

**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, Chemung County Treasurer and Chemung 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). The County Treasurer will mail this Certificate to former owners directly. If you do not have a Certificate, you must request it from the Chemung County Treasurer.
4. Request a **Certificate of Claims to the Surplus Monies*** from the County Clerk pursuant to RPAPL §1355. The Certificate of Claims should 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 Chemung County Treasurer, County Court, as well as all parties filing a Notice of Claim or Notice of Appearance. Please note that copies are available by request at a cost of \$0.65 cents a page at the County Clerk's office.
5. 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 Big Flats Tax Map Number 45.00-1-1.5).
6. A **Notice of Motion*** must be filed with the County Clerk together with the required filing fee of \$105.00. Use the same caption and index number as in the In Rem Action – The papers **MUST** include the Lien Year Index Number and Tax Map Number of the Parcel.

Attached to your Notice of Motion should be the following:

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

- c. The Certificate of Claims 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 Chemung County Treasurer's website); and by searching County Clerk records.
- f. **Affidavit of Service*** of your Notice of Motion and Affidavit upon the Chemung 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 Chemung 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 Referee)**. 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.

- 7. 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. A certified copy will cost \$5.00 plus \$5.00 per page. 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.
- 8. 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.

9. Forms are available online by visiting: Chemung County Treasurer:
<https://chemungcountyny.gov/Departments/Treasurer/Foreclosure/Surplus>

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

Chemung County Treasurer's Office
320 E. Market Street, Elmira, NY 14901

Chemung County Clerk's Office
210 Lake Street, Elmira, NY 14901

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