

Law Library Resource Center

PROCEDURES: HOW TO FILE FOR RELEASE OF EXCESS PROCEEDS OF SALE

STEP 1 Fill out the ***“Application for Release of Excess Proceeds of Sale”*** and make copies as directed on the separate instructions for this form.

STEP 2 **GO TO THE CLERK OF COURT TO FILE YOUR PAPERS:** The Court is open from 8 a.m.-5 p.m., Monday-Friday. You should go to the Court at least two hours before it closes.

You may file your papers with the Clerk of the Superior Court at the following locations:

Central Court Building

201 West Jefferson, 1st floor
Phoenix, Arizona 85003

Northeast Court Facility

18380 North 40th Street
Phoenix, AZ 85032

Southeast Court Facility

222 East Javelina Avenue, 1st floor
Mesa, Arizona 85210

Northwest Court Facility

14264 West Tierra Buena Lane
Surprise, Arizona 85374

For information on “alternative” and “after hours” filing services, contact the Clerk of the Court, or visit the Clerk’s website.

FEES: A list of current fees is available from the Law Library Resource Center and from the Clerk of Court’s website.

If you cannot afford the filing fee and/or the fee for having the papers served by the Sheriff or by publication, you may request a deferral (payment plan) when you file your papers with the Clerk of the Court. Deferral Applications are available at no charge from the Law Library Resource Center.

PAPERS: Give the **original, plus 1 copy for EACH “interested party”** of the ***“Application”*** to the clerk at the Civil Filings Counter. The clerk will process your application and collect the filing fee (unless it has been deferred). **Make sure the clerk stamps and returns each copy to you.**

VERIFY YOUR CASE NUMBER after filing. It should remain the same as on the Complaint filed by the trustee depositing funds with the Treasurer’s Office. If the number is different, notify the Civil Filings clerk immediately as you are filing in response to *an existing case* and should be filing under *that* case number.

STEP 3 **NOTIFY “INTERESTED” PARTIES. Send copies of *“The Application”* to:**

- **each party** listed in the mailing list of the trustee’s complaint,
- **the Judge** assigned to your case, and
- **the Maricopa County Treasurer’s Office**, “by any form of mail that requires a signed and returned receipt” (A.R.S. § 33-812(G), *such as*:
- **Certified, with Return Receipt Requested, Priority Mail with Signature Confirmation,**
- **Personal service by licensed process server,**
- (for the Treasurer’s copy ONLY) **Hand Delivery with a request for a signature of receipt or an “Acceptance of Service” or with an extra copy to be stamped “Received”.**

Keep all returned receipts from the mailings, and all “undeliverable” returned mailings, unopened and in the original condition as received back from the Post Office, as well as any signed receipt, ***“Acceptance of Service”***, or copy stamped “Received” from the Treasurer’s Office.

Interested parties have 30 days from of the date their copy of the ***“Application”*** was *mailed* to file a response to object to your ***“Application”***. (A.R.S. §33-812 (H))

STEP 4 AFFIDAVIT OF MAILING.

Fill in the information requested about you at top left, and then the name of the plaintiff (the trustee) and case number (which should be the same as on your "**Application**"). Mark each box and fill in the information requested to indicate what method of delivery was attempted for each "interested party".

Do not sign the form until you are in the presence of a Deputy Clerk of Court or Notary Public.

NEXT: AFTER you have received back the signed return receipts and any original sealed "returned as non-deliverable" envelopes addressed to each of the "interested parties":

- **SIGN the original "Affidavit of Mailing" in front of a Deputy Clerk of Court** (at the filing counter) **or a Notary Public.**
- **MAKE TWO COPIES of the "Affidavit of Mailing" and all attachments** (return receipts and/or "undeliverable" returned envelopes).
- **FILE the original "Affidavit of Mailing" with the Clerk of Court at the Civil Filing Counter.** Attach copies of signed return receipts and copies of any sealed "returned-as-undeliverable" envelopes.
- **MAIL OR DELIVER A COPY TO THE ASSIGNED JUDGE of the "Affidavit" AND all attachments** (copies of signed return receipts and copies of any sealed "returned-as-undeliverable" envelopes) (Keep the second copy for your records). You may deliver the documents to the assigned Judge's office, or you may mail to the Judge in care of the Superior Court in Maricopa County. If mailing, you may use this address:

The Honorable <insert Judge's name>
c/o Maricopa County Superior Court
201 W Jefferson Street
Phoenix, Arizona 85003

STEP 5 RESPONSE OR NO RESPONSE.

