

## MOTION FOR DISBURSEMENT OF SURPLUS FUNDS

# How to Request Funds Which Have Been Deposited with the Superior Court Clerk

*This Guide includes instructions and sample forms. Links to download the fillable forms are at the end of this Guide. Additional copies of this Guide can be accessed at [www.saclaw.org/surplus-funds](http://www.saclaw.org/surplus-funds).*

## BACKGROUND

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](#). This request is made by a formal noticed motion. Motions are used to ask the judge to make an order in your case. In many cases, the attorney representing the company that sold your home will file the motion to disburse funds. 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. When you file a motion, you will choose a hearing date, and then file the written motion stating why you are entitled to the release of the funds.

### You may also need....

These Step by Step guides may also be helpful:

- [Personal Service](#)
- [Service by Mail](#)

## STEP-BY-STEP INSTRUCTIONS

### Step 1: Prepare the Motion

A request to release surplus funds is done through a motion. A “motion” is a request made in a case asking the court to issue an order of some sort.

#### **1.1: Modify the Template**

There are no pre-printed Judicial Council forms for this type of motion. Instead, you must draft the motion yourself. Motions must be typed on 28-line pleading paper and follow a specific format. This motion is very simple and it consists of the following:

- Notice of Motion;
- Motion;
- Points and Authorities;
- Declaration; and
- [Proposed] Order.

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance consult a lawyer.

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The Notice of Motion lets any other parties involved in this matter know when and where the motion is scheduled to be heard, while the Motion lets the court and any other party know what is being requested. The Points and Authorities section explains the legal basis of the Motion, while the Declaration provides evidence, sworn under penalty of perjury, supporting the Motion. These four parts may be combined into a single document. A [Proposed] Order is prepared for the Judge to sign, and must always remain a separate document. [California Rule of Court Rule 3.1112.](#)

The templates and samples included at the end of this Guide are designed to be used in simple matters. They may be modified to fit your situation, if necessary.

In Sacramento, the Notice of Motion and Motion **must** include the paragraph from [Local Rule 1.06 \(D\)](#) informing the parties of the tentative ruling system. That language is included in the motion template.

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Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
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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	16	17	18 Last day to serve by mail	19 Day 5	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

**1.2: Setting the Date of the Motion**

In Sacramento, the party requesting to release surplus funds is responsible for setting the date for hearing the motion. There are two very important deadlines you must consider when choosing the date of a motion: the **filing deadline** and the **service deadline**.

**Filing Deadline:** The motion must be filed with the court at least sixteen court days prior to the motion date ([California Code of Civil Procedure \[CCP\] § 1005](#)). Court days are Monday through Friday, excluding court holidays. To determine whether a particular filing date will meet this deadline, start with your desired hearing date and count backward ([CCP § 12c](#)) sixteen court days. Day one is the court day prior to the hearing. The sixteenth court day prior to the hearing is the last possible date that the motion can be filed with the court.

For example, suppose you wanted to have your motion heard on June 18, 2012. You would start counting backward using June 15, 2012 as day one. Do not count weekends or court holidays (there

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is only one court holiday in this example, which is Memorial Day, May 28). Your sixteenth court day before the hearing would be May 24, 2012, which would be the latest that the motion could be filed.

**Service Deadline:** Before you file the motion with the court, you must have all parties in the case served with a copy. This means that someone—**not you**—over the age of 18 who is not a party in the case must either personally deliver a copy of the motion and related documents to the party or their attorney, or mail a copy of the motion and related documents to the party or attorney by first class mail. If the motion is personally served, the service must be at least sixteen court days prior to the date of the motion, the same as the minimum filing deadline. If the motion is served by first-class mail, additional time is added to the calculation, depending on where the mail originates and where it is sent ([CCP § 1005](#)). For example, if the documents are mailed from California to an address in California, five calendar days are added before the sixteen court days. Calendar days include weekends and holidays, but if the final day lands on a weekend or holiday, it is rolled over to the previous court day. So, if June 18, 2012 was the hearing date, the sixteenth court day before would be May 24, 2012, but counting back five more calendar days results in Saturday, May 19, 2012. Because the fifth day fell on a weekend (or holiday), the deadline for service rolls back to May 18, 2012, the last court day before the deadline. When choosing the date of your motion, be sure that you have left enough time for the motion to be both served and filed in a timely fashion.

### ***Step 1.3: Determining the Department to Hear and the Time of the Motion***

Motions to release surplus funds are heard Monday through Friday in Department 53 (odd numbered cases) at 2:00 p.m. or Department 54 (even numbered cases) at 9:00 a.m. (If your case has already been assigned a different department, use that instead.)

## **Step 2: Make Copies**

Make four (4) copies each of your Motion (including the Points and Authorities, Declaration, and any attachments) and your [Proposed] Order to Disburse Funds. Staple each photocopy, but leave the original documents unstapled, for the court's ease in scanning. One of the copies is to be served on the other attorney or self-represented party; the original and the other three copies are to be filed with the court. Sample filled-in forms with instructions are available at the end of this Guide.

