



**COUNTY OF SAN BERNARDINO
POLICY MANUAL**

POLICY NO. 05-52
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LOCAL RULES FOR EXCESS PROCEEDS CLAIMS

APPROVED
JAMES RAMOS
Chair, Board of Supervisors

POLICY STATEMENT AND PURPOSE

It is the policy of San Bernardino County to process and disburse all claims of entitled claimants for excess proceeds resulting from the sale of tax-defaulted property in a timely and accurate manner.

AFFECTED ENTITIES

Board of Supervisors and the County Tax Collector

DEFINITIONS

Excess proceeds - funds remaining from the sale of tax-defaulted property once fees, costs, and taxes have been satisfied.

Tax-defaulted - any property that has unpaid current year or prior year taxes, assessments, penalties and costs that remain unpaid as of July 1st of the current year.

POLICY AMPLIFICATION

When property taxes are delinquent for five years, a county may, pursuant to California Revenue & Taxation Code¹ (R&T) §3691, sell the property at a public auction known as a tax sale. The county first applies tax sale proceeds to payment of fees and tax sale-related costs, and then to defaulted taxes. Any funds remaining after fees, costs and taxes are paid are known as "excess proceeds." Pursuant to R&T §4675, any party of interest may file a claim for the excess proceeds. As permitted by R&T §4675.1, the San Bernardino County Board of Supervisors (Board) has authorized the County Tax Collector to oversee the distribution of excess proceeds in accordance with state law, including approving or denying claims, or filing of interpleader actions with the Court, provided the Tax Collector gives an annual report of excess proceeds claims, status, and distribution to the Board no later than June 30 of each year.

The Board, pursuant to R&T §4675(d), has authority to require such information and proof as deemed necessary to establish claimants' rights to excess proceeds. The following rules and procedures for claims to excess proceeds have been adopted:

1. The existence and terms of a promissory note may only be established by submitting:
 - a. An original or a copy of the promissory note signed by the person or entity charged with the debt;
 - b. A written declaration from the obligor on the note stating that payments were not made on the promissory note, or specifying the number of payments that were made or were missed;
 - c. Account records maintained in the ordinary course of business showing when payments were made or missed with entries made at the time of the events recorded;
 - d. Tax records showing the lack of payments and the years the payments were missed; or
 - e. A court order that establishes the existence and terms of a lost note pursuant to Civil Code §3415.

Under no circumstances will a claim to excess proceeds be granted if the time has elapsed to commence an action to enforce the promissory note.

2. Any claim based upon a trust will only be allowed if a copy of the trust or a court order pursuant to Civil Code §3415 is submitted with any other instruments necessary to establish the right of the claimant to act on behalf of the trust.
3. In the event a trust has ceased to exist, claims based on ownership by the trust will be paid pursuant to a valid court order, or to the settler(s) of the trust upon sufficient proof of their identity.

¹ Unless otherwise noted, all statutory citations are to the California Revenue and Taxation Code, which is abbreviated "R&T".

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4. Claims on behalf of a partnership or limited partnership must contain a copy of the partnership agreement and of any other documents necessary to establish the authority of a person who files a claim on behalf of the partnership. No claim will be paid that is filed on behalf of a partnership that cannot prove it has been in good standing or doing business prior to five years before the "date of sale" of the property for which the partnership claims excess proceeds, as defined in R&T §3692.1(b).
5. All claims on behalf of a corporation or limited liability corporation ("LLC") in good standing with the State of California, or with the state in which it was incorporated or formed, must contain documentary evidence that the corporation, or LLC is in good standing with the appropriate state, and that the claimant is duly authorized to file a claim on its behalf.
6. All claims on behalf of a corporation, or LLC, not in good standing with the State of California or with its state of incorporation or formation, must contain a resolution by the corporation, or LLC, or a court order, that the person filing the claim is authorized to file the claim on behalf of the corporation or LLC, or wind up the affairs of the corporation or LLC, and must be submitted to the Tax Collector within five years of the date the corporation or LLC lost its good standing.
7. No foreign corporation may file a claim unless and until it has obtained a certificate of qualification from the California Secretary of State as set forth in Corporations Code §2105(a).
8. Claims will be accepted from agents, attorneys in fact, and persons with valid powers of attorney. Disbursements will be sent to the address of the attorney, agent, or attorney in fact, but shall only be made payable to the principal.
9. All notarized statements must either bear the seal of a notary, or be accompanied by a copy of the notary's license or other document establishing the authority of the notary to notarize documents.
10. Any challenge to the decision of the Tax Collector pursuant to R&T §4675 shall be based only on the record in possession of the Tax Collector at the time the claim was presented for action, and shall include all claims not withdrawn. Any challenge shall be only by a petition for writ of mandate as set forth in Code of Civil Procedure §1094.5.
11. The claimant shall provide such documents as are necessary to establish the claimant's identity. The documents must be satisfactory to the Tax Collector, and may include, but are not limited to, copies of birth certificates, death certificates, passports, immigration and naturalization papers, driver's licenses, marriage certificates, divorce decrees, court orders, utility bills, tax returns, trusts, partnership agreements, or other documents that show a consistent use of a specific name used with a consistent spelling.
12. If a claim is filed based on a small estate affidavit pursuant to Probate Code §13100, the claimant shall also submit an affidavit in a form specified by the Tax Collector containing the following information:
 - a. Names and birth dates of all persons having an interest in the estate of the same priority as the declarant's; and
 - b. Names, birth dates and dates of death of all persons that would have had an interest in the estate of the same priority as the person on whom the declarant bases the declarant's claim.
 - c. The Tax Collector may require such additional documentary proof as to the information contained in the affidavit as the Tax Collector may, in its discretion, deem appropriate.
13. All claims shall include the current physical (e.g. street) address and telephone number of the claimant, and of all assignors of 100% assignments. Addresses consisting solely of a post office box, or postal drop, will be rejected. Claimants shall advise the Tax Collector of all changes of address and telephone number. If the Tax Collector is unable to contact a claimant for more than three (3) months due to a failure by the claimant to advise the Tax Collector of a change of address or telephone number, the claim shall be considered withdrawn, unless the Tax Collector in its sole discretion, determines otherwise.

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14. A claim may only be based on an interest recorded prior to recordation of the tax deed except if the claim is based on a court judgment or order and:
- The judgment or order was entered in a case to which the County was a party;
 - Rival claims were timely filed by parties obtaining a dissolution of marriage, and an order or judgment was entered within one year after issuance of the tax deed; or
 - The claim is filed on behalf of an estate and letters testamentary were issued within one year after issuance of the tax deed.

EXCEPTIONS

- The Tax Collector is authorized to extend the one year deadline for filing a claim for excess proceeds set forth in R&T §4675 for two periods of 30 days each for good cause, or, for up to three (3) years if the excess proceeds have not been disbursed and good cause is shown for the delay, such as fraud.
- The Tax Collector is authorized to extend the 90 day deadline for filing suit after it has made its award, for up to, but not exceeding 60 days. After that, the matter must be submitted to the Board for any further extensions.

LEAD ENTITY

Tax Collector

APPROVAL HISTORY

July 14, 2009, Board Agenda Item No. 61; March 17, 2015, Item No. 17.

REVIEW DATES

March 2020