



Foreclosure Sale Surplus Funds: What Local Governments Should Know

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Once a foreclosure sale is conducted and the amount owed to the foreclosing party has been paid from the proceeds of the sale, surplus funds may be leftover. When surplus funds exist, the person who conducted the foreclosure sale is left to handle the surplus funds and to determine to who the surplus funds belong.

MCL 600.3252 dictates what happens to such surplus funds. Ultimately, whether the mortgagor has made a demand for the surplus controls. MCL 600.3252 provides that the individual conducting the same shall pay any surplus *on demand* to the mortgagor "unless at the time of the sale, or before the surplus shall be so paid over. . ." a subsequent lienholder of the property makes a claim for the surplus. MCL 600.3252. As such, in a foreclosure sale where there are no junior lienholders who claim the surplus, the mortgagor is entitled to receive the surplus upon their demand.

However, if the individual conducting the foreclosure sale receives a claim from a junior lienholder, MCL 600.3252 provides that, "upon receiving [a] claim" for the surplus, the individual conducting the sale shall . . . "pay the surplus to and file the written claim with the clerk of the circuit court." MCL 600.3252. Accordingly, in a case where a junior lienholder makes a claim for the surplus at the time of sale or before it occurs, and the mortgagor also makes a demand for the surplus, the individual conducting the sale must distribute the surplus to the circuit court and the circuit court will ultimately determine to who the surplus belongs.

Similarly, in the situation where the mortgagor does not make a demand for an existing surplus, but a junior lienholder makes a timely claim for the surplus, MCL 600.3252 requires that the individual conducting the sale pay the surplus to the circuit court and file a claim with the clerk of the court.

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Finally, if a surplus exists and the mortgagor fails to make a demand for the surplus and no junior lienholders make a claim for the surplus, the individual conducting the sale should wait until the statutory redemption period ends, at which point the junior lienholders forfeit their right to redeem. *In re \$55,33617 Surplus Funds*, 319 Mich App at n2. After this statutory redemption period ends, the individual conducting the sale should then pay the surplus to the mortgagor. *Id.*

Based on the variety of situations that could potentially arise in the case of a surplus in a foreclosure sale, local governments should be aware of the different ways that these surplus funds must be handled and distributed, depending on whether junior lienholders have asserted claims to the funds, whether the mortgagor has made demand for the funds, and whether no claims or demands have been made.

If you have further questions regarding foreclosure sales, surplus funds and how they should be handled and distributed, please contact a member of the Finance, Real Estate & Bankruptcy Law Team.

