



EXCESS PROCEEDS FOR JUDICIAL & NONJUDICIAL TAX SALES

April 2026 Client Training



TAXING AUTHORITY
CONSULTING SERVICES, P.C.

Governing Law

Judicial Tax Sales are governed by VA Code § 58.1-3965 *et seq.*

Virginia Code § 58.1-3965 – Judicial sale of tax delinquent real properties (formerly/sometimes also known as “Bill in Equity” Sales).

This Code Section gives you the authority to sell property (if necessary), after a certain number of years of delinquency.

Excess Proceeds are governed by § 58.1-3967



Virginia Code

LIS – Legislative

Information System

Nonjudicial Tax Sales are governed by VA Code § 58.1-3975

Virginia Code § 58.1-3975 – Nonjudicial sale of tax delinquent real properties of minimal size and value.

This Code Section gives you the authority to sell certain “less desirable” property (if necessary), after a certain number of years of delinquency.

The “minimal value” determination has steadily increased over the years.

Excess Proceeds are governed by § 58.1-3975(K)



Virginia Code

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Information System

What *are* Excess Proceeds?

When a property is sold, how do the sale proceeds get distributed?



Costs of Sale

- Costs are always paid first
- Title, Publications, Service of Process Costs, Appraisal, etc.



Tax, Penalty, Interest, and Attorneys Fees

- Tax, Penalty, Interest, Administrative Fees, etc.
- Attorneys Fees Contracted For



Liens/Deeds of Trust and/or Excess Proceeds

- Any liens or deeds of trust not in default are paid based on priority
- The remainder is considered "Excess Funds"

Judicial vs. Nonjudicial Excess Proceeds

The main differences are based on timing, custodian, and procedure when funds are petitioned for.

Judicial Excess Proceeds:

- Held for 2 years from the entry of the Decree of Confirmation
- Held by the Clerk of the Circuit Court
- Petitions for Excess Proceeds are made to the Court (but some people will “petition” TACS or the locality)

Nonjudicial Excess Proceeds:

- Held for 2 years from the sale date
- Held by the locality (or TACS can hold them as your agent) in an interest-bearing escrow account
- Petitions for Excess Proceeds are made to the locality, or TACS, and the funds are then “Interpled” into the Court

And how does this all work?

Who is entitled to the Excess Proceeds?

The money is held for two years for the benefit of the former owner, their heirs, devisees, successors, or assigns, or any unknown lien beneficiaries.

If unclaimed, then the Excess Proceeds are disbursed to the locality who sold the property (and it must be split with a Town if the Town received TPI proceeds from the sale)

Example:

\$10k of Excess Proceeds (none claimed)
2 Years Passes – No Petitions – No Town

\$10k to County

Example:

\$15k of Excess Proceeds (\$5k claimed)
2 Years Passes – No further petitions - (Town had received 25% of TPI paid out from sale)

\$2,500 of Excess to Town, \$7,500 of Excess to County

How do people petition for their funds?

They *must* file a petition in writing – but it does not really have to be anything fancy.

The petition should at the very least explain who they are, what case or parcel(s) they are involved with, and that they are requesting their share of the excess funds.

Additional documents/proof will be required prior to any determinations or disbursements

Who they are:

ID
Birth Certificate

How much they're entitled to:

Family Tree
Will
List of Heirs

How do people petition for their funds?

Judicial Sales – Excess Proceeds are held by the Court, so petitioners typically submit their petition with the Court.

Nonjudicial Sales – Excess Proceeds are held by the locality (or by TACS on their behalf), so petitioners should petition the Treasurer or TACS – they sometimes will petition the Court, who will direct them to the proper place

Judicial:

Petition the Court
Court may appoint a
Commissioner in Chancery

Nonjudicial:

Petition Treasurer
Petition TACS
Petition Court

Nonjudicial Sale – Interpleader of Funds

Once a petition is received, the funds must be “Interpled” into the Court

Because no case exists with the Court, an Interpleader Complaint must be filed (we handle this for you)

The Court will then take evidence and hear testimony to determine the proper distribution

**What does an Excess
Proceeds hearing look like?**

Excess Proceeds Hearing – Main Elements

The Court is going to need to make a determination on *who* is entitled to *how much*.

