



## Agenda Submittal

**Agenda #:** 11 **Status:** Approved  
**Type:** Resolution **Department:** County Counsel  
**File #:** 17-621 **Contact:** Dennis Bunting, 784-6140  
**Agenda date:** 9/12/2017 **Final action:** 9/12/2017  
**Title:** Adopt a resolution accepting claims for excess proceeds from tax-defaulted property sales and authorizing distribution of excess proceeds from the sales

**Governing body:** Board of Supervisors

**District:** All

**Attachments:** 1. A - Excess Proceeds Table, 2. B - Resolution, 3. Adopted Resolution, 4. Minute Order

Date	Ver.	Action By	Action	Result
9/12/2017	1	Board of Supervisors	Adopted	

Published Notice Required? Yes ☐ No ☒

Public Hearing Required? Yes ☐ No ☒

### DEPARTMENTAL RECOMMENDATION :

Adopt a resolution accepting claims for excess proceeds from tax-defaulted property sales and authorizing distribution of excess proceeds from the sales.

### SUMMARY:

Pursuant to Board of Supervisors' Resolution No. 2016-18, on June 1, 2 and 3, 2016, the Solano County Treasurer/Tax Collector/County Clerk ("Tax Collector") conducted a public auction of tax-defaulted properties on the internet. After the properties were sold, the delinquent taxes, interest, penalties and statutory administrative costs were paid from the proceeds. The remaining sums are deemed excess proceeds. The Tax Collector is entitled to make a claim for the actual costs related to the distribution of excess proceeds and, pursuant to the Revenue and Taxation Code, all other persons with an interest in the properties have one year in which to file a claim for excess proceeds from the sale. The former owner of a property can make a claim for any residual amount, after the Tax Collector has been paid its costs and all creditors with valid claims have been paid.

Seven (7) parcels were sold at the auction. The Tax Collector received proceeds in excess of the sums owed the Tax Collector on all of the parcels sold, and received claims for excess proceeds on four (4) of the parcels. The requested action authorizes distribution of the excess proceeds funds according to statutory priority and the resolution.

### FINANCIAL IMPACT :

The County received all of its taxes, penalties, interest, and administrative costs for the defaulted parcels.

The reimbursement of \$1,797.37 for the Tax Collector's administrative costs is unanticipated revenue that will be recorded in the department's FY2017/18 budget.

In addition, the County General Fund shall receive \$1,098.27 from the excess proceeds. The County is entitled

to claim the residual amount, either because claims were not made or an invalid claim was made. [Rev. & Tax. Code, § 4674; *First Corporation, Inc. v. County of Santa Clara* (1983) 146 Cal.App.3d 841.]

## **DISCUSSION:**

Revenue and Taxation Code sections 3692 and 3692.2 authorize the Tax Collector to sell tax-defaulted property on the internet. The disposition of the proceeds from the sales is prescribed in sections 4671-4676. As part of this statutory distribution scheme, section 4675 concerns distribution of excess proceeds.

Section 4675 allows any party of interest in the property to file with the county a claim for excess proceeds at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser. Upon the expiration of the one year, the excess proceeds may be distributed to claimants on order of the board of supervisors to the parties of interest in the order of priority set forth in the section. The statute further provides in pertinent part:

“... [P]arties of interest and their order of priority are:

- (a) First, lienholders of record prior to the recordation of the tax deed to the purchaser in order of their priority.
- (b) Second, any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.”

In determining priority, lienholder claimants have priority over title of record claimants. As between lienholders, the venerable common law principle of first in time, first in right governs priority, based on the recording date of the lien.

Finally, unless otherwise expressly provided under law, no statutory authority provides for the payment of interest on excess proceeds from the sale of tax-defaulted property. Accordingly, any person awarded excess proceeds is only entitled to receive interest calculated through the date of sale.

The parcels and claims are as follows:

### **1. APN 0044-050-210**

The excess proceeds amount to \$1,315.40. No party submitted a claim for the excess proceeds on the parcel. After the Tax Collector recovers its administrative costs on the parcel in the amount of \$276.19, the County of Solano is entitled to the residual amount of \$1,039.21.

