Instructions to Claim
Surplus Monies Action (In Rem Foreclosures)

1. To claim surplus funds, you can hire an attorney or use the following information to obtain the court order yourself. The County Court Clerk, County Treasurer and County Clerk's Office cannot provide any legal advice or guidance on the claims process.

2. Required forms are in bold below. Any forms that have an asterisk (*for example:* **Notice of Claim***) are available in the packet of forms provided to you with these instructions.

3. You must submit the **Certificate of Amount of Money on Deposit** from the County Treasurer (with whom the money is deposited) showing the amount of money (including interest). The County Treasurer will mail this Certificate to former owners directly. If you do not have a Certificate, you must request it from the County Treasurer.

4. **IMPORTANT:** You MUST have the correct Lien Year and Index Number on all surplus forms. Please refer to the Schedule "A" attached to the Order Confirming Surplus; the Index Number claimants should use is noted next to the parcel.

5. Request a **Certificate of Claims to Surplus Monies** from the County Clerk pursuant to RPAPL §1355. The fee for this Certificate is $5.00. The Certificate of Claims will list any other parties who have filed a Notice of Claim for Surplus Monies or Notice of Appearance in the In Rem Action, against the specific parcel (identified by Tax Map Number). You must serve a copy of the Notice of Motion and Motion on the Sullivan County Treasurer as well as all parties filing a Notice of Claim or Notice of Appearance.

6. A **Notice of Claim*** must be filed in the In Rem Action with the County Clerk. This is filed with the Notice of Motion (see below). The Notice of Claim must contain the same caption and index number as the In Rem Action. The Notice of Claim must also include the Tax Map Number (for example, *Town of Bethel Tax Map Number 45.-1-1*).

7. A **Notice of Motion*** must be filed with the County Clerk together with the required filing fee of $45.00. Use the same caption and index number as in the In Rem Action – The papers MUST include the Tax Map Number of the Parcel.

   Motions should be made returnable the first Monday of the month at 11:00 a.m. No personal appearance is required.

   Attached to your Notice of Motion should be the following:

   a. An **Affidavit in Support of the Motion***;

   b. *OPTIONAL:* A limited title search (also known as a tax foreclosure search) of the property commencing at the date that the Claimant/Former Owner took title through the date the County foreclosure deed was recorded to identify lien holders (other judgment creditors). The search must be issued by a licensed title search company. (This is optional, however, submitting the same may expedite the distribution of surplus proceeds.);

   c. The Certificate of Claims to Surplus Monies from the County Clerk referred to above;

   d. The Certificate of Amount of Money on Deposit from the County Treasurer referred to above;

e. A copy of the Judgment of Foreclosure and Sale (available on the Sullivan County Treasurer's website); and

f. **Affidavit of Service*** of your Notice of Motion and Affidavit upon the Sullivan County Treasurer and all lien holders, if any exist. A copy of the Affidavit(s) of Service must be submitted with the Notice of Motion. The original Affidavit(s) of Service must be filed in the Sullivan County Clerk's Office.

g. You must prepare and submit to the Court a proposed **Order to Distribute Surplus Funds*** directing how the surplus monies are to be paid.

h. You must prepare and submit a proposed **Order Appointing a Referee*** (Order of Reference). The County (as existing Referee in the Tax Foreclosure action) is not required to file a Report of Referee (See County Tax Act §11-26.0).

i. If a referee is appointed by the Court, the Referee will file a **Referee's Report** with the Court, certifying the appearances in the In Rem Foreclosure Action and determining the priority of creditors.

Be sure to retain a copy of all papers for your own records. County and court staff are not permitted to make copies for you.

8. Once the Order is signed and entered by the County Clerk you must obtain a certified copy of the order from the County Clerk's Office and file it with the County Treasurer's Office (with whom the money is deposited). A certified copy will cost $5.20 plus $0.65 per page over 8 pages. If you do not have a copy of the Order to be certified, the County Clerk can print the Order for you for an additional fee. The Treasurer's Office will mail the checks as set forth in the Referee's Report less the administrative fee (currently 2% per §8010 of the NYS Civil Practice Laws and Rules) and less the Referee's fee.

9. Please be aware that nothing contained herein should be construed as legal advice. You should seek the advice of an attorney to better understand your rights, responsibilities and legal options.

10. Forms are available online by visiting:

    Sullivan County Treasurer:
    https://sullivanny.us/Departments/Treasurer/Foreclosures

11. Hard copies of the forms are available by visiting:

    Sullivan County Treasurer's Office
    100 North Street, Monticello, NY 12701

    Sullivan County Clerk's Office
    100 North Street, Monticello, NY 12701

The Court Clerk, County Treasurer and County Clerk's Office cannot provide any legal advice or guidance on the claims process.

