

Motion for Disbursement of Surplus Funds After Foreclosure

If your home was sold by the trustee in a foreclosure auction for more money than you owed on the balance of the loan, you are entitled to the difference. [California Civil Code \(CC\) § 2945-2945.11](#)

(http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=14.&part=4.&chapter=2.&article=1.5).

In many cases, the attorney representing the company that sold your home will file a motion with the court to disburse funds.

Templates and Forms

- [Motion for Disbursement of Surplus Funds Template – RTF](https://saclaw.org/wp-content/uploads/2023/04/SBS-Surplus-Funds-Motion-Template.rtf) (<https://saclaw.org/wp-content/uploads/2023/04/SBS-Surplus-Funds-Motion-Template.rtf>)

Sometimes, the company will instead ask that it be permitted to deposit the funds with the court, and withdraw from the case. In that case you may need to file a motion so the court may order the funds to be disbursed. This guide gives you information on how to do that.

You may also need....

- [Personal Service](https://www.saclaw.org/resource_library/personal-service/) (https://www.saclaw.org/resource_library/personal-service/)
- [Service by Mail](https://www.saclaw.org/resource_library/serving-documents-by-mail/) (https://www.saclaw.org/resource_library/serving-documents-by-mail/)

Step by Step Instructions

1. Reserve a Hearing Date

This information is for Sacramento. If your case is in a different county, do not follow these instructions. Instead, call the clerk or visit the court website in your county to find the correct information.

Determine the department and time of the motion

This is considered a “Law and Motion” matter. In Sacramento, Law and Motion hearings are heard in Department 53 at 1:30 p.m. or Department 54 at 9:00 a.m., Tuesday-Thursday. To determine which

department your hearing will be in, check your case number. Odd numbered cases are heard in Dept. 53, even numbered cases in Dept. 54. (There are occasional exceptions, so if you've been assigned to one or the other in the past, use that one.)

Reserve the date for the hearing

In Sacramento's Departments 53 and 54, you must reserve a court date through the court's online reservation system.

To use the online system, go to [the Sacramento Superior Court's Public Portal](https://prod-portal-sacramento-ca.journaltech.com/public-portal/) (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/>) and choose "Reservation System (CRS)." You must have a free account on the system to use it.

Before you log on or call, figure out if there are any days you will *not* be available during the next couple of months. For instance, you don't want to pick a date when you know you will be out of town.

You must choose a date far enough in the future that you can both **file** and **serve** your motion on time. Scheduling it four weeks in advance generally gives a comfortable margin for most types of motions. Usually, the first available date will be further away than that.

Determine the legal deadline to file the motion in court

Tip: The deadline is the *last* day you can file the motion. It's recommended to file earlier if you can, to make sure it is received in plenty of time.

The last legal day to file with the court is at least sixteen *court* (business) days prior to the motion date ([CCP § 1005](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1005) (http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1005)). "Court days" are Monday through Friday, excluding court holidays. To determine whether a particular filing date will meet this deadline, start counting backwards on the day before your hearing until you reach the sixteenth court day. ([CCP § 12c](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12c.&lawCode=CCP) (http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12c.&lawCode=CCP))

For example, suppose your reservation is for Monday, June 18. You would start counting backward using the previous court day, Friday, June 15, as day one, as shown in the calendar below. Skip weekends and court holidays (there is one court holiday in this example, which is Memorial Day, May 28). The sixteenth court day before the hearing would be May 24, which would be the last day that the motion could be filed.



MAY							JUNE						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5						1 Day 11	2
6	7	8	Day 5 falls on a weekend, so the last day for service by mail rolls over to the previous court day.			12	3	4 Day 10	5 Day 9	6 Day 8	7 Day 7	8 Day 6	9
13	14	15				18 Last day to serve by mail	10	11 Day 5	12 Day 4	13 Day 3	14 Day 2	15 Day 1	16
20 Day 4	21 Day 3	22 Day 2	23 Day 1	24 Day 16 Last day to file	25 Day 15	26	17	18 Hearing Date	19	20	21	22	23
27	28 Holiday	29 Day 14	30 Day 13	31 Day 12			24	25	26	27	28	29	30

Holiday Heads-Up: The California courts are closed on several holidays that you may not expect, including Lincoln’s Birthday (Feb. 12); Cesar Chavez Day (March 31); Juneteenth (June 19); and Native American Day (third Friday in September).

Make a note on your calendar to file the motion by this date. Do not miss this deadline. The court will cancel the hearing and you will have to start over.

Determine the legal deadline to serve the motion on the other parties or their attorneys

You must have all other attorneys (or self-represented parties) served with a copy of the motion. There is a strict deadline to do this (earlier is always acceptable).

