

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, Schoharie County Treasurer and Schoharie County Clerk's Office cannot provide any legal advice or guidance on the claims process.
2. The 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 Surplus Funds on Deposit *** from the County Treasurer (with whom the money is deposited). The County Treasurer will mail this Certificate to the former owner(s) directly. If you do not have a Certificate, you must request it from the Schoharie County Treasurer.
4. A **Notice of Claim*** must be filed in the In Rem Action with the Schoharie County Clerk. 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 Town and Tax Map Number. **Important: You MUST have the correct Lien Year, Index Number, and Tax Map Number on all surplus forms.**
5. Request a **Certificate of Claims to the Surplus Monies*** from the County Clerk pursuant to RPAPL §1355. The fee for this is **\$10** payable to the Schoharie County Clerk. 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 Town and Tax Map Number). You must serve a copy of the Notice of Motion and Motion and all attachments on the Schoharie County Treasurer and Schoharie County Attorney, as well as all parties filing a Notice of Claim or Notice of Appearance.
6. A **Notice of Motion*** must be filed with the Schoharie County Clerk together with the required filing fee of **\$45** made payable to Schoharie County Clerk. Use the same caption and index number as in the In Rem Action – The papers **MUST** include the Town and Tax Map Number of the parcel as well as the Index Number.

**** 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 as to Notice of Claims to Surplus Money from the Schoharie County Clerk referred to above.
- d. The Certificate of Amount of Money on Deposit from the Schoharie County Treasurer referred to above.
- e. A copy of the Final Judgment of Foreclosure and Sale (available on the Schoharie County Clerk's website).
- f. **Affidavit of Service*** of your Notice of Motion and Affidavit upon the Schoharie County Treasurer, Schoharie County Attorney, 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 Schoharie 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 to Distribute Surplus Monies is signed and entered by the Schoharie 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. 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, if one is appointed by the court.
- 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. Sample forms are available online by visiting:

<https://www4.schohariecounty-ny.gov/departments/schoharie-county-treasurer/>

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

Schoharie County Treasurer's Office
284 Main Street, Suite 128
Schoharie, NY 12157

Or by calling the Treasurer's Office at (518) 295-8386

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