NANCY BUCK
COUNTY TREASURER
Nancy.Buck@sullivanny.us

Tele: 845-807-0200
845-807-0210

KATHLEEN LARA
DEPUTY TREASURER
Kathleen.Lara@sullivanny.us

Fax: 845-807-0220

Sullivan County Treasurer

SULLIVAN COUNTY GOVERNMENT CENTER
100 NORTH STREET
PO BOX 5012
MONTICELLO, NY 12701

Re: CERTIFICATE OF AMOUNT OF SURPLUS FUNDS ON DEPOSIT

This will confirm that the Sullivan County Treasurer is holding surplus proceeds for the parcel known as:

Town of:

Tax map #:

Former owner:

This parcel was sold at public auction on _____ and the Sullivan County Treasurer is holding the sum of * as of *. Interest will continue to accrue until said funds are disbursed.

_____
NANCY BUCK
Sullivan County Treasurer

SAMPLE

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

CERTIFICATE AS TO NOTICE OF CLAIM

Index No.: _____

Justice Assigned: Hon. _____

Property SBL/Address: _____

Former Owner Name(s): _____

I, [name of clerk], Clerk of the Supreme Court, do hereby certify, that there is no notice of claim to surplus moneys in the above-entitled action on file, except the notice of claim of

1) [name of claimant 1], by [name of attorney], attorney, filed [date of filing];
2) [name of claimant 2], by [name of attorney], attorney, filed [date of filing];
3) [name of claimant 3], by [name of attorney], attorney, filed [date of filing]; and
4) [name of claimant 3], by [name of attorney], attorney, filed [date of filing].

Dated: Monticello, New York
_____, _____

(SEAL)

_____
Hon. _____
Sullivan County Court Clerk

SAMPLE

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

REFEREE'S REPORT OF SURPLUS MONEYS

Index No.: _____

Subject Parcel's Tax Map #:
Town of _____

Tax Map # _____

TO THE COUNTY COURT OF THE STATE OF NEW YORK, COUNTY OF SULLIVAN:

In pursuance of an Order of Reference in the above-entitled proceeding signed by the Hon. [Justice Assigned] on [date of Order of Reference] and entered in the Office of the Clerk of the County of Sullivan, whereby it was referred to the undersigned as Referee to ascertain and compute the amount due to the Claimant or any other person who has a lien on the surplus moneys and to ascertain the priorities of the liens.

1. I, [Name of Referee], the Referee in the said Order named, DO HEREBY REPORT that before proceeding to review the claims and documentary evidence I was first duly sworn faithfully and fairly to determine the questions referred to me and to make a just and true report thereon according to the best of my understanding; that I have computed and ascertained the amount due to the Claimant and to any other person who has a lien on the surplus moneys and to ascertain the priorities of the liens and that I find and according report:
2. Before proceeding with this matter, I duly took and subscribed the oath as prescribed by law.
3. I caused a copy of the Notice of Claim filed by the Claimant/Former Owner to be served by regular mail upon all the parties who have appeared in the action and all parties who have filed a Notice of Claim to submit detailed claims in writing. Copies of the notice with due proof of service thereof is annexed hereto and made a part hereof as Exhibit "A".
4. I have examined the Notice of Claim of the Claimant/Former Owner annexed hereto and made a part hereof as Exhibit "B".
5. I have examined the information in support of the application for surplus moneys together with exhibits, all as set forth on Exhibit "C".
6. I have examined the lien and judgment search submitted by the Claimant/Former Owner and the same is annexed hereto and made a part hereof as Exhibit "D".

SAMPLE

7. That the surplus moneys herein paid in court amount to the sum of $[Amount of Surplus] as evidenced by the Certificate of Surplus Funds of the Sullivan County Treasurer annexed hereto and made a part hereof as Exhibit "E".
8. No claim to said surplus moneys has been filed except for the Claims set forth in detail on Exhibit "F" annexed hereto and made a part hereof.
9. The Claimant has consented to the amount of the claim filed by [Insert Name of Creditor/Claimant].
10. Based upon my review of the Notices of Claim and upon consent of the Claimant, I have ascertained and computed the amounts due to the claims for surplus moneys filed as follows:

    [Insert name of creditor, with original amount due, plus statutory interest] [Once all creditors/claimants are listed, enter name of original claimant with the balance of surplus funds due to them] together with interest, less fees as calculated by the Sullivan County Treasurer and less the Referee's fee of $350.00.

11. After payment of the above amount due, the remaining balance together with interest and less any fees as calculated by the Sullivan County Treasurer be paid to the Claimant [Insert Name of original Claimant/Former Owner].
12. No party or attorney was given notice of any hearing and no party was entitled to notice thereto.

