SCR-28 — Tax Deed Surplus & Foreclosure Excess Proceeds Theft Guide

A Complete Handbook and Web Resource for Former Homeowners, Heirs, and Consumer Advocates

Published by Wounded Duck Studios LLC & SCAMREALESTATE.COM
Author: Mark Druckmiller, REALTOR®, Real Estate One (Saline / Washtenaw County, Michigan)

Homeowner & Heir Defense: Recovering Tax and Mortgage Foreclosure Surplus Funds, Stopping Predatory Finder Schemes, and Enforcing Tyler v. Hennepin County

Executive Summary: The Post-Auction Equity Grab

Losing a family home to mortgage foreclosure or county property tax forfeiture is one of the most painful experiences a homeowner can endure. Yet even after the sheriff's auction gavel falls, an unexpected financial reality frequently remains: Surplus Funds (Excess Proceeds / Overages).

When a foreclosed home or tax-delinquent parcel sells at a public courthouse auction for more than the outstanding debt, delinquent taxes, and administrative fees, the remaining cash balance belongs legally to the former property owner or their legal heirs. For example, if a home with $15,000 in delinquent property taxes sells at a county tax auction for $95,000, the remaining **$80,000 in surplus equity belongs 100% to the former owner**.

In May 2023, the U.S. Supreme Court cemented this constitutional right in the landmark unanimous decision **Tyler v. Hennepin County, 598 U.S. 631 (2023)**. Chief Justice John Roberts ruled that local governments violate the Fifth Amendment's Takings Clause when they seize real estate for unpaid taxes and retain the excess proceeds beyond the tax debt: "The taxpayer must render unto Caesar what is Caesar's, but no more."

However, this constitutional ruling has created a massive target for predatory **"surplus recovery hunters" and fraudulent asset locators**:

1. **The Phony Government Official Trap:** Operators pose as state treasurers, county clerk recovery units, or court administrators, claiming they "discovered forgotten state funds" and demanding a **40% to 50% contingency finder's fee** to release the money.

2. **The Deceptive Assignment / Power of Attorney Trap:** Predators present vulnerable former owners with dense legal paperwork disguised as "routine claim authorization." In reality, the document is an absolute **Assignment of Rights** or an irrevocable Power of Attorney. The predator petitions the court, collects the entire $80,000 surplus check directly from the court clerk, and vanishes without paying the former homeowner a dime.
3. **Manufactured Heir Fraud:** Scammers monitor county surplus registries for deceased former owners, fabricating fraudulent heirship affidavits to steal excess proceeds before legitimate family heirs even know the funds exist.

Under Michigan law (Public Act 256 of 2020 / MCL 211.78t) and court procedures nationwide, **former owners can claim their surplus funds directly from the county treasurer or court clerk for FREE**, without paying a third-party company a single penny.

This handbook details the legal mechanics of surplus funds, the red flags of predatory finders, and the exact step-by-step procedure to claim your funds directly at zero cost.

Section 1: The Tyler v. Hennepin County Supreme Court Milestone

Understanding your constitutional property rights:

1. **The Supreme Court Ruling (May 25, 2023):**
    - In *Tyler v. Hennepin County*, 94-year-old Geraldine Tyler owed $15,000 in unpaid property taxes, interest, and penalties on her Minneapolis condo.
    - Hennepin County seized the condo, sold it at auction for $40,000, and kept the remaining $25,000 surplus under a state forfeiture statute.
    - The U.S. Supreme Court ruled 9-0 that keeping the excess $25,000 was an unconstitutional taking under the Fifth Amendment and an excessive fine under the Eighth Amendment.
2. **The Universal Constitutional Mandate:**
    - Counties and municipalities nationwide cannot confiscate surplus proceeds from tax foreclosures. The remaining equity must be returned to the former record owner or lienholders according to statutory claim timelines.

