STANISLAUS COUNTY
APPROVED ON: February 11, 2020
BY BOARD OF SUPERVISORS RESOLUTION # 2020-0062
EXCESS PROCEEDS POLICY AND PROCEDURES

PURPOSE

California Revenue and Taxation Code Division 1, Part 8, Chapter 1.3 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.

The Stanislaus County Board of Supervisors through Resolution 2020-_____has authorized the Stanislaus 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, 4675(d)]

POLICY AND PROCEDURES

1. NOTIFICATION

1.1. When proceeds from the sale of tax-defaulted property exceed the amount of defaulted tax by at least 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. (Attachment 1 – Notice of Excess Proceeds from Sale of Tax-Defaulted Property)

1.2. The Treasurer-Tax Collector's Office will mail a notice of the right to claim excess proceeds 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 will make a reasonable effort to obtain the name and last known mailing address of interested parties. [Cal. Rev. & Tax Code, §§ 4675, 4676(c)]

1.3. 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, once a week for three weeks and within 90 days after the sale of the property, 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 Stanislaus County Treasurer-Tax Collector's Claim for Excess Proceeds form (Attachment 2 – Claim for Excess Proceeds), with supporting documentation, which provides information and proof of the claimant's right to all or any portion of excess proceeds.

2.1. CLAIM FOR EXCESS PROCEEDS FORM

2.1.1. Along with Notice of Excess Proceeds to Interested Parties, the Treasurer-Tax Collector's Office will mail a Stanislaus County Treasurer-Tax Collector's Claim for Excess Proceeds form to the interested parties it has located after making a reasonable search. (Attachment 2 – Claim for Excess Proceeds)

2.1.2. An interested party or other claimant must use the Stanislaus County Claim for Excess Proceeds form to make a claim for excess proceeds.

2.1.3. If, for whatever reason, an interested party or other claimant does not receive the Claim for Excess Proceeds form or needs additional copies, the Claim for Excess Proceeds form may be obtained by downloading it from the Stanislaus County website at www.stancounty.com/tr-tax/auction/ or upon request via email to taxes@stancounty.com or via standard U.S. Postal Service mail (if a claimant provides a self-addressed, stamped envelope for delivery) to:

Stanislaus County Treasurer-Tax Collector
ATTN: EXCESS PROCEEDS
P.O. Box 859
1010 Tenth Street, Suite 2500
Modesto, CA 95354

2.1.4. Failure to receive a Claim for Excess Proceeds form from the Treasurer-Tax Collector's Office is not an excuse for failing to properly and timely submit a claim on a Claim for Excess Proceeds form, along with any necessary supporting documentation.

2.2. INFORMATION ON FORM

The Claim for Excess Proceeds form must include the following information:

2.2.1. Assessor Parcel Number (APN);

2.2.2. Last assessee/owner of record;

2.2.3. Property address;

2.2.4. Date of tax sale;

2.2.5. Date the tax deed was recorded;

2.2.6. Final date to submit claim for excess proceeds (as provided by the Treasurer-Tax Collector's office);

2.2.7. The amount or percentage of excess proceeds of the claim (the amount of available excess proceeds from each tax sale will be made available on the Stanislaus County Treasurer-Tax Collector's website at www.stancounty.com/tr-tax/auction/);

2.2.8. Claimant's filing status:

2.2.8.1. 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");

2.2.8.2. Lienholder of Record;

2.2.8.3. Qualified Heir of Person with Title of Record; or

2.2.8.4. Assignee of an Interested Party;

2.2.9. Claimant's name, address, telephone number, email address and signature; and

2.2.10. In order to be considered complete, the Claim for Excess Proceeds form must be verified under penalty of perjury and properly notarized. [Cal. Civ. Code, § 1189]

2.3. SUPPORTING DOCUMENTATION

2.3.1. In addition to filing a completed, notarized, Claim for Excess Proceeds form, the claimant must also fill out and file applicable documentation described in Appendices A and B.

2.3.2. In those cases where original documents are required, the Treasurer-Tax Collector's Office will not accept affidavits of lost documentation in place of the original documents.

2.3.3. The Treasurer-Tax Collector's Office will return original documents to the claimant(s) upon request provided the claimant(s) submit a self-addressed envelope, with sufficient postage, with the completed Claim for Excess Proceeds form.