(A) IF A RESPONSE (Objection) TO YOUR REQUEST IS FILED: (if *no* response, go to (B))

A copy of any Response should be mailed to you at the address contained in the court records (Make sure you file a "Change of Address" with the court if you move.). You may then file a written reply (with copies to all parties) **within 10 days of the date that Response was mailed to you.** You may use the "blank pleading or motion form" from the Court or your own form, but make sure the name of the Plaintiff (the trustee) and the Defendant (Maricopa County Treasurer), and the case number from the original complaint appear near the top of the first page.

After notifying all persons who have received a copy of the complaint or who have filed a responsive pleading, the court *may* hold a hearing. If there are competing claims to the proceeds, the Court *will* hold a hearing to determine who is entitled to the funds.

If the Court schedules a hearing, fill in the information requested at top left of the "**Order**" about you, the person filing the Application, then write in the name of the Plaintiff (the trustee) and the case number as from the Complaint on the "**Order to Release Excess Proceeds of Sale**". Leave the rest of the form blank and wait for the Court's decision. Take the "**Order**" with you to the hearing in case the Judge wants to sign the Order at that time.

NOTE: If the court finds that a person *other than an applicant or respondent* has a superior right to the proceeds:

- The court shall not issue an order on the proceeds until 180 days from the date the complaint was filed.
- At any time before the expiration of the 180 day period, an applicant or respondent may move for a hearing to determine whether the claimed superior right is valid or enforceable and whether the claim is entitled to receive priority over the claim of the applicant or respondent.

- The motion shall set forth the specific facts and evidence that support the applicant's or respondent's position and shall be mailed to all persons who have received a copy of the complaint or filed a responsive pleading.
- If a response is not filed within the 180 day period by the person found by the court to have a superior right to the proceeds, the court shall enter an order in favor of any applicant or respondent entitled to the proceeds.
- On release of the proceeds, the county treasurer may assess and deduct from the proceeds a reasonable fee not to exceed one hundred dollars \$100.00 for the treasurer's costs associated with the civil action.

(B) IF AFTER 30 DAYS, NO RESPONSE HAS BEEN FILED:

Complete and submit the "**Order to Release Excess Proceeds of Sale**" to the assigned Judge for the Judge's signature. The "**Order**" should be for the same amount requested in the "**Application**" and not more than the amount deposited with the Treasurer (minus any Treasurer's fee).

Along with the original "**Order**", **MAKE SURE YOU INCLUDE:**

- **One (1) copy for each interested party**
- **One (1) copy for the Treasurer's Office**
- **One (1) copy for your records**
- **One (1) copy for the Court to certify**
- **One (1) stamped business envelope addressed to each interested party (including yourself)**

You may deliver the documents and envelopes to the assigned Judge's office, or you may mail to the Judge in care of the Superior Court in Maricopa County at the address noted in **STEP 4**, above.

STEP 6 **WAIT.** The Judge may sign the Order, schedule a hearing, or reject the request. The decision will be mailed to you and to all interested parties. If a hearing is scheduled, you must wait for the hearing.

STEP 7 **IF THE ORDER IS SIGNED . . .**

- Get a certified copy of the "**Order**" (if one not sent by the Judge, see instructions below*).
- Submit the certified copy of the Order *and* an IRS form W-9 to the Treasurer's Office.

The W-9 form is available at the Treasurer's Office or you may download it in Adobe PDF format from the IRS web site. This is this is a statement **under penalty of law** that you have provided your correct Social Security Number (or Taxpayer Identification Number) and if applicable, a declaration that you are not subject to "backup withholding". For further information, see the instructions attached to the W-9 form.

***To get a certified copy of your court order** you will need to present your Judge-signed copy along with to the Filing Counter within **48 hours**. If you need certified copies **after that time**, you will need to go to the Court's Customer Service Center at 601 W. Jackson Street in Phoenix.

The Treasurer's Office will generally disburse monies within 72 hours of receipt of the "Order" and W-9. If you have not received payment within 5 business days after submitting the "**Order**" and **W-9**, you may contact the Treasurer's Office at **602-506-7881**.