Section 2: How to Claim Tax Foreclosure Surplus Funds in Michigan for FREE (MCL 211.78t)

In Michigan, the claim procedure is codified under **MCL 211.78t (Public Act 256 of 2020)**. You never need to hire a third-party recovery firm.

Follow this exact statutory process:

Step 1: File Form 5743 (Notice of Intention to Claim Remaining Proceeds)

- Download the official state form: **Michigan Treasury Form 5743** (*Notice of Intention to Claim Remaining Proceeds of Property Sold Under Section 78m*).
- **The Strict Statutory Deadline:** You must deliver Form 5743 via certified mail to the **Foreclosing Governmental Unit (FGU)**—typically your County Treasurer—by **July 1 immediately following the foreclosure auction**.
- The form requires your legal name, parcel identification number, former address, and contact information. There is **zero filing fee**.

Step 2: Receive the County Treasurer's Notice (By the Following January)

- By the following January, the County Treasurer must notify all claimants who filed Form 5743, disclosing:
  - The final auction sale price.
  - The exact outstanding tax debt, interest, and allowable fees deducted.
  - The exact dollar amount of **Remaining Proceeds** held in escrow.

Step 3: File a Motion for Remaining Proceeds in Circuit Court

- Between February 1 and May 15 following the January notice, file a simple **Motion for Remaining Proceeds** in the county Circuit Court where the property was located.
- The Circuit Court judge reviews the claim, verifies priority against any recorded mortgages, and orders the County Treasurer to disburse the remaining proceeds check directly to you.

Section 3: How to Claim Mortgage Foreclosure Surplus Funds

In traditional bank mortgage foreclosures (such as sheriff's deed sales):

1. **Surplus Deposited with the Court Clerk / Sheriff:**
   - If a third-party bidder purchases a home at a sheriff's auction for more than the bank's foreclosure judgment, the sheriff deposits the surplus proceeds with the county court clerk or register of deeds.
2. **Filing a Simple Motion to Disburse:**
   - Have a local real estate attorney file a straightforward **Motion to Disburse Surplus Proceeds** in the foreclosure court case.
   - Most attorneys will file this motion for a flat fee of $500 to $1,500—saving you the $20,000 to $40,000 contingency fees demanded by predatory surplus hunters.

Section 4: The 4 Red Flags of Predatory Surplus Hunters

Watch for these warning signs if contacted about unclaimed property funds:

Red Flag	Predatory Feature	Legitimate Claim Reality
1. 40% to 50% Fee Demands	Demands half your money in exchange for "locating" your funds.	You can claim 100% of your surplus funds directly from the county for zero fee.

Red Flag	Predatory Feature	Legitimate Claim Reality
2. Absolute Assignment of Rights	Demands you sign an "Assignment of Interest" assigning all claim rights to their LLC.	Never assign away your legal rights; you remain the sole claimant of record.
3. Fake Government Titles	Caller claims to be with the "Department of Unclaimed Equity Recovery."	County treasurers do not use commercial collection agency aliases.
4. High-Pressure Forfeiture Threats	Claims the state will permanently seize your money in 48 hours.	Statutory surplus claim windows are established by state law (typically 1 to 2 years).

Section 5: Emergency Response Protocol — If You Signed with a Predatory Hunter

If you signed an assignment or power of attorney with a rogue surplus recovery hunter:

1. **Execute an Immediate Written Revocation of Power of Attorney:**
    - Draft and notarize a formal **Revocation of Power of Attorney and Rescission of Assignment**.
    - Send copies immediately via certified mail to the recovery company and the county treasurer.
2. **File an Emergency Notice of Appearance in Circuit Court:**
    - Retain an independent real estate attorney to file an immediate Notice of Appearance in the court surplus proceeding, alerting the judge that the prior assignment was executed under false pretenses and directing all funds to be paid directly into the court registry.
3. **File a Complaint with the State Attorney General:**
    - Report deceptive surplus practices to the Michigan Attorney General’s Consumer Protection Division and the FTC at **reportfraud.ftc.gov**.

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