3. SUBMISSION OF CLAIM

3.1. The deadline (the "Deadline") to file a completed claim with the Stanislaus 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. If mailed, the claim shall be postmarked on or before the Deadline.

3.2. A claimant may neither file, nor amend, a claim after the Deadline. It is the claimant's sole responsibility to timely submit a complete claim, including all necessary supporting documentation.

3.3. A claimant may not rely on the Treasurer-Tax Collector's Office to approve or request additional information to supplement incomplete claims.

3.4. The claimant must mail the completed Claim for Excess Proceeds form, along with all supporting documentation, to:

Stanislaus County Treasurer-Tax Collector
ATTN: EXCESS PROCEEDS
P.O. Box 859
1010 Tenth Street, Suite 2500
Modesto, CA 95354

3.5. Each interested party must file his/her own claim, unless:

3.5.1. The interested party has assigned his/her rights to another party. When the interested party has assigned his/her rights, the claim must include information and documentation establishing the assignment described in Appendices A and B (Attachment 3 – Assignment of Rights to Collect Excess Proceeds); or

3.5.2. 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 are 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.

3.6. Generally, each claimant must submit his/her claim in a separate envelope. However, multiple claimants may submit their individual claims (each claim must be on a separate Claim for Excess Proceeds form) in a single envelope if they share supporting documentation.

3.7. For each claim filed on a Claim for Excess Proceeds form and received by the Deadline, the Treasurer-Tax Collector's Office will send the claimant an Excess Proceeds Acknowledgement Letter. (Attachment 4 – Excess Proceeds Acknowledgement Letter)

4. PRELIMINARY CLAIM REVIEW

4.1. 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. The 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.

4.2. 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 for Excess Proceeds 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.

4.3. 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.

4.4. The Treasurer-Tax Collector's Office will not accept claims, amendments to claims, or supporting documentation after the Deadline.

5. FINAL CLAIMS REVIEW

5.1. After the Deadline, the Treasurer-Tax Collector's Office will perform a final review of the claim.

5.2. Except as provided in section 5.5 below, the Treasurer-Tax Collector, or designee, will decide, in his/her sole discretion, whether the claim and supporting documentation provides sufficient evidence of the existence of a recorded document supporting claimant's right to excess proceeds.

5.3. On behalf of the Board of Supervisors, 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. [Cal. Rev. & Tax Code, §§ 4675(d)-(e), 4675.1]

5.4. 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)]

5.5. In certain instances, the Treasurer-Tax Collector's Office may choose to file a legal action known as an "interpleader" to ask the Stanislaus 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

6.1. After the distribution of 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, the Treasurer-Tax Collector's Office will distribute the remaining excess proceeds as follows:

6.1.1. 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 Stanislaus County General Fund. [Cal. Rev. & Tax. Code, § 4676(d)]

6.1.2. If there are sufficient excess proceeds after the above-described distributions and claims with a higher priority, junior claims approved by the Treasurer-Tax Collector's Office will be paid the remaining excess proceeds in the order of priority established by Section 4675(e) of the Revenue and Tax Code.

6.1.3. The Treasurer-Tax Collector's Office will transfer any remaining unclaimed excess proceeds as required under Revenue and Taxation Code section 4675(e) to the Stanislaus County General Fund. [Cal. Rev. & Tax. Code, § 4674]

APPENDIX A

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Qualified Heir or Successor of Person(s) with Title of Record or Other Interested Party 6
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Assignee(s) of an Interested Party 7

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:

   1.1. Original 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 below, 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).

   1.2. If title to the property was in a recorded trust, the original trust document 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.

   1.3. 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.

2. QUALIFIED HEIR OR SUCCESSOR 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:

   2.1. 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).

   2.2. If applicable, a notarized probate affidavit. [Cal. Prob. Code, §§ 13100-13116] A form affidavit is available for download on the Stanislaus County Treasurer-Tax Collector's website at www.stancounty.com/tr-tax/auction/. (Attachment 5 – Affidavit for Collection of Personal Property)

   2.3. 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.

   2.4. 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

   3.1. MORTGAGE LENDERS AND DEED OF TRUST BENEFICIARIES

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

   3.1.1. The original promissory note and all amendments or other modifications (if any) on the tax-defaulted property.

   3.1.1.1. Copies of any promissory note(s) and/or modifications of the promissory note(s) are unacceptable.

   3.1.1.2. 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.