Personal service: 16 **court** days before the hearing, the same as the minimum filing deadline. The server can fill out [Proof of Personal Service—Civil \(POS-020\)](https://www.courts.ca.gov/documents/pos020.pdf) (<https://www.courts.ca.gov/documents/pos020.pdf>).

Service by mail: 16 court days before hearing PLUS five **calendar** days before the hearing (more if the mailing address is outside California). ([CCP § 1005](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1005)

(http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1005)). The server can fill out [Proof of Service by First-Class Mail—Civil](https://www.courts.ca.gov/documents/pos030.pdf). (<https://www.courts.ca.gov/documents/pos030.pdf>)

“Calendar days” include weekends and holidays, but if the final day lands on a weekend or holiday, it is pushed back to the previous court day. On the example calendar above, the final day for mail service falls on Saturday, May 19, so the actual service deadline is May 18.

Make a note on your calendar to have the motion served by mail before the deadline. If you miss the mail deadline, you can still have the motion served by personal service up until 16 court days before the hearing. If

you miss that deadline, you will have to cancel your court date and start over.

2. Prepare the Motion

There is no pre-printed form for this motion. You will need to customize a motion on “pleading paper.” Instructions and a sample motion are at the end of this guide.

Parts of a Motion

A request to continue trial is made through a **motion**. A motion is a request made in a case asking the court to issue an order of some sort.

A written motion consists of four parts (the first two are usually combined):

- Notice of Motion and Motion;
- Points and Authorities; and
- Declaration with evidence

The Notice of Motion lets the opposing party know when and where the motion is scheduled to be heard, while the Motion lets the court and the opposing party know what is being requested. The Points and Authorities explains to the court and the opposing party the legal basis of the motion, while the Declaration provides evidence, sworn under penalty of perjury, supporting the motion.

The parts can be filed as separate documents or combined into one document, as in our template motion.

Modify the Template Motion

There is no Judicial Council form for this procedure. Instead, the relevant documents must be typed on 28-line pleading paper. A customizable template may be downloaded from this link:

- [Motion for Disbursement of Surplus Funds \(https://www.saclaw.org/wp-content/uploads/2023/04/SBS-Surplus-Funds-Motion-Template.rtf\)](https://www.saclaw.org/wp-content/uploads/2023/04/SBS-Surplus-Funds-Motion-Template.rtf)

You will need to modify the sample text in the gray boxes to fit the specific facts of your case and attach any evidence to your declaration as an exhibit. More information about how to customize the motion is included on the sample at the end of this guide.

At the end of this guide is a sample completed motion with instructions.

3. Copy and Assemble Your Documents

Make four (4) copies of your Motion. One of these copies is to be served on the other party’s attorney (or the other party, if they do not have an attorney); the original and the other three copies are to be filed with the

court. Staple each of the copies, but leave the original unstapled so the court can scan it.

Attaching Exhibits

Attach any documents you want to rely on, such as plane tickets, a doctor's note confirming date of surgery, or other evidence.

For each exhibit attached to your motion, you must place a page in front of the exhibit identifying it as Exhibit A, B, and so forth in alphabetical order.

4. Have the Motion Served and Attach the Proof of Service to Remaining Copies

Your motion must be served by a person over the age of 18 who is not a party to the case. Your server must complete a proof of service form, either [Proof of Service by First Class Mail \(POS-030\)](http://www.courts.ca.gov/documents/pos030.pdf) (<http://www.courts.ca.gov/documents/pos030.pdf>) or [Proof of Personal Service \(POS-020\)](http://www.courts.ca.gov/documents/pos020.pdf) (<http://www.courts.ca.gov/documents/pos020.pdf>). For more information on these Proofs of Service, see our guides for [Serving Documents by Mail](https://www.saclaw.org/resource_library/serving-documents-by-mail/) (https://www.saclaw.org/resource_library/serving-documents-by-mail/) and [Service by Personal Delivery](https://www.saclaw.org/resource_library/personal-service/) (https://www.saclaw.org/resource_library/personal-service/).

The proof of service form should be completely filled out, but not signed. **Make a copy of the unsigned proof of service before proceeding and staple after the last page of the copy you will serve.**

The server must then personally deliver or mail the service copy on the other party's attorney (or the other party, if they do not have an attorney).

The server then signs the Proof of Service form, and gives the signed Proof of Service to you.

Make copies of the signed proof of service. It is not necessary to copy the instruction page. Attach the signed original to the original motion packet, and the copies to the copy packets, after the last page.

5. File Your Motion in the Law and Motion Department

File the original (with original signed proof of service) and two copies (with copied proof of service) of your motion at the Law & Motion Civil Filing Window in Room 212 on the second floor of the Hall of Justice building, located at 813 6th Street in downtown Sacramento.

Filing Fee: There is a \$60 fee to file a motion.