Dated: Monticello, New York
_____, 2024

_____
Referee

SAMPLE

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

Index No.: _____

_____

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

_____

NOTICE OF CLAIM
TO SURPLUS MONIES

Subject Parcel's Tax Map Number:

Town of _____

Tax Map # _____

To the Sullivan County Court Clerk:

You will please take notice that _____
(Insert your name)

of _____, _____,
(Street Address) (Insert City/Town/Village; State; Zip Code)

one of the Defendants in the above-entitled actions, is entitled to the surplus monies, or a portion thereof, arising from the sale made on the _____day of _____, 20____ under a judgment of this Court in the above-entitled action and that this claim amounts to _____ _____ Dollars ($_____) with interest thereon from the _____ day of _____, 20___, and is made by virtue of the fact that said _____
(Your Name)

_____ is the owner of the equity of redemption and his/her said claim is next in priority after the Lien of the Plaintiff in this action.

Dated: _____, 20___

_____
(Signature)

_____
(Print your Name)

_____
(Address)

_____
(Telephone Number)

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

_____

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

_____

NOTICE OF MOTION

Index No.: _____

Property SBL/Address:

_____
(Insert Property Address)

_____

MOTION MADE BY:

_____
[Name of Claimant]

DATE, TIME and PLACE of HEARING:

_____
[Motions are heard by the Court on the first Monday of each month at 11:00 am. No personal appearance is required.]

SUPPORTING PAPERS:

Affidavit of _____ sworn to on the _____ day of _____, 20__, along with Supporting Exhibits.

RELIEF DEMANDED:

Order directing the release of surplus money on deposit relative to _____
[Address of Property]

GROUNDS for RELIEF:

REAL PROPERTY TAX LAW §1197

DATED: _____
Monticello, New York

_____
(Signature of Claimant/Attorney)

_____
(Print Name)

_____
(Address)

_____
(Telephone Number)

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

Index No.: _____

_____

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

_____

AFFIDAVIT IN SUPPORT OF MOTION

Subject Parcel's Tax Map Number:

Town of _____

Tax Map # _____

STATE OF NEW YORK)
COUNTY OF SULLIVAN) ss.:

_____, hereby affirms under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.:

1. I am the Petitioner in the above captioned action and the prior owner of premises known as

_____, _____, _____.
Street Address City or Town State

2. I make this Affidavit in support of the application to claim surplus monies resulting the tax foreclosure sale of premises identified above.

3. On _____, _____, I became the owner of record for the subject premises. See
Month and Day Year
Exhibit A – Deed recorded in the Sullivan County Clerk's Office as Instrument #_____ or Liber _____ and Page _____.

4. This foreclosure action proceeded to a Judgment of Foreclosure and Sale on _____,
Month and Day
_____, then to public sale. The Sullivan County Treasurer has a total amount on deposit of
Year
$_____, as of _____, _____.
Dollar Amount Month and Day Year

A copy of the Sullivan County Treasurer's Certificate is attached as Exhibit B.

5. On _____, _____, the subject premises was sold at public auction
Month and Day Year

to _____ for the sum of $_____.
Purchaser Dollar Amount

6. The delinquent real estate taxes were paid in full from the proceeds, with the remainder of the sale proceeds deposited with the Sullivan County Treasurer.

7. Other than my claim, there are _____ other claims on file to the surplus monies. The County
No or Number
Clerk has issued a Certificate of Claims. See Exhibit C.

WHEREFORE, your deponent requests that the Sullivan County Treasurer be directed to pay to Petitioner, herein, the amount of $_____ being ALL / A PORTION of the remaining
Dollar Amount Cross out one
surplus funds on deposit with the said Sullivan County Treasurer.

Dated:
Monticello, New York

_____, 20____
(Date signed)

_____
(Signature)

_____
(Print your Name)

_____
(Address)

_____
(Telephone Number)

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

Index No.: _____

_____

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

_____

AFFIDAVIT OF SERVICE

Subject Parcel's Tax Map Number:

Town of _____

Tax Map # _____

STATE OF NEW YORK)
COUNTY OF SULLIVAN) ss.:

_____, hereby affirms under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law:

On _____, _____, I served a copy of my Notice of Claim, Notice of Motion and Affidavit in Support of my Motion upon the following interested parties by depositing a true copy of the aforesaid documents in a postpaid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service, as follows:

1. Sullivan County Treasurer
   100 North Street
   Monticello, NY 12701

2. See attached list for other lien holders and their respective mailing addresses.

Dated:
Monticello, New York
_____, 20____
(Date signed)

_____
(Signature)

_____
(Print Name)

At a Special Term of County Court
held in and for the County of Sullivan
on the ____ day of _____, _____

