



NOTICE OF EXCESS FUNDS
(Section 34.03, Subsection (a), Tax Code)

To:

Cause No:

Styled:

This notice is to inform you that excess proceeds were deposited with the Clerk of the District Courts of El Paso County, Texas, in the amount of \$ _____ in connection with the above numbered and styled cause.

You are further advised to review the following text of Section 34.03 and 34.04, Tax Code regarding your rights with respect to the excess proceeds.

§ 34.03. Disposition of Excess Proceeds

- a) *The clerk of the court shall:*
- (1) *if the amount of excess proceeds is more than \$25, before the 31st day after the date the excess proceeds are received by the clerk, send by certified mail, return receipt requested, a written notice to the former owner of the property, at the former owner's last known address according to the records of the court or any other source reasonably available to the court, that:*
 - (A) *states the amount of the excess proceeds;*
 - (B) *informs the former owner of that owner's rights to claim the excess proceeds under Section 34.04; and*
 - (C) *includes a copy or the complete text of this section and Section 34.04; and*
 - (2) *regardless of the amount, keep the excess proceeds paid into court as provided by Section 34.02 (c) for a period of two years after the date of the sale unless otherwise ordered by the court.*
- b) *If no claimant establishes entitlement to the proceeds within the period provided by Subsection (a), the clerk shall distribute the excess proceeds to each taxing unit participating in the sale in an amount equal to the proportion its taxes, penalties, and interests bear to the total amount of taxes, penalties, and interest due all participants in the sale.*
- c) *The clerk shall note on the execution docket in each case the amount of the excess proceeds, the date they were received, and the date they were transmitted to the taxing units participating in the sale. Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media.*

§ 34.04. Claims for Excess Proceeds

- a) *A person, including a taxing unit and the Title IV–D agency, may file a petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds. The petition must be filed before the second anniversary of the date of the sale of the property. The petition is not required to be filed as an original suit separate from the underlying suit for seizure of the property or foreclosure of a tax lien on the property but may be filed under the cause number of the underlying suit.*
- b) *A copy of the petition shall be served, in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor, on all parties to the underlying action not later than the 20th day before the date set for a hearing on the petition.*
- c) *At the hearing the court shall order that the proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:*
- (1) *to the tax sale purchaser if the tax sale has been adjudged to be void and the purchaser has prevailed in an action against the taxing units under Section 34.07(d) by final judgment;*
 - (2) *to a taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment or that were omitted from the judgment by accident or mistake;*
 - (3) *to any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law;*
 - (4) *to a taxing unit for any unpaid taxes, penalties, interest, or other amounts adjudged due under the judgment that were not satisfied from the proceeds from the tax sale; and*
 - (5) *to each former owner of the property, as the interest of each may appear, provided that the former owner:*
 - (A) *was a defendant in the judgment;*
 - (B) *is related within the third degree by consanguinity or affinity to a former owner that was a defendant in the judgment; or*
 - (C) *acquired by will or intestate succession the interest in the property of a former owner that was a defendant in the judgment.*
- (c–1) *Except as provided by Subsections (c)(5)(B) and (C), a former owner of the property that acquired an interest in the property after the date of the judgment may not establish a claim to the proceeds. For purposes of this subsection, a former owner of the property is considered to have acquired an interest in the property after the date of the judgment if the deed by which the former owner acquired the interest was recorded in the real property records of the county in which the property is located after the date of the judgment.*
- d) *Interest or costs may not be allowed under this section.*
- e) *An order under this section directing that all or part of the excess proceeds be paid to a party is appealable.*
- f) *A person may not take an assignment or other transfer of an owner's claim to excess proceeds unless:*
- (1) *the assignment or transfer is taken on or after the 36th day after the date the excess proceeds are deposited in the registry of the court;*
 - (2) *the assignment or transfer is in writing and signed by the assignor or transferor;*
 - (3) *the assignment or transfer is not the result of an in-person or telephone solicitation;*
 - (4) *the assignee or transferee pays the assignor or transferor on the date of the assignment or transfer an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds; and*
 - (5) *the assignment or transfer document contains a sworn statement by the assignor or transferor affirming:*

- (A) that the assignment or transfer was given voluntarily;
 - (B) the date on which the assignment or transfer was made and that the date was not earlier than the 36th day after the date the excess proceeds were deposited in the registry of the court;
 - (C) that the assignor or transferor has received the notice from the clerk required by Section 34.03;
 - (D) the nature and specific amount of consideration given for the assignment or transfer;
 - (E) the circumstances under which the excess proceeds are in the registry of the court;
 - (F) the amount of the claim to excess proceeds in the registry of the court;
 - (G) that the assignor or transferor has made no other assignments or transfers of the assignor's or transferor's claim to the excess proceeds;
 - (H) that the assignor or transferor knows that the assignor or transferor may retain counsel; and
 - (I) that the consideration was paid in full on the date of the assignment or transfer and that the consideration paid was an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds.
- g) An assignee or transferee who obtains excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for the amount of excess proceeds obtained plus attorney's fees and expenses. An assignee or transferee who attempts to obtain excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for attorney's fees and expenses.
 - h) An assignee or transferee who files a petition setting forth a claim to excess proceeds must attach a copy of the assignment or transfer document and produce the original of the assignment or transfer document in court at the hearing on the petition. If the original assignment or transfer document is lost, the assignee or transferee must obtain the presence of the assignor or transferor to testify at the hearing. In addition, the assignee or transferee must produce at the hearing the original of any evidence verifying the payment of the consideration given for the assignment or transfer. If the original of any evidence of the payment is lost or if the payment was in cash, the assignee or transferee must obtain the presence of the assignor or transferor to testify at the hearing.
 - i) A fee charged by an attorney to obtain excess proceeds for an owner may not be greater than 25 percent of the amount obtained or \$1,000, whichever is less. A person who is not an attorney may not charge a fee to obtain excess proceeds for an owner.
 - j) The amount of the excess proceeds the court may order be paid to an assignee or transferee may not exceed 125 percent of the amount the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer.

This office cannot provide you forms or legal advice to claim the excess proceeds

CERTIFICATE OF SERVICE

To:
Cause No:
Styled:

I, Norma L. Favela Barceleau, District Clerk, El Paso County, Texas hereby certify that a true and correct copy of the foregoing/attached Notice of Excess Funds was sent by certified mail to the person named herein on (date).

Cert. Mail Receipt #

Norma L. Favela Barceleau
District Clerk
El Paso County, Texas

By: _____
Deputy