Fee Waiver: If you are receiving government benefits such as Medi-Cal or are otherwise qualified because of low income, you can apply for a fee waiver. Turn the fee waiver request forms in with the motion instead of a fee payment. For more information, see our [Step-by-Step guide on Fee Waivers](https://www.saclaw.org/resource_library/fee-waiver/) (https://www.saclaw.org/resource_library/fee-waiver/).

6. Opposition Papers and Your Optional Reply Papers

If any opposing counsel or self-represented party opposes your motion, he or she may serve and file an opposition at least **nine court days** prior to your motion. No fee is required to file an opposition. The opposition contains a memorandum of points and authorities and usually a declaration, but does not need the notice of motion or motion. Be sure to check your mail, and read any documents you receive carefully.

If the other attorney or party opposes your motion, you may choose to serve and file a reply to the opposition at least **five court days** prior to the motion. [CCP § 1005](#)

(http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1005). It must be served by overnight mail to reach the opposing party no more than one day after it is filed.

The reply is optional and is usually used to address new issues your opponent raised in the opposition. No fee is required to file a reply. See our guide on [Writing, Scheduling, and Opposing Motions](#) (https://www.saclaw.org/resource_library/motions-in-civil-cases/) for more information.

7. Review the Tentative Ruling and Notify Court and Opponent if You Wish to Appear

Pursuant to [Local Rule 1.06](#) (<http://www.saccourt.ca.gov/local-rules/docs/chapter-01.pdf>), as modified for Department 47, the judge will read your documents and will post a tentative ruling on the motion by 2:00 p.m. two court days **before the hearing**. (If you are not filing in Sacramento, check with your county court for their rules on tentative rulings. Most counties use a similar system.)

Parties may access the tentative ruling on the court's [public portal](#) (<https://www.saccourt.ca.gov/indexes/new-portal-info.aspx>) or by telephoning 916-874-5487. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the department clerk at 916-874-5487 no later than 12:00 p.m. (noon) on the court day preceding the hearing of their intent to appear at the hearing, and further advises the clerk that such party has notified the other side of its intention to appear. For more information, see the [Tentative Ruling Information](#) (<https://www.saccourt.ca.gov/civil/self-help-services/tentative-ruling.aspx>) page on the Sacramento County Superior Court's website.

Closely review the tentative ruling. Since you are asking the court for to set aside the default, you are looking for your motion to be "GRANTED." If the court does not grant your request, your motion will be "DENIED." Even if your request is granted, be sure to read the tentative ruling very carefully, since it will likely contain other important information such as if and when you need to serve and file your proposed Answer (or other response).

If you are happy with the tentative ruling: you do not need to do anything. You won't have to go to court unless ordered to appear in the tentative ruling or unless the other side calls you and the court no later than 12:00 p.m. (noon) the court day before the hearing. If that happens, you should go to the court hearing and be prepared to argue why your motion should be granted.

If you are not happy with the tentative ruling: You can present arguments in front of the judge. To do so, notify the other party that you plan to appear, and then call the the department clerk at 916-874-5487 no later than 12:00 p.m. (noon) the court day before the hearing. Leave a message confirming that you plan to appear and that you have notified the other party.

8. Attend the Hearing, if Needed

If neither party calls the court and opposing party to request oral argument, the court will simply make the tentative ruling the order of the court.

If you or the other party request oral argument, you can attend in person, by telephone, or by video using the Zoom app. Instructions are available on the [Presiding Judge Department Information](https://www.saccourt.ca.gov/civil/presiding-judge-info.aspx#alternatives) (<https://www.saccourt.ca.gov/civil/presiding-judge-info.aspx#alternatives>) page.

Arrive, call, or log onto Zoom early. There will probably be other cases scheduled at the same time. Go into the courtroom or Zoom waiting room and check in with the bailiff or clerk.

When your name is called, be ready to speak and to answer any questions the judge has. You will only have a few minutes. After both sides speak, the judge may make a decision right away, or may "take it under consideration" and mail out the decision in a few days.

For Help

SH@LL (Self-Help at the Law Library) (<https://saclaw.org/services/civil-self-help/>)

609 9th Street, Sacramento CA 95814

(916) 476-2731 (Appointment Request Line)

Services Provided: SH@LL provides general information and basic assistance to self-represented litigants on a variety of legal issues. All assistance is provided by telephone. Visit ["What we can help with"](https://saclaw.org/services/civil-self-help/#canhelp) (<https://saclaw.org/services/civil-self-help/#canhelp>) for a list of qualifying cases.

Eligibility: Must be a Sacramento County resident or have a [qualifying case](https://saclaw.org/services/civil-self-help/#who) (<https://saclaw.org/services/civil-self-help/#who>) in the Sacramento County Superior Court.

