the time of sale.
2. Person(s) with title of record must additionally submit the following, if applicable:
  - a. If title to the property was in a recorded trust, you must submit the original trust document indicating that the claimant(s) is/are the trustee(s) or successor trustee(s) of the trust authorized to file all claims on behalf of the trust.
  - b. Should the claimant be unable to produce a recorded grant deed, proof of title of record may be established through other recorded instruments,

Assessor's records, or other information, in the sole discretion of the Napa County TTC.

**D. QUALIFIED HEIRS OF PERSON(S) WITH TITLE OF RECORD**

1. A qualified heir must submit all documentation required to prove his or her legal standing as an heir to the Person(s) with Title of Record.
2. A qualified heir must additionally submit the following, if applicable:
  - a. A notarized probate affidavit, verified under penalty of perjury and executed by all claimant(s), pursuant to California Probate Code sections 13100-13116. A form is available for download on the County TTC website.
  - b. Last Will and Testament(s), if applicable.
  - c. Any other information that establishes a qualified heir's claim, in the sole discretion of the Napa County TTC.

**E. CLAIMS FILED ON BEHALF OF ANY BUSINESS**

1. All claim forms must be signed by an individual with corporate authority for the business, such as an officer, general partner, or sole proprietor. In the case of a corporation, the parent corporation is merely a shareholder of its subsidiary corporation; it does not own the corporate property of its subsidiary. Therefore, a parent corporation, regardless of the percentage of shares owned, is not a party of interest of its subsidiary's recorded lien or title of record.
2. All business entities must provide proof of their Federal Employer Identification Number (FEIN) assigned to the business. Suggested documents include:
  - a. "Letter of Confirmation" from the IRS showing assignment of the FEIN;
  - b. Copy of received tax statement, such as:
    - i. IRS Form 1098, statement of interest paid; or
    - ii. IRS Form 1099-INT or 1099-DIV, statement of interest or dividends earned;
  - c. IRS assignment of FEIN internet confirmation page; and/or
  - d. Tax returns, IRS Form SS-4 application or W-9 will not be accepted to verify FEIN.

3. In addition to the foregoing, the following documentation is also required, as applicable:

**a. CORPORATION**

Provide proof that claimant is an officer of the corporation. Suggested documents include the following, but any documentation must demonstrate entitlement and authority to claim on behalf of a business:

- i. Corporate Resolution and/or The Articles of Incorporation;
- ii. The most recent Statement of Information (or equivalent from state in which business operates) filed with the Secretary of State. 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;

- iii. Certificate of Dissolution; and/or
- iv. Other documents may be accepted if they prove claimant is a corporate officer.

**b. LIMITED LIABILITY COMPANY**

Provide proof claimant is a manager or officer of the Limited Liability Company. Suggested documents include the following, but any documentation must demonstrate entitlement and authority to claim on behalf of a business:

- i. Company Resolution;
- ii. Operating Agreement;
- iii. Articles of Organization;
- iv. The most recent Statement of Information filed with the Secretary of State. 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;
- v. Certificate of Dissolution; and/or
- vi. Other documents may be accepted if they prove claimant is a manager or officer.

**c. LIMITED PARTNERSHIP**

Provide proof claimant is a general partner of the Limited Partnership. Suggested documents include the following, but any documentation must demonstrate entitlement and authority to claim on behalf of a business:

- i. Certificate of Limited Partnership filed with the Secretary of State. If the business e-filed, provide a copy of the document and a copy of the payment receipt provided by the Secretary of State;
- ii. Partnership Agreement;
- iii. Certificate of Dissolution; and/or
- iv. Other documents may be accepted if they prove that the claimant is a general partner.

**d. GENERAL PARTNERSHIP**

Provide proof claimant is a general partner of the General Partnership. Suggested documents include the following, but any documentation must demonstrate entitlement and authority to claim on behalf of a business:

- i. Statement of Partnership Authority;
- ii. Partnership Agreement;
- iii. Certificate of Dissolution; and/or
- iv. Other documents may be accepted if they prove claimant is a general partner.

**e. SOLE PROPRIETORSHIP**

Provide the following documentation:

- i. Current or final federal tax return, including Schedule C;
- ii. Most current business license or facility permit, if required for the jurisdiction where the sole proprietorship is located; and
- iii. Fictitious Business Name filing (filed with county), if applicable.

**f. MERGER BUSINESS**

If you are claiming for a business that has merged with or sold to another business, provide a copy of the merger or purchase agreement, in addition to the documentation required above for the type of business entity that your business currently takes or previously took.

**g. SUSPENDED BUSINESS**

In addition to the documentation required above for your business's entity type, if you are claiming for a business that was previously suspended by either the Secretary of State or the Franchise Tax Board (FTB), provide proof that the business is no longer suspended, which may include:

- i. If the business was suspended by the Secretary of State, provide a Certificate of Good Standing. You can obtain the certificate by contacting the Secretary of State Information Services Office at (916) 657-5448, or by following the instructions located on the Secretary of State's website that links to their "Information Requests" page.
- ii. If the business was suspended by the FTB, provide a copy of an Entity Status Letter. You can obtain the letter by contacting the FTB at: Franchise Tax Board, PO Box 942857, Sacramento, Ca 94244-2250, or by visiting the Franchise Tax Board's website.

