

## EXCESS PROCEEDS

### [Tax Code §34.04](#)<sup>1</sup>

**Overview:** When property is sold at a tax foreclosure sale, any money above what is owed on the Judgment is deposited into the Registry of the Court; those funds are called Excess Proceeds. When a deposit of Excess Proceeds is made, the District Clerk sends notice by letter to all parties in the tax case. The Excess Proceeds stay in the Registry unless and until the Court orders all or a part of it to be paid to someone who proves a right to all or part of the Excess Proceeds. At the end of two years, any of the Excess Proceeds remaining in the Registry are paid to the state.

#### Who May Make A Claim For Excess Proceeds?

1. **Tax Sale Purchaser:** The tax sale purchaser may apply if the tax sale is void and the purchaser wins a lawsuit under Tax Code Section 34.07(d) (TEX. TAX CODE §§34.04(c)(1), 34.07(d), and 34.07(f)).
2. **Tax Authority – Money Due After Judgment:** A tax authority may be paid for taxes, penalties, or interest (a) that become due or delinquent on the property after the tax case judgment or (b) that were accidentally or mistakenly not included in the judgment (TEX. TAX CODE §34.04(c)(2)).
3. **Lienholders Which Are Not Tax Authorities:** A party who is not a tax authority and has a lien on the property may collect the amount due on their lien, and are paid according to the lien priorities established by law (TEX. TAX CODE §34.04(c)(3)).
4. **Tax Authority – Money Due and Not Paid:** A tax authority may be paid for any unpaid taxes, penalties, interest, or other amounts included in the judgment which were not paid at the tax sale. (TEX. TAX CODE §34.04(c)(4)).
5. **Former Owner:** Former owners may be paid for their ownership interest if:
  - (A) The party was a defendant named in the tax judgment;
  - (B) The party is related within the third degree by consanguinity<sup>2</sup>, or affinity<sup>3</sup> to a former owner who was a defendant named in the tax judgment; or
  - (C) The owner is deceased and the party obtained an interest in the property either by the Will of a defendant in the tax judgment or by being an heir of a defendant in the tax judgment who died without a Will. (TEX. TAX CODE §34.04(c)(5)).

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<sup>1</sup><https://statutes.capitol.texas.gov/Docs/TX/htm/TX.34.htm>

<sup>2</sup> Consanguinity means related by blood or adoption:

- 1<sup>st</sup> degree means the property owner's parents and children,
- 2<sup>nd</sup> degree means the property owner's siblings, grandparents, and grandchildren,
- 3<sup>rd</sup> degree means the property owner's great-grandparents, great-grandchildren, aunts and uncles who are the sibling of one of the property owner's parents, and nephews and nieces who are the child of one of the property owner's siblings. See TEX. GOV'T CODE §573.023(c).

<sup>3</sup> Affinity means related by marriage:

- 1<sup>st</sup> degree means the property owner's spouse,
- 2<sup>nd</sup> degree means the spouses of the people related by the 2<sup>nd</sup> degree of consanguinity for the property owner,
- 3<sup>rd</sup> degree means anyone related to the property owner's spouse under the rules of consanguinity. See TEX. GOV'T CODE §573.025(a) and (b).

## How Do I Make A Claim For Excess Proceeds?

1. **File a Motion:** File a Motion before the second anniversary of the sale. (TEX. TAX CODE §34.04(a)). A form is located on the [District Clerk's website](#).<sup>4</sup>
  - a. Use the same cause number as the original tax case. (TEX. TAX CODE §34.04(a)).
  - b. Attach evidence to show why the Excess Proceeds, or some of them, belong to you.
    - **EXAMPLE:** John Doe's mother owned the land and was a defendant in the tax case, but she passed away after the tax sale. John Doe's Motion claims that he is entitled to 1/3 of the Excess Proceeds because he is one of her three heirs. His evidence might include an affidavit he signs, his mother's obituary, a death certificate, his birth certificate, and/or similar items showing his family history.
  - c. You may hire an attorney to bring your claim. Be aware that an attorney cannot charge you more than either 25% of the amount you receive or \$1,000, whichever is less. (TEX. TAX CODE §34.04(i)).
2. **Call the Court:** Call the Court to get a submission date and time for the Court to consider your Motion (936-539-7861). (TEX. TAX CODE §34.04(b)).
  - "Submission" means that the Court will consider your request by reading your Motion and evidence, rather than by having a hearing in the courtroom.
3. **Notify Others About Your Motion:** Send both a copy of your Motion and a written Notice of the submission date and time to every party in the original tax case. Use a method listed in [Texas Rule of Civil Procedure 21a](#)<sup>5</sup> to provide this information. **Be aware that the Motion and Notice must be provided at least 20 days before the submission date.** (TEX. TAX CODE §34.04(b)).

## How Will I Know What The Court Decides?

- On or within a few days after your submission date, the Court will review your Motion.
  - If the Court needs additional information, then the Court Coordinator will contact you.
  - If no additional information is required, then the Court will sign a written Order stating the ruling.
- The District Clerk will send you notice of the Court's ruling.
- If the Court grants your Motion, after a 30 day wait, the District Clerk will send you a check at the address in the Order for the amount the Court allowed less the administrative fee of 5% of the withdrawn amount not to exceed \$50.00 to be paid to Montgomery County (TEX. LOCAL GOV'T CODE §117.055).

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<sup>4</sup>[https://cms1files.revize.com/montgomerycountytexas/Registry\\_Civil%20Withdraw\\_Update\\_d%2001.13.2021.pdf](https://cms1files.revize.com/montgomerycountytexas/Registry_Civil%20Withdraw_Update_d%2001.13.2021.pdf)

<sup>5</sup><https://www.txcourts.gov/media/1452743/trcp-combined-effective-september-1-2021.pdf>