## **Step 3: Have the Motion Served**

Your motion must be served by someone—**not you**—over the age of 18 who is not a party in the case. Service may be made either in person or by mail. Each type of service has different timing requirements; see Step 1.2 above for more information. In some situations, these timing requirements will help you decide which type of service will best fit your situation.

### ***Step 3.1: Fill out the Proof of Service form***

Prior to service, the proof of service form should be completely filled out, but not signed.

- If personally serving, use [Proof of Personal Service \(POS-020\)](#).
- If serving by mail, use [Proof of Service by First Class Mail \(POS-030\)](#).

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Instructions for completing these forms are available from the Step-by-Step guides on Proofs of Service on our website at [www.saclaw.org/personal-service](http://www.saclaw.org/personal-service) and [www.saclaw.org/mail-service](http://www.saclaw.org/mail-service), respectively. Make a copy of the unsigned proof of service before proceeding.

**Step 3.2: Server Serves the Motion**

The server must personally deliver or mail photocopies of the motion, proposed order, and unsigned proof of service form to the opposing attorney or self-represented litigant. The unsigned proof of service form can be attached as the last page of the motion.

**Step 3.3: Server Signs the Proof of Service form**

After mailing or delivering the documents, the server signs the original Proof of Service form, and gives the signed Proof of Service to you.

**Step 3.4: Copy the Signed Proof of Service**

Make three (3) copies of the signed Proof of Service. It is not necessary to copy the instruction page.

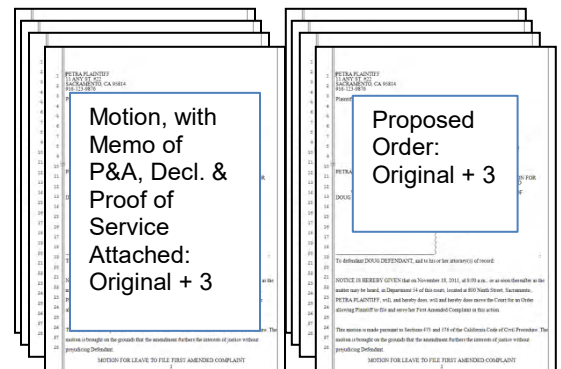
**Step 4: Assemble Your Documents for Filing**

Attach a signed proof of service form to each of the Motions.

- Attach your original signed proof of service to your original motion. Use a clip, NOT a staple!
- Staple a photocopy of the signed proof of service to each of your remaining photocopied Motions.

Assemble your documents for filing as follows:

- Original Motion with all pages, plus three (3) copies. The original should be unstapled in Sacramento, while each copy is stapled.
- [Proposed] Order, plus three (3) copies. The original should be unstapled in Sacramento, while each copy is stapled.



**Step 5: File Your Documents *Update!***

File the original and three photocopies of your motion at the Civil Law and Motion filing counter. Until Sept. 16, 2016, file at 720 9th St., Room 102. As of Sept. 19, file at **813 Sixth Street**, Room 212 (Hall of Justice). Oppositions and replies are also filed at the counter. **Do not use the drop box for filing motions, oppositions, or replies**, as the delay in processing will prevent the court from timely receiving your document.

**Step 6: Check the Tentative Ruling**

Pursuant to [Local Rule 1.06](#), the court will make a tentative ruling on the merits of your matter by 2:00 p.m. the court day **before the hearing**. You may read the tentative ruling online, or may call the Presiding Judge's department at 874-8142 to hear it. For more information, see the Sacramento Superior Court's website at [www.saccourt.ca.gov/civil/motions-hearings-tentative.aspx](http://www.saccourt.ca.gov/civil/motions-hearings-tentative.aspx).

Closely review the tentative ruling. Since you are asking the court to promptly disburse the totality of the surplus funds deposited with the clerk, you are looking for your motion to be "GRANTED." Your

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motion may also be “DENIED” or “GRANTED IN PART and DENIED IN PART.” In any event, be sure to read the tentative ruling very carefully to make sure you understand it.

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 between 2:00 p.m. and 4:00 p.m. the court day before your hearing date to request an oral argument in front of the judge. If that happens, you should go to the court hearing and be prepared to argue your case.

Department 53 and 54, where these motions are heard, are not in the main courthouse; they are now in the Hall of Justice Building, 813 Sixth St. (6th and H).

If you are not happy with the tentative ruling, and wish to present arguments in front of the judge, you must call all opposing counsel and/or self-represented parties, and the clerk for Department 53 ((916) 874-7858) or Department 54 ((916) 874-7848) no later than 4:00 p.m. the court day before your hearing and state that you are requesting oral argument on the motion. If neither you nor the opposing counsel or self-represented party requests oral argument, the court will simply make the tentative ruling the order of the court, and no oral argument will be permitted.

## FOR HELP

### **Sacramento County Public Law Library Civil Self Help Center**

609 9<sup>th</sup> Street, Sacramento 95814

[www.saclaw.org/self-help/civil-self-help-center/](http://www.saclaw.org/self-help/civil-self-help-center/)

*Services Provided:* The Sacramento County Public Law Library Civil Self Help Center provides general information and basic assistance to self-represented litigants on a variety of civil legal issues.

