

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GENERAL ADMINISTRATIVE ORDER NO. 2024-01

SUBJECT: SURPLUS FUNDS, MORTGAGE FORECLOSURE CASES

IT IS HEREBY ORDERED:

This order applies to all surplus funds arising from any mortgage foreclosure case filed or pending in the Chancery Division, and it supersedes this Division's General Administrative Order 2019-01.

I. PETITIONS FOR TURNOVER OF SURPLUS FUNDS

A. *Requirements for All Petitions.* The following provisions apply to all petitions for turnover of surplus funds filed in the Chancery Division.

1. Hearings.

- i) Timing. Petitions may be presented to the court only 30 days or more after entry of the order approving sale.
- ii) Presiding Judge to Hear Petitions. Petitioners shall schedule all petitions for turnover of surplus funds for a date and time on Chancery Division Calendar 12, where they will be heard by the Presiding Judge of the Chancery Division (Presiding Judge). Petitions scheduled on any other calendar, by either the Clerk of the Court or the petitioner, must be re-scheduled for presentment on Calendar 12.

2. Courtesy Copies.

- i) Three Days In Advance. Anyone filing a petition for turnover of surplus funds shall provide the Presiding Judge a copy of the petition, with all supporting documentation, no less than three (3) business days before the scheduled hearing date.
- ii) Delivery of Courtesy Copies. Courtesy copies may be delivered electronically to ccc.chancerycalendar12@cookcountyil.gov or in person to Courtroom 2403, Richard J. Daley Center, 50 W. Washington Street, Chicago, IL 60602.
- iii) Courtesy Copy Documents. Courtesy copies must include, at a minimum:
 - Notice of Petition;
 - Petition for Turnover of Surplus Funds;
 - A filed-stamped copy of an appearance; and

- The following documents, if applicable:
 - A copy of Letters of Office from a probate case;
 - A copy of the filed Affidavit of Heirship and Small Estates Affidavit (no probate);
 - A copy of any bankruptcy court order of dismissal or lifting of the stay; and
 - A copy of the mortgage foreclosure order confirming the amount due and owing on a subordinate lien.
3. **Form of Petition.** Form CCCH 0317, “Petition for Turnover of Surplus Funds,” available at <https://www.cookcountyclerkofcourt.org/> may be used. All petitions shall be signed by the petitioner.
 4. **Separate Petitions.** Each individual or entity seeking the surplus funds in a single case, regardless of their relationship to each other, shall file a separate petition for turnover of surplus funds, regardless of whether the petitioner has attorney representation.
 5. **Notice of Petitions for Turnover of Surplus Funds.**
 - i) **Notice to all Parties Required.** Notice of the petition for turnover of surplus funds to be provided to all individuals and entities named as parties in the mortgage foreclosure case, even if no appearances are on file and the party has been found in default or otherwise dismissed from the case.
 - ii) **Form of Notice.** Form CCCH 0317“Notice of Petition of Surplus Funds,” available at <https://www.cookcountyclerkofcourt.org/> may be used.
 - iii) **Content of Notice.** All notices shall include:
 - a) Time, date, and location of the hearing;
 - b) A complete list of people or entities receiving notice, including the address to which notice was sent; and
 - c) The means (mail, email, personal service, etc.) by which the petitioner delivered the notice to each individual or entity.
 6. **Appearances.** Petitioners who are not represented by an attorney must file an appearance with the Clerk of the Circuit Court (circuit clerk)..
 7. **Attorney Representation.** Attorneys must have an appearance on file. The Presiding Judge has discretion to inquire about fee arrangements if an attorney who is not a civil legal service provider, as defined by the Illinois Equal Justice Act, 30 ILCS 756/10, appears for the Petition of Turnover of Surplus Funds.
 8. **Bankruptcy.** If a bankruptcy proceeding in federal court occurred at any point during the mortgage foreclosure litigation, any petitioner must provide proof to the court of one of the following: (1) an order dismissing the bankruptcy proceeding; (2) an order lifting the bankruptcy stay as to the petitioner of the surplus funds; or (3) an order from the bankruptcy court allowing the funds to be disbursed. If there is a repayment plan with a

bankruptcy trustee, notice of the Petition of Turnover of Surplus Funds must be provided to the bankruptcy trustee.