The Court will take evidence and hear testimony

1. Who petitioned?
2. How much are they claiming?
3. How did they gain a legal entitlement to the excess proceeds?
4. How much are they entitled to?
5. Are there any lienholders who are entitled to a portion of their share?

Some Examples

Example 1:

Jeff Scharf was the owner of the property at tax sale. He files a petition for all of the excess proceeds (there were \$40,000 of excess proceeds in this case).

The Court will require Jeff to prove who he is, and may require him to testify that there are not any lienholders who are entitled to claim the funds.

Assuming the Court was satisfied with the testimony and evidence, an Order would be entered ordering the Clerk to cut a check to Jeff in the amount of \$40,000, plus any interest, and less any fees.

Some Examples

Example 2:

John Rife was the owner of the property sold at tax sale. John had died many years ago and left numerous heirs, some of whom had also died prior to the sale and left numerous heirs (as many of these heirs as possible were identified in the Complaint, but there were also Parties Unknown listed to account for potential other heirs).

One of John's heirs, Woodrow "Woody" Guthrie, filed a petition for all of the excess proceeds.

Some Examples

Example 2, Continued:

The Court will require Woody to prove who he is, how he was related to John, and will require testimony and/or evidence to show why he is entitled to *all of* the excess (there were \$40,000 of excess proceeds in this case).

Because of the research done prior to filing suit, it will come out that Woody was John's great-grandson.

The Court would then need to determine exactly how many children John had, how many children Woody's grandmother had, how many children Woody's mother had, whether any of them died without a spouse or children themselves and whether there were any Wills of record in other localities.

Some Examples

Example 2, Continued:

It turns out that John had ten children, one being Woody's grandmother (1/10th).

Woody's grandmother had five children, one of them being Woody's mother, Nora Belle (1/5th).

And Woody had four siblings (1/5th).

Woody is therefore entitled to 1/5th of 1/5th of 1/10th of the excess proceeds (or 1/250th). This amounts to \$160 of the \$40,000 of excess proceeds, and Woody is now complaining because he had to take off of work.

Recent Changes – Commissioner in Chancery

“Heirship” property creates complications. It is usually beneficial to have an attorney involved, and this is opening up new lines of work for willing attorneys.

The law changed on July 1, 2025 to allow the Court to appoint a Commissioner in Chancery to help with determining entitlement to the excess funds.

Without a Commissioner in Chancery

If numerous heirs

- Potentially numerous attorneys, “competing” interests, numerous attorney fees
- Adds burden to Court staff and judges

With a Commissioner in Chancery:

If numerous heirs

- Court may appoint “Commissioner in Chancery”
- Allows for evidence to be taken, report to be made, and one attorney fee

**What if no one petitions for
the Excess Proceeds?**

If No One Petitions

- Remember the two-year waiting period. Don't budget for those funds until they have been remitted.
1. Any unclaimed funds (including any portions that are unclaimed) are to be remitted to the locality (or localities, if a Town is involved) that received Tax, Penalty, and Interest proceeds from the tax sale;
 2. TACS keeps track of all excess proceeds, and will either file the required documents with the Court (for Judicial sale funds), or will notify the locality (for Nonjudicial sale funds);
 3. Those funds are then placed into the locality's general fund and accounted for;

If we are holding your Nonjudicial Excess Proceeds

Greater of \$250

- If \$1,000
- Our fee would be \$250

Or 10% of
Unclaimed Funds
Remitted

- If \$5,000
- Our fee would be \$500

Subject to a 50%
Max

- If \$100
- Our fee would be \$50
- If \$0 is left, our fee is \$0

Relevant Code Sections and Case Law

Virginia Code Section 58.1-3967

Virginia Code Section 58.1-3975(K)

McKeithen Tr. of Craig E. Caldwell Tr. U/A Dated December 28, 2006 v. City of Richmond, 302 Va. 422 (2023)

CVE, LLC v. Refund Recovery Specialists, LLC, Va. Ct. App. 2025 WL 2598043 (Sept. 9, 2025)

Questions?

tacs

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