**h. ASSIGNEES OF A PARTY OF INTEREST**

- i. All proof required of any qualified claimant as defined in Section 3.2(a), (b), (c), (d), or (e) of this policy, as it applies to the particular legal standing of the assigning party;
- ii. The notarized affidavit, contained in the Claim Form, containing the following information:
  - a. Proof that the amount and source of excess proceeds was disclosed to the party of interest; and
  - b. That the party of interest 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
- iii. Contact information of the party of interest, including name, address, and phone number.

**4. SUBMISSION OF CLAIM**

- A. An individual claimant must file his or her own claim, unless he or she has chosen to assign his or her rights to another party.
- B. Multiple claimants may submit their individual claims, together in one envelope, only if they are sharing back-up materials. However a separate claim processing fee will be charged for each individual claim submitted.
- C. Multiple claimants (e.g. siblings, heirs, husband and wife) may file one joint claim with shared back-up materials only if they possess equal ownership rights within the same supporting documents (e.g. 50% each, 25% each, husband and wife as joint tenants, etc.). In this case there will be one claim processing fee charged, which will also cover one disbursement warrant. Each additional disbursement warrant beyond the first will be charged an additional fee of thirty dollars (\$30).
- D. Mail completed claims and all attachments to:  
Robert G. Minahen  
Napa County Treasurer-Tax Collector  
1195 Third Street, Suite 108  
Napa, CA 94559
- E. Claims will be accepted from agents, attorneys in fact, and persons with valid powers of attorney. Disbursements will be sent to the address of the attorney, agent, or attorney in fact, but shall only be made payable to the principal.
- F. Claimants will receive a letter from the Napa County TTC indicating a claim was received, as long as their claim was filed correctly on the required Napa County TTC Claim Form, and received within the deadline to file said claims.
- G. Pursuant to California Revenue & Taxation Code section 4675(a), any claim must be postmarked or stamped as received by the TTC on or before the date of one year after the recordation of the tax collector's deed to the purchaser. Under no circumstances shall any claimant be given additional time to file a valid Napa County TTC Claim Form, beyond the one year filing deadline. It is the claimant's responsibility to submit a complete form, including all necessary supporting documentation. Please read and follow all instructions before submitting a claim. The Napa County TTC's office is not responsible for informing the claimant of missing attachments or incomplete claims.
- H. Submission under Assignment. A party of interest in the property at the time of the sale may assign his or her right to claim the excess proceeds only by completing the "Assignment of Rights" section of the Napa County TTC Excess Proceeds Claim Form. This section of the form serves as a dated, written instrument that explicitly states that the right to claim the excess proceeds is being assigned; and that each party to the proposed assignment has disclosed to the other party all facts of which he or she is aware of relating to the value of the right that is being assigned. Any attempted assignment that does not comply with these requirements shall have no effect and will be disallowed.

## **5. CLAIM REVIEW AND DISPOSITION**

- A. Pursuant to California Revenue and Taxation Code section 4675, claims will be processed after one (1) year has passed from the date of the recording of the deed to the purchaser. In order to receive consideration by the Napa County Board of Supervisors, completed claims

must be postmarked before the expiration of one (1) year following the date of the recording of the deed to the purchaser.

- B. The Napa County TTC does not guarantee any preliminary review of claims received throughout the one (1) year period; however, as time permits, TTC staff will make every attempt to review those claims that are filed early in an effort to better serve the public. Therefore, as of the effective date of this policy, completed claims filed with the office of the Napa County TTC, within the first eleven (11) months following the recording of the deed to the purchaser, may undergo a preliminary review by staff. That preliminary review may enable staff to inform the claimant(s) of any necessary documentation that might not have been submitted before the claim is forwarded to the legal department for final review and processing. At that time, staff will make only one (1) written attempt to notify the claimant(s) of their preliminary findings in a Preliminary Claim Review letter, at the claimant's address shown on the Napa County TTC Excess Proceeds Claim Form, and provide them with information regarding what appears to be incomplete. The claimant(s) will have an opportunity to submit any additional documentation necessary to complete their original claim process up to the original deadline date for filing said claim. No time extensions will be permitted.
- C. Claims received during the final thirty (30) days of the one (1) year filing period will not undergo a preliminary review by staff. Claims received during that timeframe will only be reviewed and processed by the legal department following the deadline to file a claim for excess proceeds, which is one (1) year from the date of the recording of the deed to the purchaser.
- D. The Napa County TTC does not accept unsolicited supporting documentation after the final date to submit claims. The only supporting documentation that will be accepted separate from the original claim packet will be solicited documentation that has been specifically requested by TTC staff in a Preliminary Claim Review process. That specific documentation must be accompanied by a copy of the Preliminary Claim Review letter from the Napa County TTC office and must be received by the TTC's office, postmarked on or before the final date to file a claim for excess proceeds.
- E. In the event of competing claims that the TTC does not believe can be resolved with the requisite certainty on the basis of the documentation submitted, the TTC may elect to interplead the excess proceeds in controversy for a judicial determination.
- F. Once the TTC makes a final decision as to a claim, a letter of final determination will be sent to the claimant. Pursuant to California R&T Code section 4675(g), the deadline to commence any action or proceeding to review the decision of the TTC shall be 90 days after the date notice of the TTC's final decision is mailed to the claimant.
- G. Excess proceeds will be distributed within 90 days of the final decision and expiration of any review period.