9. **Orders for Turnover of Surplus Funds.** The order for the turnover of surplus funds shall be prepared only by the court. If the petitioner was approved for a fee waiver, at the Presiding Judge's discretion, may order that the appearance fee be deducted from the surplus funds and paid to the circuit clerk. Orders for the turnover of funds shall specify that the circuit clerk make the check payable only to the petitioner and not to attorneys. Petitioners shall pick up checks in person from the circuit clerk; except, upon the petitioner's payment of the \$10.00 fee, the clerk shall mail the check to the petitioner by certified mail.

B. *Heirs of Deceased Mortgagors.* The following provisions apply to all petitions for turnover of surplus funds filed by an heir when the mortgagor is deceased.

1. **Requirements for All Petitions.** All provisions of Section I(A) apply.
2. **Probate Case Pending; Letters of Office.** If a case has been pending or was initiated in the Probate Division, the petitioner must provide the court with a copy of the Letters of Office granting the petitioner the authority to collect the surplus funds for the estate of the deceased mortgagor.
3. **No Probate Case; Affidavit of Heirship and Small Estate Affidavit.** If a mortgagor is deceased and there is no probate case pending or opened, the petitioning heir must file both an Affidavit of Heirship and a Small Estate Affidavit with the petition. The Affidavit of Heirship and the Small Estate Affidavit must be either in the form attached to this order in *Attachment 1*, or in a substantially similar form.
4. **Heirs without Lawyers.** Petitioning heirs who do not have legal representation are encouraged to find out if they are eligible for low or no cost legal assistance through legal services providers, such as Chicago Volunteer Legal Services (CVLS) at cvls.org or (312) 332-1624.

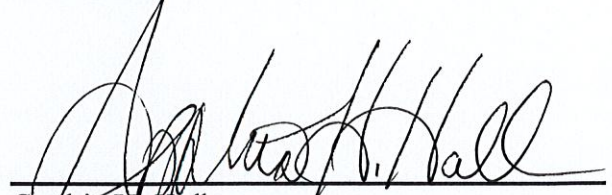
C. *Subordinate Lienholders.* The following provisions apply to any lienholder with a lien subordinate to the foreclosing lender in the mortgage foreclosure case.

1. **Requirements for All Petitions.** All provisions of Section I(A) apply to petitions for turnover of surplus funds filed by subordinate lienholders.
2. **Prove-up of Lien.** Subordinate lienholders shall prove-up the subordinate lien amount before the mortgage foreclosure judge and attach a copy of the order to the filed petition for turnover of surplus funds.
3. **Multiple Subordinate Lienholders.** When there are multiple subordinate liens on the foreclosed property, the petition shall include an order from the mortgage foreclosure judge providing the priority of the subordinate liens; this order may be in the same order that includes the prove-up amount or a separate order.

II. SURPLUS FUNDS HELD BY THE CLERK OF THE CIRCUIT COURT

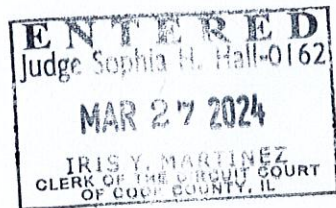
Although the circuit clerk holds all surplus funds from mortgage foreclosure cases until the court issues an order directing release of the funds, the clerk shall provide information about whether funds are being held in a particular case only to individuals asserting a right to part or all of the surplus in that case, and shall not provide compiled lists of case numbers, party names, party contact information, addresses, monies being held, or other information to any individual or entity unless ordered by the court.