Appointments will be made beginning at 8:30 a.m. If an appointment is appropriate, it will be made for later in the day. You are encouraged to arrive by 8:25 a.m. to participate in the appointment setting drawing.

*Eligibility:* Must be a Sacramento County resident or have a [qualifying case](#) in the Sacramento County Superior Court.

## FOR MORE INFORMATION

### **On the Web:**

For information about the Sacramento County Superior Court’s motion requirements, visit

[www.saccourt.ca.gov/civil/motions-hearings-general.aspx](http://www.saccourt.ca.gov/civil/motions-hearings-general.aspx).

*IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.*

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## **ATTACHMENTS: FORMS AND INSTRUCTIONS**

Sample filled-in forms with instructions are available at the end of this Guide.

You can download the customizable templates from:

- Motion: [www.saclaw.org/surplus-funds-motion](http://www.saclaw.org/surplus-funds-motion)
- [Proposed] Order: [www.saclaw.org/surplus-funds-order](http://www.saclaw.org/surplus-funds-order)

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

Your name, address and telephone number. In Pro Per means you are representing yourself.

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](http://www.saclaw.org/surplus-funds-motion).

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 In re:

11 ALL CLAIMANTS TO SURPLUS FUNDS  
12 AFTER TRUSTEE'S SALE OF REAL  
13 PROPERTY LOCATED AT:

14 6666 Los Funds Drive, Elk Grove, CA 95624

15 Property address

16 Case No.: 34-2016-00123456

Case number.

17 NOTICE OF HEARING AND CLAIM FOR  
18 SURPLUS FUNDS; POINTS AND  
19 AUTHORITIES; DECLARATION

20 Date: June 30, 2016  
21 Time: 9:00 a.m.  
22 Dept: 54

Enter the relevant dates, time and department. See Step 1.2 for information on selecting your hearing date.

23 Your name.

24 TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:

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

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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

11 Your name, date,  
12 and signature.

13 John Property, Claimant in Pro Per



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

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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,  
including the payment of the trustee's fees and attorney's fees permitted pursuant  
22 to subdivision (b) of Section 2924d and subdivision (b) of this section.

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

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

25 (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  
26 of the trustee's sale.

27 (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  
28 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

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,

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12  
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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Your name.

### 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.

Date of trustee sale.

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.

Address of 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.

Surplus amount from petition.

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.

Date of order and amount deposited with clerk.

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.

Explain why you didn't participate earlier, if applicable.

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

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

Your name, address and telephone number. In Pro Per means you are representing yourself.

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.

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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 In re:

11 ALL CLAIMANTS TO SURPLUS FUNDS  
12 AFTER TRUSTEE'S SALE OF REAL  
13 PROPERTY LOCATED AT:

14 6666 Los Funds Drive, Elk Grove, CA 95624

15 Property address

10 Case No.: 34-2016-00123456

Case number.

11 [PROPOSED] ORDER DISTRIBUTING  
12 SURPLUS FUNDS AFTER TRUSTEE'S  
13 SALE OF REAL PROPERTY

14 Date: June 30, 2016  
15 Time: 9:00 a.m.  
16 Dept: 54

Enter the relevant dates, time and department. See Step 1.2 for information on selecting your hearing date.

17 This matter came before Department 54 of the court on June 30, 2016 at 9:00 a.m. by noticed  
18 hearing of the claimant, John Property, who appeared *in pro per*. The Petitioner had been  
19 previously discharged from the action.

Your name.

20 THE COURT FINDS:

- 21 1. All notices were properly given by the Petitioner in this case, as well as by the claimant,  
22 John Property.
- 23 2. On 4/13/2015 the Petitioner, Foreclose Holdings, completed a foreclosure sale of the  
24 real property located at 6666 Los Funds Drive, Elk Grove, CA 95624 (hereafter

25 Date of foreclosure sale.

26 Address of foreclosed property.

Amount of original surplus.

1 “PROPERTY”) pursuant to the terms of the mortgage on that property, resulting in a  
2 surplus of \$43,052.00

Name of original petitioner.

Date of order permitting deposit with the clerk, and amount of deposit.

3. On May 12, 2016, the Petitioner, Foreclose Holdings, was awarded costs and attorney fees, and after all known claims superior to the claimant were paid, was permitted to deposit the \$39,750 in surplus funds from the foreclosure of the PROPERTY with the clerk of the court. The Petitioner did subsequently deposit these funds with the

7 4. The claimant, John Property, has shown to the satisfaction of the court that he was the  
8 last recorded owner of record prior to the trustee sale, and no other persons have claimed  
9 any right superior to his claim to the surplus funds.

Surplus amount deposited from prior order.

11 THE COURT ORDERS:

12 1. That the clerk of the court disburse forthwith the \$39,750 deposited by the petitioner in  
13 this case to the claimant, John Property.

Your name.

16 IT IS SO ORDERED.

17 Dated:

20 \_\_\_\_\_  
Judge of the Superior Court