   3.1.2. The original or certified copy of the Deed of Trust/Mortgage;

   3.1.3. The original or certified copy of assignments (if any);

   3.1.4. A statement setting forth:

   3.1.4.1. The original amount of the obligation;

   3.1.4.2. Any advances or modifications to the original obligation;

   3.1.4.3. The total amount of payments received and date(s) received; and

   3.1.4.4. The amount still due and payable as of the date of the sale of the tax defaulted property;

3.1.4.5. 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.

3.1.5. 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.

3.2. JUDGMENT CREDITORS

A judgment creditor must submit the following information:

3.2.1. 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.

3.2.2. A certified copy of the judgment(s).

3.2.3. Any statement or orders setting forth any modification(s) to the judgment.

3.2.4. A statement setting forth:

3.2.4.1. The total amount of payments received and date(s) received; and

3.2.4.2. The amount still due and payable as of the date of the sale of the tax defaulted property.

3.2.5. 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:

4.1. A completed "Assignment of Right to Collect Excess Proceeds" form. The form is available for download on the Stanislaus County website at www.stancounty.com/tr-tax/auction/ .

4.2. The "Assignment of Right to Collect Excess Proceeds" form must be:

4.2.1. Verified under penalty of perjury;

4.2.2. Executed by all parties to the assignment;

4.2.3. Notarized [Cal. Civ. Code, § 1189]; and

4.3. Must contain the following information:

4.3.1. Proof that the amount and source of excess proceeds was disclosed to the interested party;

4.3.2. That the interested party was advised of his/her right to file a claim for excess proceeds on his/her own behalf directly with the county at no cost; and

4.3.3. Contact information of the interested party, including name, address phone number and email.

4.4. 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, refer to appendix B.

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

APPENDIX B

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Limited Partnership 10
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1. CLAIMS FILED ON BEHALF OF A BUSINESS

1.1. Each Claim for Excess Proceeds 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.

1.2. 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:

1.2.1. "Letter of Confirmation" from the IRS showing assignment of the FEIN;

1.2.2. Copy of tax receipt statement, such as:

1.2.2.1. IRS Form 1098, statement of interest paid; or

1.2.2.2. IRS Form 1099-INT or 1099-DIV, statement of interest or dividends earned; or

1.2.2.3. IRS assignment of FEIN interact confirmation page;

Tax returns, IRS Form SS-4 application or W-9 will not be accepted to verify FEIN.

In addition to the above-required information, claimants must also file the following documentation, as applicable:

2. CORPORATION

2.1. 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:

2.1.1. The articles of incorporation;

2.1.2. 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;

2.1.3. A corporation resolution;

2.1.4. Certificate of Dissolution; and

2.1.5. Other documents that prove claimant is a corporate officer who has authority to make a claim on behalf of the corporation.

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.

3. LIMITED LIABILITY COMPANY

3.1. 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:

3.1.1. Company's resolution;

3.1.2. Company's operating agreement;

3.1.3. Articles of Organization;

3.1.4. 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;

3.1.5. Certificate of Dissolution, if applicable; and/or

3.1.6. Other documents that prove claimant is a manager or officer of the limited liability company.

4. LIMITED PARTNERSHIP

4.1. 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:

4.1.1. 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;

4.1.2. Partnership Agreement;

4.1.3. Certificate of Dissolution; and/or

4.1.4. Other documents that prove that the claimant is a general partner of the Limited Partnership.

5. GENERAL PARTNERSHIP

5.1. 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:

5.1.1. Statement of Partnership Authority;

5.1.2. Partnership Agreement;

5.1.3. Certificate of Dissolution, if applicable; and/or

5.1.4. Other documents if they prove claimant is a general partner of the general partnership.

6. SOLE PROPRIETORSHIP

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

6.1.1. Current or final federal tax return, including Schedule C;

6.1.2. Most current business license or facility permit;

6.1.3. Fictitious Business Name filing (filed with County), if applicable; and

6.1.4. Other documents if they prove that claimant is the sole proprietor of the business.

7. 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.

8. SUSPENDED BUSINESS

8.1. 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:

8.1.1. 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;

8.1.2. A copy of an Entity Status Letter if the business was suspended by the FTB. You can obtain the letter by visiting the FTB's website or contacting the FTB at:

Franchise Tax Board
P.O. Box 942857
Sacramento, CA 94244-2250