

Chautauqua County In Rem Foreclosure Surplus Funds Instructions

Pursuant to New York State Real Property Tax Law, any person who had any right, title, interest, claim, lien or equity of redemption in a foreclosed parcel may file a claim with the court for a share of any surplus within ***three years*** from the sale.

To claim surplus funds, you can hire an attorney or use the following information to obtain the court order yourself. The Court Clerk, County Finance Office, or County Clerk's Office cannot provide any legal advice or guidance on the claims process.

1. Request a Certificate of Amount of Surplus Funds on Deposit from the Chautauqua County Director of Finance showing the amount of money being held in escrow.
 2. Request a Certificate as to Notice of Claims to Surplus Monies from the Chautauqua County Clerk pursuant to RPAPL §1355. The Certificate as to Notice of Claims to Surplus Monies will list any other parties who have filed a Notice of Claim to Surplus Monies or Notice of Appearance in the In Rem Action, against the specific parcel (identified by SBL Number). You must serve a copy of the Notice of Motion and all attachments (see below) on the Chautauqua County Director of Finance as well as on all parties who have filed a Notice of Claim to Surplus Monies or Notice of Appearance.
 3. A Notice of Claim to Surplus Monies must be filed in the In Rem Action with the Chautauqua County Clerk. This is filed with the Notice of Motion (see below). The Notice of Claim to Surplus Monies must contain the same caption and index number as the In Rem Action. The Notice of Claim to Surplus Monies must also include the SBL Number.
 4. A Notice of Motion must be filed with the Chautauqua County Clerk together with the required filing fee. Use the same caption and index number as in the In Rem Action – The papers **MUST** include the SBL Number of the Parcel.
- Attached to your Notice of Motion should be the following:
- a. An Affidavit in Support of Motion;
 - b. OPTIONAL: A limited title search (also known as a tax foreclosure search) of the property commencing at the date that the Claimant/Former Owner took title through the date the County foreclosure deed was recorded to identify lien holders (other judgment creditors). The search must be issued by a title search company. (While this is optional, submitting the same may expedite the distribution of surplus proceeds.);
 - c. The Certificate as to Notice of Claims to Surplus Monies from the Chautauqua County Clerk;
 - d. The Certificate of Amount of Surplus Funds on Deposit from the Chautauqua County Director of Finance;

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- e. A copy of the Judgment of Foreclosure and Sale;
- f. Affidavit(s) of Service of your Notice of Claim to Surplus Monies, Notice of Motion, and Affidavit in Support of Motion upon the Chautauqua County Director of Finance and all lien holders, if any exist. A copy of the Affidavit(s) of Service must be submitted with the Notice of Motion. The original Affidavit(s) of Service must be filed in the Chautauqua County Clerk's Office; and,
- g. You must prepare and submit to the Court a proposed Order to Distribute Surplus Monies directing how the surplus monies are to be paid.

Be sure to retain a copy of all papers for your own records. County and court staff are not permitted to make copies for you.

- 5. Once the Order to Distribute Surplus Monies is signed and entered by the County Clerk, you must obtain a certified copy of the Order from the County Clerk's Office and file it with the Chautauqua County Director of Finance (with whom the money is deposited). The Chautauqua County Department of Finance will mail the checks as set forth in the Order less the administrative fee (currently 2% per §8010 of the NYS Civil Practice Laws and Rules).

Chautauqua County cannot provide you with legal advice. You should contact an attorney to discuss your rights regarding any surplus actions as these are legal proceedings, which may require an attorney.

If you are unable to afford an attorney, you may contact the following for assistance:

Legal Assistance of WNY
(866) 664-4567

Center for Elder Law & Justice
(844) 481-0973

Volunteer Lawyers Project
(716) 847-0662