

PIMA COUNTY
APPLICATION PACKET



FILING FOR A REFUND
FROM
A TRUSTEE'S SALE

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REQUIREMENTS TO FILE

To file for a refund from a Trustee's sale, the following must apply:

1. You must be:
 - a. a former owner (trustor) of property that was sold at a trustee's sale as a result of foreclosure
OR
 - b. a party who had an interest in the property at the time of the trustee's sale
AND
2. The property was sold for MORE than the amount that was owed to the lender
AND
3. The lender's attorney has deposited the excess funds with the County Treasurer.

If there are excess proceeds as a result of the sale, a Complaint for Deposit of Excess Proceeds will be filed in the Clerk's Office by the Trustee within 90 days of the completion of the sale. A copy of the complaint should be served on you by certified mail, likely at the address of the property that was sold at the Trustee's sale, (unless you have provided them in writing with an updated address). It is in your best interest to provide the Trustee and the Treasurer's Office with your most recent mailing address as early in the process as possible in order to receive all notices regarding the money that is due back to you.

Once that Complaint is filed with the Clerk's Office, you can apply for your refund.

PLEASE FOLLOW THE DIRECTIONS CAREFULLY AND EXACTLY IN ORDER TO GET YOUR REFUND RETURNED TO YOU AS QUICKLY AS POSSIBLE. If you have any questions about these forms, you may call the County Treasurer's Office at (520) 724-8341. However, the County Treasurer's Office does not give legal advice.

PROCESS OVERVIEW

Filing for a refund is typically a four to six step process:

If no other party has filed an application for the proceeds:

You file:

- 1) An Application for the funds
- 2) An Affidavit of Mailing pursuant to A.R.S. § 33.812(G)
- 3) A Notice of Lodging of the proposed order
- 4) And finally, an Order Releasing Funds to you.

OR

If another party to the case files an application for the proceeds:

You file:

- 1) A reply to their application or response *
- 2) An application for the funds
- 3) An Affidavit of Mailing pursuant to A.R.S. § 33.812(G)
- 4) A Notice of Lodging (of the proposed order)
- 5) And finally, an Order Releasing Funds.

*You may have to attend a hearing if the judge deems necessary.

If you received a NOTICE OF IMPENDING DISMISSAL or an ORDER OF DISMISSAL, there will be an additional step required. A MOTION TO REINSTATE CASE AND CONTINUE ON ACTIVE CALENDAR or an ORDER SETTING ASIDE ORDER OF DISMISSAL AND REINSTATING CASE TO ACTIVE CALENDAR, depending on the situation, will be required beforehand. These forms can be obtained through the Pima County Treasurer's Office at 240 N. Stone Ave., Tucson, AZ 85701.

FREQUENTLY ASKED QUESTIONS

1. How long does the process take for me to receive my refund?

The refund process generally takes anywhere from about two months to eight months, depending on if there are any other applications filed for the proceeds.

2. What if there is a lien holder who also has claim to the funds?

If there is a party who holds a deed of trust or a judgment lien on the property, this party may get paid before you are entitled to receive any funds.

3. How much time do I have in which to apply for the refund?

The lawful owner has two years from the date of the deposit with the Treasurer's Office to apply for his refund. If the funds remain unclaimed after the two year period, the County Treasurer will remit those unclaimed funds to the Arizona State Revenue Department. The funds would be on deposit with the Unclaimed Property Department and you will then have to claim those funds through that department.

4. Can I file for the refund if I have filed bankruptcy?

Yes, but if your bankruptcy is still pending contact your attorney or the bankruptcy trustee and let them know of your right to claim the proceeds.

5. Are there any fees or costs involved in my applying to get my refund?

Yes, there is a filing fee of approximately \$174.00 which must be paid when you file your application. You will also have to send copies by certified mail which will be an additional expense.

6. How does marital status affect my right to the excess proceeds?

If you are married, in order to have the full amount of the proceeds that are due back to you, both parties will have to sign the application. If only one of the married parties signs the application, that person will only be entitled to ½ of the proceeds.

If you are separated or divorced, you will only be entitled to ½ of the proceeds that are due back to you.

7. I am now divorced or have filed for divorce. How does this affect my right to the refund?

Provide the Treasurer's office with a copy of your divorce decree. You may only be entitled to ½ of the proceeds.

8. What if I owned the home prior to being married, but did not add my present spouse to the title?

Then you are the only party legally entitled to the proceeds.

