

Tax Court Policy Concerning Application for Disbursement of Excess Proceeds

Applications for the disbursement of excess proceeds placed in the registry of the court pursuant to the provisions of Texas Property Tax Code § 34.02(d), as amended effective September 1, 1999, are subject to the following guidelines and policies:

1. No application or petition for the disbursement of funds from the Registry of the Court shall be filed before the Officers' Return of Sale has been filed with the District Clerk and the excess proceeds actually received by the trust funds department.
2. Copies of the application or petition must be served on all parties that are listed on the Judgment on the underlying action. This includes all taxing authorities, all lien holders or (IN REM ONLY) parties to the Judgment the original property owner(s) and the office of the County Attorney.
3. The filing of the application of petition and the notice of hearing date shall be served pursuant to the Texas Rules of Civil Procedure or by certified mail, return receipt requested. Proof of service must be provided with the proposed order at the hearing on the application.
4. Copies of the application or petition and notice of the hearing must be served on all parties at least sixty (60) days before the hearing date. See the Tax Master's Rules.
5. If the party seeking disbursement of the funds is not a party to the Original action, the petition shall have attached to it the sworn statement of the property owner and the property owner's spouse, if applicable, stating the following:
 - a. That the assignment of rights to the funds in the registry was given to the applicant voluntarily, and on a specified date;
 - b. A full and complete statement of the consideration received by the property owner(s) from the applicant, including any contingent or future payments promised;
 - c. A clear statement that the owner(s) is fully aware of the circumstances under which the funds have been placed in the registry of court;
 - d. The affirmation of the owner(s) of the amount of funds held in the registry of the court;
 - e. The affirmation of the owner(s) that no other assignment or conveyance of the owners' interest in the proceeds has been given to any party other than the applicant; and

- f. The affirmation of the owner(s) of his/her right to seek the assistance of an attorney if an attorney has not been retained.
6. The application shall state the date of the Constable's Sale, the amount of the successful bid, and the amount deposited in the Registry.
7. The application shall also contain a clear statement of the nature and amount of any lien claim against the property of the property owner(s). If it is claimed that any such lien has been discharged, the application must have attached to it a copy of the recorded Release of Lien.
8. Orders directing the disbursement of excess proceeds from the Registry of the Court shall provide for the disbursement in the following manner, pursuant to the provisions of Texas Property Tax Code § 34.04(c):
 - a. To each taxing unit for any taxes, penalties or other sums that have become due or delinquent following the date of the judgment in the underlying action;
 - b. To any lien holder in the amount of the unpaid indebtedness secured by the lien;
 - c. For any amount of unpaid taxes, penalty, interest or other amount due under the judgment that were not satisfied from the proceeds distributed by the officer performing the sale;
 - d. To each owner of the property in proportion to his/her interest.

In the event that any of the parties entitled to priority in distribution of the funds as set forth above is not owed any money, the Order shall expressly state that the party is entitled to recover "\$-0-".

9. The order shall also provide the address of each party that is entitled to receive any portion of the excess proceeds.
10. The order shall bear the signature of the attorney for each taxing unit involved in the original suit, acknowledging that all taxes becoming due prior to the sale have been paid or are ordered paid from the excess proceeds.
11. Whenever possible, a joint order should be submitted by all parties seeking excess funds.
12. In the petition for excess proceeds, the party must state how much of the excess proceeds the parties believes it is entitled to and the basis for the claim for excess proceeds.