

Eighth Judicial District Court Help Center

Requirements for Order Confirming Referee's Report of Sale and for Distribution of Surplus Monies

Note: **The Court Help staff are able to provide forms and information on court procedures. The Court Help staff can not give you legal advice, prepare your papers or act as your attorney.**

1. Use the same caption and index number as on the Judgment of Foreclosure and Sale. (The caption MUST be identical.)
2. Request a Certificate of Claims to the Surplus Monies from the County Clerk (Actions & Proceedings) pursuant to RPAPL § 1355. See sample
3. You may be required by the Court to obtain a limited (stub) search of the property to identify lien holders. All lien holders must be served and an Affidavit of Service must be submitted with Motion. Original Affidavits of Service must be filed in the County Clerk's Office in Actions & Proceedings.
4. You may also be required to prepare and submit:
 - a. An Affidavit certifying the Appearances in the Mortgage Foreclosure or In Rem Tax Foreclosure action;
 - b. An Affidavit certifying the Exceptions to the Report of Sale in a Foreclosure action or to the Order for Surplus Monies in an In Rem action. Original Affidavits must be filed in the County Clerk's Office in Actions & Proceedings.
5. You must obtain a Certificate of Deposit from the County Comptroller or Referee (whomever the money is deposited with) showing how money, including interest, is being held and submit the certificate with you application.
6. You must obtain a copy of the Referee's Report of Sale in the Mortgage Foreclosure action from the County Clerk and submit it with your application.
7. If Notice of Claim or Appearances were filed, you must obtain copies and proceed by Motion on Notice to those who filed the notices.
8. 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 Comptroller's office or Referee (whomever the money is deposited with). The Comptroller's Office will mail you a check for the money they are holding less it's fee (currently 2%).