9. What if I owned the home prior to being married, added my spouse to the title but not to the note?

Then both of you are legally entitled to the proceeds and both of you will have to apply in order to get the full amount refunded to you.

10. What if my spouse is deceased but his/her name remains on the title?

A death certificate should be attached to your application to prove that you are the only party entitled to the disbursement.

11. An agency or attorney's office has contacted me regarding the funds that are on deposit. Do I need an attorney to get my refund?

If you choose not to file on your own behalf to have your refund returned to you, you can consult with an attorney. There are also "finder" or "locator" agencies which you can pay for assistance in recovering your refund. The statute allows for these agencies to charge a fee, plus legal fees. However, the County Treasurer's Office does not endorse or recommend any particular party for that service.

APPLICATION
for excess proceeds from the Trustee's sale of property

The Application for Excess Proceeds tells the court and any interested parties that you are applying to get your refund which is on deposit with the County Treasurer.

1) FILL OUT FORM # 1a, the APPLICATION FOR EXCESS PROCEEDS.

2) MAKE A COPY of the application for EACH party named in the complaint which was filed with the court. Be sure to include ALL parties at each of the addresses named on the list of persons incorporated or attached to the complaint. Always include a copy to mail to the County Treasurer's office and to the County Attorney's Office.

If you didn't receive a copy of the complaint by mail from the Trustee's office, you can obtain a copy from the Clerk of Court.

3) FILE the original APPLICATION FOR DISTRIBUTION OF EXCESS PROCEEDS with the Clerk of Court, Superior Court, Civil Division, at 110 W. Congress Street, Tucson, Arizona 85701. There is a fee of approximately \$174.00 which the Clerk charges to file papers in response to a suit. You can inquire with the Clerk's Office about having that fee waived or deferred at (520) 724-3200.

Have the Clerk's office date-stamp EACH copy of the application for each interested party.

4) Mail, BY CERTIFIED MAIL, a copy of your application to each party. Be sure to use the addresses attached to the complaint. SAVE each certified mail receipt for each party. Be sure to include mailing a copy by certified mail to the Pima County Treasurer, as well.

When you receive the signed green card from the addressee, save this card. Also, save any envelopes that did not reach the addressee and which were returned to you.

Applicant _____
Address _____
City, State, Zip _____
Telephone _____
Party Filing Is: ___Self -Represented

SUPERIOR COURT OF ARIZONA IN PIMA COUNTY

Plaintiff (s), _____ Case No. _____

Defendant(s), _____

APPLICATION FOR RELEASE
OF EXCESS PROCEEDS
A.R.S. § 33-812

APPLICANT _____

HEREBY REQUESTS release of the excess proceeds on deposit with the Pima County Treasurer under the above captioned case number pursuant to A.R.S. § 33-812.

APPLICANT is the former owner of the property identified as:

(Address)

and sold at Trustee's sale, and as such, is entitled to submit this Application for Release of Excess Proceeds.

Applicant has reviewed the Trustee's Sale Guarantee and affirms to the Court that there ___are ___are not liens superior to the interest of the Applicant.

Applicant requests that the Court issue an order directing the Pima County Treasurer to release to the above named applicant excess proceeds on deposit in the amount of \$ _____, after presentation to the Treasurer of a conformed copy of the signed order which has been stamped by the Clerk's Office.

Today's Date: _____ Applicant's Signature _____
Today's Date: _____ Applicant's Signature _____

I hereby certify that a copy of the foregoing was mailed via *certified* mail, return receipt requested on this _____ day of _____, 20____, to the following parties:

Pima County Treasurer
240 North Stone Ave
Tucson, Arizona 85701

Pima County Attorney
32 North Stone, Suite 2100
Tucson, Arizona 85701

(List the names and complete addresses of all other parties who were named on the address list of the complaint).

Applicant's Signature

AFFIDAVIT OF MAILING

The Affidavit of Mailing tells the court and any interested parties involved that you affirm that you have mailed each party a copy of your application for the funds.

- 1) FILL OUT FORM #2a, the AFFIDAVIT OF MAILING and make a copy for each party.
- 2) MAKE A COPY OF EACH CERTIFIED MAIL RECEIPT which you received back indicating that each application was either: a) received or b) not received.
- 3) Check on the Affidavit of Mailing if the certified mail receipt (green card) shows that the mailed application was:
 - a. Received- If so, attach to the affidavit a copy of the signed receipt (green card).
 - OR
 - b. Not Received- If so, attach to the affidavit, a copy of the original, unopened and undelivered or unclaimed returned envelope.