PRESENT:
HON. _____,
SULLIVAN COUNTY COURT JUDGE

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

_____

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

_____

ORDER TO DISTRIBUTE
SURPLUS MONEY

Index No.: _____

Property SBL/Address:

_____
(Insert Property Address)

_____

Petitioner(s) _____, having brought a
[Name]

motion to distribute surplus money deposited with the Sullivan County Treasurer; and this Court having

issued an order of reference dated _____, and the Referee having issued their report
[Date]
on _____; and according to the Referee's Report the amounts due as a result of the claim(s) for
[date]
surplus monies are as follows:

_____
_____
_____

Now, having read and considered the Notice of Motion, the Affidavit of _____
[Name of Affiant]

sworn to on _____, and exhibits annexed thereto, the Certificate of the Sullivan
[Date]

County Treasurer, showing that $_____ remains on deposit as surplus with respect to the
[Amount of surplus money]

subject premises; the Affidavit of Appearances or Notices of Claims of _____, sworn
[name of Affiant]

to on _____, and upon the Referee's Report dated _____ showing that there
[Date] [Date]

are no other notices of claims to the surplus money and upon all papers and proceedings had herein, and the motion having come on to be heard and due deliberation having been had thereon, it is hereby

ORDERED, that the Report of the Referee is confirmed; and it is further

ORDERED that the Sullivan County Treasurer shall pay out and distribute the surplus money in her hands to the credit of this action, after deducting the fees and commissions allowed to her by law as follows and in the following order of priority:

First: That she pay to _____, Esq. Referee in this proceeding the sum of $350.00 as
[Name]
their fees as such Referee;

Second: That she pay _____, the balance of the money $_____,
[Name] [Amount]
together with accrued interest.

Dated: Monticello, New York
_____, _____

ENTER,

_____

Hon. _____
Sullivan County Court Judge

STATE OF NEW YORK COUNTY COURT
COUNTY OF SULLIVAN

_____

In the Matter of Foreclosure of _____ tax liens by Proceedings in Rem Pursuant to Article Eleven of The Real Property Tax Law by the County of Sullivan affecting parcels located in the Towns of BETHEL, CALLICOON, COCHECTON, DELAWARE, FALLSBURG, FORESTBURGH, FREMONT, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

_____

ORDER OF REFERENCE APPOINTING REFEREE IN SURPLUS MONEY PROCEEDING

Index No.: _____

Subject Parcel's Tax Map Number:

Town of: _____

Tax Map #: _____

The Report of Surplus Auction Proceeds of the Sullivan County Treasurer dated _____ was duly filed in the Sullivan County Clerk's Office on _____ and it appearing from the report and form that there is a surplus of $_____ arising from the sale of the above-referenced subject premises at public auction, which was thereafter paid into the account of the Sullivan County Treasurer, and said Report having been confirmed by Decision and Order of this Court,

Upon reading and filing the Notice of Claim of _____, filed on _____, asserting a claim to the surplus moneys as a former owner of the equity or redemption or as a creditor of the former owner;

Now, upon application of _____ claimant, to adjudicate the claims of the respective claimants, it is hereby

ORDERED that _____ be and they hereby are appointed Referee to ascertain and report the amount due to Claimants noted above or any other person who has a lien on the surplus moneys, and to ascertain the priorities of liens, and that the referee report thereon with all convenient speed but not later than _____, so that a further order maybe made for the distribution of the surplus moneys as may be just.

The Referee "may inquire into and determine all questions of law and fact, and consider the equities of the claimants in a surplus money proceeding to the end that it may be decided in such proceedings finally and on the merits to whom such surplus moneys belong" (*Chase Manhattan Mortg. Corp. v Hall*, 18 AD3d 413, 414 [2d Dept 2005] [internal quotation marks and citation omitted]); and it is further

ORDERED that in the event any of the named parties other than the former homeowners shall claim the right to any portion of the surplus moneys, they shall submit detailed claims in

writing, under oath, to the Referee so appointed no later than _____; and it is further

ORDERED that should a hearing be necessary, the referee shall hold the hearing of the issue to be reported upon at his office or other location to be determined by him, at a date and time to be determined by him, but not later than _____, and it is further

ORDERED that the referee shall be paid the total sum of $350.00 to be paid by each of the claimants in equal shares from the surplus funds, within 10 days after service of a copy of the referee's report upon the claimants' attorneys. If a hearing is necessary, the referee may seek an additional fee. In addition, any distribution of surplus funds shall be subject to the payment of the County Treasurer's administrative fee as set forth in §8010 of the NYS Civil Practice Laws and Rules.

The foregoing constitutes the Decision and Order of the Court.

Dated: _____, 2024
Monticello, NY

ENTER:

_____
HON.
_____

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.