ENTERED:



Sophia H. Hall
Interim Acting Presiding Judge
Chancery Division

Date: March 27, 2024



ATTACHMENT 1

Sample Affidavit of Heirship & Small Estates Affidavit

AFFIDAVIT OF HEIRSHIP

Affidavit of facts concerning the identity of Heirs for the Estate of: _____.

Before me, the undersigned authority, on this day personally appeared: _____.

("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is _____.
2. I live at _____.
3. I am personally familiar with the family and marital history of decedent _____ and I have personal knowledge of the facts stated in his Affidavit.
4. I am the Decedent's _____.
5. I knew the decedent from _____ until _____. Decedent died on _____.
Decedent's place of death (city/state): _____.
At the time of decedent's death, decedent's place of residence was at:
_____.

6. Provide the following information on the deceased's marital history (or state if never married):

Name of Spouse	Date of Marriage	Date of Divorce	Date of Spouse's Death

7. Provide the following information on the deceased's natural born and adopted children (or state if none):

Name + Address of Child	Date of Birth	Name of Child's Other Parent	Date of Child's Death

8. Provide the following information on the deceased's grandchildren, born only to the deceased children in Item 7 above:

Name + Address of Grandchild	Date of Birth	Name of Grandchild's Deceased Parent

9. If the decedent never married and did not have any children, provide the following information on the deceased's parents:

Deceased's Parents	Name of Parent + Address	Date of Parent's Death
Mother		
Father		

10. Provide the following information on the deceased's brothers and sisters (or state if none):

Name + Address of Sibling	Date of Birth	Date of Sibling's Death

11. Provide the following information on the deceased's nieces and/or nephews born only to the deceased's brothers/sisters in Item 9 above (or state if none):

Name + Address of Niece or Nephew	Date of Birth	Name of Niece or Nephew's Deceased Parent

Signed this _____ day of _____ in the year _____.

_____ (signature of Affiant)

State of _____

County of _____

Sworn to and subscribed to before me on this _____ day of _____ in the year _____

by _____ (name of Affiant)

Notary Signature: _____

My commission expires on _____ day of _____ year of _____.

Notary Seal:

AN AFFIDAVIT TO THE SECRETARY OF THE STATE OF ILLINOIS, PURSUANT TO 755 ILCS 5/ART. XXV OF THE PROBATE ACT, ILLINOIS COMPILED STATUTES, AS AMENDED BY PUBLIC ACT 98-0836 (EFF. 1-1-15).

STATE OF ILLINOIS

COUNTY OF _____

SMALL ESTATE AFFIDAVIT

I, _____ (name of affiant), on oath state:

- 1. (a) My post office address is: _____
- (b) My residence address is: _____; and
- (c) I understand that if I am an out-of-state resident I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

NAME: _____ ADDRESS: _____

CITY: _____ TELEPHONE: _____

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person cannot be effectuated, the Clerk of the Circuit Court of _____ (County) _____ (Judicial Circuit) Illinois is recognized by Illinois law as my agent for service of process.

- 2. The decedent's name is _____
- 3. The date of the decedent's death was _____ and I have attached a copy of the death certificate hereto.
- 4. The decedent's place of residence immediately before his/her death was _____

- 5. No letters of office are now outstanding on the decedent's estate, and no petition for letters is contemplated or pending in Illinois or in any other jurisdiction, to my knowledge.
- 6. The gross value of the decedent's entire personal estate, including the value of all property passing to any party either by intestacy or under a will, does not exceed \$100,000 in value and consists of the following (list each asset and its fair market value):

Including vehicle(s) described below:

Make of Vehicle	Body Type	Year Model	Vehicle Identification Number
_____	_____	_____	_____
_____	_____	_____	_____

Last licensed in the State of Illinois in (Year) _____ License Plate Number(s) _____

- 7. Mark (X) either (a) or (b): (a) All the decedent's funeral expenses and other debts have been paid, or (b) All the decedent's known unpaid debts are listed and classified as follows:

Class 1: Funeral and burial expenses, which include reasonable amounts paid for a burial space, crypt, or niche; a marker on the burial space; and care of the burial space, crypt, or niche; expenses of administration; and statutory custodial claims:

Name _____
Post Office Address _____ Amount \$ _____

Class 2: Surviving spouse's award or child's award, if applicable:

Name _____
Post Office Address _____ Amount \$ _____

Class 3: Debts due the United States:

Name _____
Post Office Address _____ Amount \$ _____

Class 4: Money due employees of the decedent of not more than \$800 for each claimant for services rendered within four months prior to the decedent's death and expenses attending the last illness:

Name _____

Post Office Address _____ Amount \$ _____

Class 5: Money and property received or held in trust by the decedent that cannot be identified or traced:

Name _____

Post Office Address _____ Amount \$ _____

Class 6: Debts due the State of Illinois and any county, township, city, town, village, or school district located within Illinois:

Name _____

Post Office Address _____ Amount \$ _____

Class 7: All other claims:

Name _____

Post Office Address _____ Amount \$ _____

7.5 I understand that all valid claims against the decedent's estate described in paragraph 7 must be paid by me from the decedent's estate before any distribution is made to any heir or legatee. I further understand that the decedent's estate should pay all claims in the order set forth above, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata.

8. There is no known unpaid claimant or contested claim against the decedent except as stated in paragraph 7.

9. (a) The names and places of residence of any surviving spouse, minor children and adult dependent* children of the decedent are as follows:

Name and Relationship	Place of Residence	Age of Minor Child
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*(Note: An adult dependent child is one who is unable to maintain themselves and is likely to become a public charge.)

(b) The award allowable to the surviving spouse of a decedent who was an Illinois resident is \$ _____

(\$20,000, plus \$10,000 multiplied by the number of minor children and adult dependent children who resided with the surviving spouse at the time of the decedent's death. If any such child did not reside with the surviving spouse at the time of the decedent's death, so indicate in 9(a)).

(c) If there is no surviving spouse, the award allowable to the minor children and adult dependent children of a decedent who was an Illinois resident is \$ _____ (\$20,000, plus \$10,000 multiplied by the number of minor children and adult dependent children), to be divided among them in equal shares.

10. Mark (X) either 10(a) or 10(b):

(a) The decedent left no will. The names, places of residence and relationships of the decedent's heirs, and the portion of the estate to which each heir is entitled under the law where decedent died intestate are as follows:

Name, Relationship and Place of Residence	Age of Minor	Portion of Estate
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(b) The decedent left a will, which has been filed with the clerk of an appropriate court. A certified copy of the will on file is attached. To the best of my knowledge and belief the will on file is the decedent's last will and was signed by the decedent and the attesting witnesses as required by law and would be admissible to probate. The names and places of residence of the legatees and the portion of the estate, if any, to which each legatee is entitled are as follows:

Name, Relationship and Place of Residence	Age of Minor	Portion of Estate
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(c) Affiant is unaware of any dispute or potential conflict as to the heirship or will of the decedent.

10.3 My relationship to the decedent or the decedent's estate is: _____.

10.5 I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent's estate, the decedent's heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit who incur any loss because of reliance on this affidavit, up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney's fees and the expenses of recovery.

11. After payment by me from the decedent's estate of all debts and expenses listed in paragraph 7, any remaining property described in paragraph 6 of this affidavit should be transferred to (NAME) _____
(ADDRESS) _____;
this affidavit is made to induce the Secretary of State of Illinois, to issue a Certificate of Title to the vehicle to the assignee.

The foregoing statement is made under the penalties of perjury. (Note: A fraudulent statement made under the penalties of perjury is perjury, as defined in Section 32-2 of the Criminal Code of 2012.)

Signature of Affiant Date

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

(SEAL)