The photocopies of the mail receipts should be legible with the name, address and tracking numbers on both the receipt and the corresponding address card visible for each party.

THE COPIES OF THE RETURNED MAIL RECEIPTS MUST BE ATTACHED TO THE
AFFIDAVIT.

- 4) The affidavit must then be NOTARIZED.
- 5) FILE the Affidavit with the Clerk's Office at 110 West Congress Street, Tucson, Arizona 85701.
- 6) Mail a copy of the affidavit with the attachments to each person to whom you mailed a copy of your application. This can be done by regular mail.

If you *do not* receive a written response from any of the persons named in the complaint within 30 days of mailing the application, you can file the next form which is a Notice of Lodging. If you *do* receive a response, a hearing may be set by the judge and you will be notified by mail.

Applicant _____
Address _____
City, State, Zip _____
Telephone _____
Party Filing Is: ___ Self -Represented

SUPERIOR COURT OF ARIZONA IN PIMA COUNTY

Plaintiff (s), _____

Case No. _____

Defendant(s), _____

AFFIDAVIT OF MAILING OF
APPLICATION FOR RELEASE OF
EXCESS PROCEEDS OF SALE A.R.S. § 33-812(G)

I hereby swear or affirm that the following is true under penalty of perjury:

I _____, as Applicant for Excess Proceeds, mailed postage prepaid by a form of mail that required a returned receipt, a copy of the application to:

1) The County Treasurer at 240 North Stone Ave., Tucson, Arizona 85701.

The copy of the application was mailed to aforementioned party on the _____ day of _____, 20_____.

___The mail was received and a copy of the signed receipt is attached.

___The mail was NOT received and a copy of the original unopened and undelivered or unclaimed return envelope is attached.

AND:

to all the following persons at each of the addresses named on the list of persons that is incorporated in or attached to the complaint per A.R.S. § 33-812 (G):

2) _____
Interested Party, Mailing Address, City, State, Zip Code

The copy of the application was mailed to aforementioned party on
the _____ day of _____, 20__.

The mail was received and a copy of the signed receipt is attached.

The mail was NOT received and a copy of the original unopened and undelivered or unclaimed return envelope is attached.

3) _____
Interested Party, Mailing Address, City, State, Zip Code

The copy of the application was mailed to aforementioned party on
The _____ day of _____, 20__.

The mail was received and a copy of the signed receipt is attached..

The mail was NOT received and a copy of the original unopened and undelivered or unclaimed return envelope is attached.

4) _____
Interested Party, Mailing Address, City, State, Zip Code

The copy of the application was mailed to aforementioned party on
The _____ day of _____, 20__.

The mail was received and a copy of the signed receipt is attached.

The mail was NOT received and a copy of the original unopened and undelivered or unclaimed return envelope is attached.

5) _____
Interested Party, Mailing Address, City, State, Zip Code

The copy of the application was mailed to aforementioned party on
the _____ day of _____, 20__.

The mail to the aforementioned party was received and a copy of the signed receipt is attached.

The mail to the aforementioned party was NOT received and a copy of the original unopened and undelivered or unclaimed return envelope is attached.

AFFIRMATION OF APPLICANT

I state under penalty of perjury that the contents of this document are true and correct to the best of my knowledge and belief:

Signature of Affiant/Applicant

STATE OF ARIZONA)
)ss.
County of Pima)

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20__.

Notary
My commission expires:_____

I certify that I have mailed a copy of this executed aforementioned Affidavit to all interested parties listed below this _____ day of _____, 20__:

Pima County Treasurer
240 North Stone Avenue
Tucson, Arizona 85701

(List the names and complete address of all other parties who were named on the address list of the complaint.)

Signature

**NOTICE OF LODGING
of the Order Disbursing Funds**

The Notice of Lodging shows the Court and all interested parties the proposed order that you would like to Judge to sign.

1. Fill out form 3a, the NOTICE OF LODGING and make a COPY of form 4a, the ORDER DISBURSING FUNDS. Fill out both forms.

This is simply a preliminary step which shows any other parties how you would like the judge to rule regarding your refund. This copy of the order is a proposed document and will not actually be signed by the judge.

2. FILE the original NOTICE of LODGING with an attached copy of the proposed ORDER DISBURSING FUNDS as Exhibit A, page 3c, and file with the Clerk's Office.
4. SEND a copy by regular mail to each interested party and retain a copy of the filing for yourself.