For More Information

On the Web:

For information about the Sacramento County Superior Court's motion requirements, visit their page, "[Motions and Hearings: General Information](https://www.saccourt.ca.gov/civil/motions-hearings-general.aspx) (<https://www.saccourt.ca.gov/civil/motions-hearings-general.aspx>)."



Samples

1	John Property	
2	1234 Tree Court	
3	Sacramento, CA 95814	Your name, address and telephone number. In Pro Per means you are representing yourself.
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 Case number.
11	ALL CLAIMANTS TO SURPLUS FUNDS	NOTICE OF HEARING AND CLAIM FOR SURPLUS FUNDS; POINTS AND AUTHORITIES; DECLARATION
12	AFTER TRUSTEE'S SALE OF REAL	
13	PROPERTY LOCATED AT:	
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		Enter the relevant dates, time and department. See Step 1.2 for information on selecting your hearing date.
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	//	Your name.
28	//	
Claim for Surplus Funds from Trustee Sale - 1		

Claim for Surplus Funds from Trustee Sale (page 1)



1 //

2 **NOTICE OF TENTATIVE RULING**

3 "Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
4 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings
5 for the department may be downloaded off the court's website. If the party does not have online
6 access, they may call the dedicated phone number for the department as referenced in the local
7 telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the
8 hearing and receive the tentative ruling. If you do not call the court and the opposing party by
9 4:00 p.m. the court day before the hearing, no hearing will be held."

10 Dated: June 1, 2016

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12 Your name, date,
and signature.

John Property, Claimant in Pro Per

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Claim for Surplus Funds from Trustee Sale - 2

Claim for Surplus Funds from Trustee Sale (page 2)



1	<div>Your name.</div>	
2	VERIFICATION OF CLAIM	
3	I, <u>John Property</u> , am the claimant in this matter. I have personal knowledge of the facts of	
4	this case, have read the foregoing CLAIM FOR SURPLUS FUNDS AND NOTICE OF	
5	HEARING and know its contents, and declare under penalty of perjury under the laws of the	
6	State of California that the contents therein are true and correct.	
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8		
9	Dated: <u>June 1, 2016</u>	
10	<div>Your name, date, and signature</div>	
11		<u>John Property, Claimant in Pro Per</u>
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	Claim for Surplus Funds from Trustee Sale - 3	
	Claim for Surplus Funds from Trustee Sale (page 3)	

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

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

II. LEGAL ARGUMENT

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

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

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

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

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

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

(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.

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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.

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10 Respectfully submitted,

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13 Dated: June 1, 2016

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15 Your name, date
and signature

16 John Property, Claimant in Pro Per

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Claim for Surplus Funds from Trustee Sale - 5

Claim for Surplus Funds from Trustee Sale (page 5)



1	<div>Your name.</div>	
2		DECLARATION
3	I, <u>John Property</u> , declare the following:	
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5	1. I have personal knowledge of all facts stated in this declaration and if called to testify,	
6	would testify consistently with the facts stated in this declaration.	
7	<div>Date of trustee sale.</div> 2. On <u>4/13/2015</u> the real property located at <u>6666 Los Funds Drive, Elk Grove, CA 95624</u>	
8	(hereafter "PROPERTY") was sold at trustee sale pursuant to the terms of the mortgage	<div>Address of property</div>
9	on that property.	
10	3. I am the recorded owner of the PROPERTY just prior to the trustee sale.	
11	4. After the sale, the trustee paid the creditors to the PROPERTY, and a surplus in the	
12	amount of <u>\$43,052</u> remained.	<div>Surplus amount from petition.</div>
13	5. On <u>May 12, 2016</u> , the court permitted the petitioner reasonable attorney fees and costs,	
14	which were deducted from the surplus, and directed the remaining <u>\$39,750</u> deposited	
15	with the clerk of the court.	<div>Date of order and amount deposited with clerk.</div>
16	6. I know of no other person with a superior claim to the surplus funds from the sale of this	
17	property, and therefore claim all surplus funds remaining after any court-authorized	
18	deductions from the sale of the PROPERTY.	<div>Explain why you didn't participate earlier, if applicable.</div>
19	7. I did not file an initial claim, and was not present at the hearing allowing the funds to	
20	deposited because the petition was served on the address for the PROPERTY, at which I	
21	no longer lived due to the foreclosure. As a result, I had no knowledge of this case.	
22	8. For these reasons, I ask that the court direct the clerk to disburse the funds deposited as a	
23	surplus on the PROPERTY to me.	
24	I declare under penalty of perjury under the laws of the State of California that the foregoing	
25	is true and correct.	
26	Dated: <u>June 1, 2016</u>	
27	<div>Your name, date, and signature</div>	
28	<u>John Property, Claimant in Pro Per</u>	

Claim for Surplus Funds from Trustee Sale - 6

Claim for Surplus Funds from Trustee Sale (page 6)