



Samples

1 John Property
2 1234 Tree Court
3 Sacramento, CA 95814
4 916-888-9910
5 Claimant, In Pro Per

6 **IMPORTANT:** Text that appears in BLUE is text you will change to fit your case. RED boxes are instructions, and not part of your completed document.

7 This template is generic. It is presented as a sample only. You will have to research the appropriate law and make extensive changes to use it as a template for your own motion. You can download the customizable template from www.saclaw.org/surplus-funds-motion.

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 In re:) Case No.: 34-2016-00123456
11 ALL CLAIMANTS TO SURPLUS FUNDS) NOTICE OF HEARING AND CLAIM FOR
12 AFTER TRUSTEE'S SALE OF REAL) SURPLUS FUNDS; POINTS AND
13 PROPERTY LOCATED AT:) AUTHORITIES; DECLARATION

14 6666 Los Funds Drive, Elk Grove, CA 95624) Date: June 30, 2016
15 Property address) Time: 9:00 a.m.
16) Dept: 54

17)
18 Your name.

19 TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:
20 John Property hereby claims \$39,750 in surplus funds subject to this action (or whatever
21 remainder exists after prior court authorized disbursements), and sets this matter for hearing at
22 the above-captioned date and time in Department 54 of this Courthouse located at 813 9th
23 Street, Sacramento, California. This claim is made on the basis that John Property was the
24 recorded owner of the property that is subject to this lawsuit immediately prior to the trustee
25 sale giving rise to the surplus. This claim is supported by the attached Points and Authorities
26 and Declaration of John Property.
27 //
28 //

Claim for Surplus Funds from Trustee Sale - i

Claim for Surplus Funds from Trustee Sale (page 1)



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NOTICE OF TENTATIVE RULING

"Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held."

Dated: June 1, 2016

Your name, date,
and signature.

John Property, Claimant in Pro Per



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Your name.

VERIFICATION OF CLAIM

I, John Property, am the claimant in this matter. I have personal knowledge of the facts of this case, have read the foregoing CLAIM FOR SURPLUS FUNDS AND NOTICE OF HEARING and know its contents, and declare under penalty of perjury under the laws of the State of California that the contents therein are true and correct.

Dated: June 1, 2016

Your name, date, and signature

John Property, Claimant in Pro Per

Claim for Surplus Funds from Trustee Sale # 3

Claim for Surplus Funds from Trustee Sale (page 3)



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3 **Memorandum of Points and Authorities in Support of Motion for Disbursement of Surplus**

4 **Funds**

5 **I. Background**

Write a brief description of what has happened in the case, and how the surplus funds came to be with the court, and briefly describe what you are asking the court to do.

6 This case involves surplus funds following a trustee sale of real property. The claimant
7 was the owner of the property, and was the recorded owner of the property immediately prior to
8 the trustee sale. On May 12, 2016, the court permitted the plaintiff, having received no claims
9 prior to the hearing, to deposit the funds with the clerk of the court, and to be dismissed from the
10 case. The claimant, having not known of the hearing, is now asking the court to direct the clerk
11 of the court to disburse the funds deposited by the plaintiff to the claimant.

12
13 **II. LEGAL ARGUMENT**

14 The priority order of the distribution of surplus funds from a non-judicial foreclosure
15 trustee sale is set forth in Civil Code §2924k, which reads:

16 2924k. Priority of order of distribution of proceeds: Trustee's costs and expenses

17 (a) The trustee, or the clerk of the court upon order to the clerk pursuant to
18 subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the
19 proceeds, as the case may be, of the trustee's sale conducted pursuant to Section
20 2924h in the following order of priority:

21 (1) To the costs and expenses of exercising the power of sale and of sale,
22 including the payment of the trustee's fees and attorney's fees permitted pursuant
23 to subdivision (b) of Section 2924d and subdivision (b) of this section.

24 (2) To the payment of the obligations secured by the deed of trust or
25 mortgage which is the subject of the trustee's sale.

26 (3) To satisfy the outstanding balance of obligations secured by any junior
27 liens or encumbrances in the order of their priority.

28 (4) To the trustor or the trustor's successor in interest. In the event the
property is sold or transferred to another, to the vested owner of record at the time
of the trustee's sale.

(b) A trustee may charge costs and expenses incurred for such items as mailing
and a reasonable fee for services rendered in connection with the distribution of
the proceeds from a trustee's sale, including, but not limited to, the investigation
of priority and validity of claims and the disbursement of funds. If the fee charged
for services rendered pursuant to this subdivision does not exceed one hundred
dollars (\$100), or one hundred twenty-five dollars (\$125) where there are

Claim for Surplus Funds from Trustee Sale -- 4

Claim for Surplus Funds from Trustee Sale (page 4)



1	obligations specified in paragraph (3) of subdivision (a), the fee is conclusively	
2	presumed to be reasonable.	
3		
4	In the present case, the trustor and owner were the claimant, as described in Civil Code	
5	§2924k(a)(4). To the best knowledge of the claimant, no unsatisfied claims have superior priority	
6	over the claim of the surplus.	
7	Accordingly, claimant claims the remaining surplus funds, and requests that these funds	
8	be transferred to him.	
9		
10	Respectfully submitted,	
11		
12		
13	Dated: June 1, 2016	
14	Your name, date and signature:	
15	[Redacted Signature]	
16		John Property, Claimant in Pro Per
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29	Claim for Surplus Funds from Trustee Sale - 5	
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Claim for Surplus Funds from Trustee Sale (page 5)		



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DECLARATION

I, John Property, declare the following:

1. I have personal knowledge of all facts stated in this declaration and if called to testify, would testify consistently with the facts stated in this declaration.
2. On 4/13/2015 the real property located at 6666 Los Funds Drive, Elk Grove, CA 95624 (hereafter "PROPERTY") was sold at trustee sale pursuant to the terms of the mortgage on that property.
3. I am the recorded owner of the PROPERTY just prior to the trustee sale.
4. After the sale, the trustee paid the creditors to the PROPERTY, and a surplus in the amount of \$43,052 remained.
5. On May 12, 2016, the court permitted the petitioner reasonable attorney fees and costs, which were deducted from the surplus, and directed the remaining \$39,750 deposited with the clerk of the court.
6. I know of no other person with a superior claim to the surplus funds from the sale of this property, and therefore claim all surplus funds remaining after any court-authorized deductions from the sale of the PROPERTY.
7. I did not file an initial claim, and was not present at the hearing allowing the funds to be deposited because the petition was served on the address for the PROPERTY, at which I no longer lived due to the foreclosure. As a result, I had no knowledge of this case.
8. For these reasons, I ask that the court direct the clerk to disburse the funds deposited as a surplus on the PROPERTY to me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 1, 2016

Your name, date, and signature
John Property, Claimant in Pro Per

Claim for Surplus Funds from Trustee Sale - 6

Claim for Surplus Funds from Trustee Sale (page 6)