### **2. APN 0044-190-070**

The excess proceeds amount to \$21,240.24. Four timely and valid claims were received for a quarter interest in the residual amount: (1) George J. Dawson, Trustee of the George J. Dawson Revocable Trust, (2) Elbert Dawson, (3) Cathy J. Canaday, and (4) Lisa Ann Levering as previous part owners. After the Tax Collector recovers its administrative costs on the parcel in the amount of \$454.67, the claimants are entitled to 25% each of the residual amount, or \$5,196.39 each.

### **3. APN 0051-370-060**

The excess proceeds amount to \$145,531.42. The Franchise Tax Board submitted a timely and valid lienholder's claim for \$4,403.98, based on a certificate of tax due and delinquency recorded May 6, 2008. Karen Ang, with the City of Vallejo, Code Enforcement, submitted two timely claims totaling \$17,009.00, based on two recorded liens. However, only one claim, in the amount of \$13,869.00, is valid because the date of recordation of the lien (2/19/2014) occurred prior to the recordation of the Tax Collector's deed to

the purchaser at the tax sale (6/23/2016). The other claim is invalid as the lien was recorded on September 13, 2016, well after the recordation of the Tax Collector's deed to the purchaser at the tax sale (6/23/2016 and Revenue and Taxation Code § 4675). Dong Yoo, with the City of Vallejo, Code Enforcement submitted three timely claims totaling \$6,005.00, based on three liens. However, only one claim for \$875.00 is valid because it is the only lien that has been recorded. Two of the three liens were not recorded. Therefore, the city is not able to recover this portion of its claim, as a "lienholder of record" under Revenue and Taxation Code § 4675(e)(1). Nadim Rehman submitted timely claims for \$1,670.28, and the residual amount. However, the claims are not valid because they are not based on a lienholder's claim or title of record recorded before recordation of the tax deed to the purchaser. Sam Dimaio submitted a timely claim for the residual amount. The Tax Collector recovers its administrative costs on the parcel in the amount of \$484.39. The Franchise Tax Board is entitled to \$4,403.98, City of Vallejo is entitled to \$14,744.00, and Sam Dimaio is entitled to the residual amount of \$125,899.05.

**4. APN 0052-491-670**

The excess proceeds amount to \$67,134.58. Waterstone Owners Association submitted a valid and timely claim for the residual amount, based on a trustee's deed upon sale recorded February 10, 2011. The Tax Collector has a right to recover its administrative costs on the parcel in the amount of \$305.93 and Waterstone Owners Association is entitled to the residual amount of \$66,828.65.

**5. APN 0054-011-510**

The excess proceeds amount to \$44.32. No party submitted a claim for the excess proceeds on the parcel. The Tax Collector did not incur any administrative costs on the parcel, thus, the County of Solano is entitled to the residual amount of \$44.32.

**6. APN 0054-011-530**

The excess proceeds amount to \$14.74. No party submitted a claim for the excess proceeds on the parcel. The Tax Collector did not incur any administrative costs on the parcel, thus, the County of Solano is entitled to the residual amount of \$14.74.

**7. APN 0074-110-490**

The excess proceeds amount to \$45,485.44. Two parties submitted timely claims for the residual amount: Andrew C. Metcalf, Agent for Richard J. Sarro and Richard J. Sarro. Subsequently, the claim submitted by Andrew C. Metcalf, Agent for Richard J. Sarro was withdrawn. After the Tax Collector recovers its administrative costs on the parcel in the amount of \$276.19, Richard J. Sarro, is entitled to the remaining proceeds in the amount of \$45,209.25.

Claimants have been notified of the determinations and the date, time, and location of this hearing.

**ALTERNATIVES:**

The Board could request further information on this matter.

**OTHER AGENCY INVOLVEMENT :**

The Tax Collector and the Auditor-Controller were actively involved in receiving the claims and assisting with the determination of distribution.

**CAO RECOMMENDATION :**

**APPROVE DEPARTMENTAL RECOMMENDATION**