

PROCEDURES: HOW TO FILE FOR A RELEASE OF EXCESS PROCEEDS OF SALE

1. Fill out the ***“Application for Release of Excess Proceeds of Sale”*** and make copies as directed on the separate instructions for this form.
2. **GO TO THE CLERK OF COURT TO FILE YOUR PAPERS:** You may file your papers at any of the following Superior Court locations:

Clerk of Superior Court
401 E. Spring St.
Kingman, AZ 86401
(928) 753-0713
Monday-Friday
8:00a-5:00p

Clerk of Superior Court
2225 Trane Road
Bullhead City, AZ 86442
(928) 758-0730
Monday-Friday
8:30a-12:00p, 1:30p-4:30p

Clerk of Superior Court
2001 College Drive
Lake Havasu City, AZ 86404
(928) 453-0701
Monday-Friday
8:30a-12:00p, 1:30p-4:30p

FILING FEE: If you have not previously “appeared” in this case, that is you have not previously filed papers and paid a “response” or “appearance” fee (or had the fee deferred, you will have to pay a fee. Cash, VISA/MasterCard debit or credit cards, money order, or personal in-state checks made payable to the “Clerk of the Superior Court” are acceptable forms of payment. Go online to www.mohavecourts.az.gov for a list of current fees.

FEE DEFERRAL: You may request a deferral of your filing fees at the time you file your papers with the court. Deferral applications are available at the Clerk of the Court and the Law Library.

PAPERS: Give the original, plus 1 copy for EACH **“interested party”** of the ***“Application”*** to the clerk at the front counter. The clerk will process your application and collect the filing fee (unless it has been deferred). Make sure the clerk stamps and returns each copy to you.

VERIFY YOUR CASE NUMBER after filing. It should remain the same as on the Complaint filed by the trustee depositing funds with the Treasurer’s Office. If the number is different, notify the clerk immediately as you are filing in response to an existing case and should be filing under that case number.

3. **NOTIFY “INTERESTED” PARTIES:** Send copies of “The Application” to:
 - each party listed in the mailing list of the trustee’s complaint,
 - the judge assigned to your case, and
 - the Mohave County Treasurer’s Office, “by any form of mail that requires a signed and returned receipt” (A.R.S. §33-812 (G)), such as:
 - Certified, with Return Receipt Requested, Priority Mail with Signature Confirmation,
 - Personal service by licensed process server,
 - (for the Treasurer’s copy ONLY) Hand Delivery with a request for a signature of receipt or an “Acceptance of Service” or with an extra copy to be stamped “Received.”

Keep all returned receipts from the mailings, and all “undeliverable” returned mailings, unopened and in the original condition as received back from the Post Office, as well as any signed receipt, “**Acceptance of Service**,” or copy stamped “Received” from the Treasurer’s Office.

Interested parties have 30 days from the date their copy of the “Application” was mailed to file a response to object to your “**Application**.” (A.R.S. §33-812 (H))

4. **AFFIDAVIT OF MAILING:** Fill in the information requested about you at top left, and then the name of the plaintiff (the trustee) and case number (which should be the same as on your “**Application**”). Mark each box and fill in the information requested to indicate what method of delivery was attempted for each “interested party.”

Do not sign the form until you are in the presence of a Deputy Clerk of Court or Notary Public.

NEXT: After you have received back the signed return receipts and any original sealed “returned as non-deliverable” envelopes addressed to each of the “interested parties”:

- **SIGN** the original “**Affidavit of Mailing**” in front of a Deputy Clerk of Court (at the front filing counter) or a Notary Public.
- **MAKE TWO COPIES** of the “**Affidavit of Mailing**” and all attachments (return receipts and/or “undeliverable” returned envelopes).
- **FILE** the original “**Affidavit of Mailing**” with the Clerk of Court at the front filing counter. Attach copies of signed return receipts and copies of any sealed “returned-as-undeliverable” envelopes.
- **MAIL OR DELIVER** a copy of the “Affidavit” AND all attachments (copies of signed return receipts and copies of any sealed “returned-as-undeliverable” envelopes) (Keep the second copy for your records). You may deliver the documents in person to one of the locations of **Clerk of Superior Court** listed on the previous page. If mailing, you may use the address below:

Clerk of Superior Court
PO Box 7000
Kingman, AZ 86402

5. **RESPONSE OR NO RESPONSE.**

- (A) **IF A RESPONSE (Objection) TO YOUR REQUEST IS FILED:**
(If no response, go to (B))

A copy of any Response should be mailed to you at the address contained in the court records (Make sure you file a “Change of Address” with the court if you move.). You may then file a written reply (with copies to all parties) **within 10 days of the date that Response was mailed to you.** You may use the ‘blank pleading or motion form’ from the court or your own form, but make sure the name of the Plaintiff (the trustee) and the Defendant (Mohave county Treasurer), and the case number from the original complaint appear near the top of the first page.

After notifying all persons who have received a copy of the complaint or who have filed a responsive pleading, the court may hold a hearing. If there are competing claims to the proceeds, the court will hold a hearing to determine who is entitled to the funds.

If the court schedules a hearing, fill in the information requested at top left of the "Order" about you, the person filing the Application, then write in the name of the Plaintiff (the trustee) and the case number as from the Complaint on the **"Order to Release Excess Proceeds of Sale."** Leave the rest of the form blank and wait for the court's decision. Take the "Order" with you to the hearing in case the judge wants to sign the "Order" at that time.

NOTE: If the court finds that a person other than an applicant or respondent has a superior right to the proceeds:

- The court shall not issue an order on the proceeds until 180 days from the date the complaint was filed.
- At any time before the expiration of the 180 day period, an applicant or respondent may move for a hearing to determine whether the claimed superior right is valid or enforceable and whether the claim is entitled to receive priority over the claim of the applicant or respondent.
- The motion shall set forth the specific facts and evidence that support the applicant's or respondent's position and shall be mailed to all persons who have received a copy of the complaint or filed a responsive pleading.
- If a response is not filed within the 180 day period by the person found by the court to have a superior right to the proceeds, the court shall enter an order in favor of any applicant or respondent entitled to the proceeds.
- On release of the proceeds, the county treasurer may assess and deduct from the proceeds a reasonable fee not to exceed one hundred dollars for the treasurer's costs associated with the civil action.

(B) IF AFTER 30 DAYS, NO RESPONSE HAS BEEN FILED:

Complete and submit the **"Order to Release Excess Proceeds of Sale"** to the assigned judge for the judge's signature. The "Order" should be for the same amount requested in the "Application" and not more than the amount deposited with the Treasurer (minus any Treasurer's fee).

Along with the original "Order," MAKE SURE YOU INCLUDE:

- One (1) copy for each interested party
- One (1) copy for the Treasurer's Office
- One (1) copy for your records
- One (1) copy for the court to certify
- One (1) stamped business envelope addressed to each interested party (including yourself)

You may deliver the documents and envelopes to the Clerk of Superior Court at one of the locations listed above or you may mail them to Clerk of Superior Court, PO Box 7000, Kingman, AZ 86402

6. WAIT. The judge may sign the "Order," schedule a hearing, or reject the request. The decision will be mailed to you and to all interested parties. If a hearing is scheduled, you must wait for the hearing.

7. IF THE ORDER IS SIGNED...

- Get a certified copy of the "Order" (if one was not sent by the judge, see instructions below*)
- Submit the certified copy of the "Order" and an IRS form W-9 to the Treasurer's Office.

The W-9 form is available at the Treasurer's Office or you may download it in Adobe PDF format from the IRS web site at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. This is a statement under penalty of law that you have provided your correct Social Security Number (or Taxpayer

Identification Number) and if applicable, a declaration that you are not subject to “backup withholding.” For further information, see the instructions attached to the W-9 form.

*To get a certified copy of your court order you will need to present your judge-signed copy along with payment of \$26.00 cash, personal in-state check or money order (payable to “Clerk of Superior Court”) for each certified copy.

The Treasurer’s Office will generally disburse monies within 72 hours of receipt of the “Order” and W-9. If you have not received payment within 5 business days after submitting the “Order” and W-9, you may contact the Treasurer’s Office at (928) 753-0737.