ALLOW 10 DAYS TO PASS. IF NO OTHER PARTY RESPONDS, YOU MAY NOW FILE THE ORDER DISBURSING FUNDS DIRECTING THE TREASURER'S OFFICE TO DISBURSE THE FUNDS TO YOU.

Applicant _____
Address _____
City, State, Zip _____
Telephone _____
Party Filing Is: ___ Self -Represented

SUPERIOR COURT OF ARIZONA IN PIMA COUNTY

Plaintiff (s), _____ Case No. _____

Defendant(s), _____

NOTICE OF LODGING OF ORDER
FOR RELEASE OF EXCESS PROCEEDS
A.R.S. §33-812

COMES NOW _____

As Applicant for Excess Proceeds, and hereby gives notice that they have lodged the attached Exhibit A, Order for Release of Excess Proceeds, with the Court for signature.

Dated this _____ day of _____, 20_____.

Applicant

(A copy of your proposed, completed order must be attached behind Exhibit A page.)

I hereby certify that I have mailed, by regular mail, a copy of this aforesaid Notice of Lodging with the Proposed Order Releasing funds attached to the following parties on this _____ day of _____, 20____.

Pima County Treasurer
240 North Stone Avenue
Tucson, Arizona 85701

Pima County Attorney
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701

Honorable _____
Superior Court Bldg.
110 West Congress Street
Tucson, Arizona 85701

(List the names and complete addresses of all other parties who were named on the address list of the complaint.)

Signature

EXHIBIT

A

ORDER DISBURSING FUNDS

The Order Disbursing Funds directs the County Treasurer to release your refund to you.

AFTER THE 10 DAYS HAVE PASSED:

1. Fill out form 4a, the ORDER TO RELEASE EXCESS PROCEEDS.
2. ATTACH a copy of Notice of Lodging that was previously submitted as well and the sample cover letter (4c) which is provided in the packet. This letter directs the Judge to review and sign your order and requests a mailing to the interested parties.
3. MAIL the Order, Notice of Lodging and cover letter to the Judge's chambers for his/her signature. Provide a copy of the order and an envelope with pre-paid postage for each party, including a copy to be mailed back to you.

Once the Treasurer is in receipt of the conformed, clerk-stamped copy, it will be forwarded to the County Attorney's Office for review and, upon approval, will disburse the refund check. This process takes anywhere from 3 days to 2 weeks.

The Treasurer's Office will deduct up to \$100 for each check that is disbursed out of the proceeds as an administrative fee.

You may contact the County Treasurer's Office at (520) 724-8341 to check on the status of your check. You can pick up your check or it can be mailed to you.

Applicant _____
Address _____
City, State, Zip _____
Telephone _____
Party Filing Is: ___Self -Represented

SUPERIOR COURT OF ARIZONA IN PIMA COUNTY

Plaintiff (s), _____

Case No. _____

Defendant(s), _____

ORDER FOR RELEASE OF
EXCESS PROCEEDS OF SALE
A.R.S. § 33-812

Applicant _____

Having made application to this Court for an Order for Release of Excess Proceeds of Trustee Sale, no objection having been made, proper notice having given to all interested parties as shown by Affidavit of Mailing, and good cause appearing,

IT IS ORDERED THAT

The Pima County Treasurer, upon presentation of a conformed copy of this Order, is hereby directed to release the Excess Proceeds in the amount of \$ _____ to the Applicant above-named. The Pima County Treasurer shall deduct its fee pursuant to A.R.S. § 33.812(I).

Done in open court this _____ day of _____, 20__.

Judge

I hereby certify that a copy of the foregoing was mailed to the following parties this _____ day of _____, 20____:

Pima County Treasurer
240 North Stone Avenue
Tucson, Arizona 85701

Pima County Attorney
32 North Stone Avenue, Suite 2100
Tucson, Arizona 85701

Honorable _____
Superior Court Bldg.
110 West Congress Street
Tucson, Arizona 85701

(List the addresses of all other parties who were named on the address list of the complaint.)

Applicant Signature

Applicant _____

Date _____

Address _____

Phone No. _____

Honorable _____

Superior Court Building
110 West Congress Street
Tucson, Arizona 85701

Regarding Excess Proceeds Case No. _____

Honorable _____,

Enclosed please find a proposed Order and copy of Notice of Lodging in the above entitled case. Ten days have passed since the Notice of Lodging was filed and no objections have been made. We respectfully submit the attached Order Granting the Release of Proceeds for your review and signature.

Sincerely,

Applicant