

133rd P.2



Chris Daniel

Harris County District Clerk

NOTICE OF EXCESS FUNDS (Section 34.03, Subsection (a), Tax Code)

www.hcdistrictclerk.com

3/30/2012

RICHARD EARL CHENEY
TDCJ#01369505
3295 FM 1314
BEAUMONT, TX 77705

Re: Cause No. 200954783: HARRIS COUNTY, ET AL VS. RICHARD EARL CHENEY

This notice is to inform you that excess proceeds were deposited with the Clerk of the District Courts of Harris County, Texas, in the amount of \$ 14,237.16 on 03/29/2012 in connection with the above numbered and styled cause.

You are further advised to review the following text of Section 34.03 and 34.04, Tax Code regarding your rights with respect to the excess proceeds.

Sec. 34.03, Tax Code – Disposition Of Excess Proceeds

(a) The clerk of the court shall;

(1) if the amount of excess proceeds is more than \$25, before the 31st day after the date the excess proceeds are received by the clerk, send by certified mail, return receipt requested, a written notice to the former owner of the property, at the former owner's last know address according to the records of the court or any other source reasonably available to the court, that:

(A) states the amount of the excess proceeds;

(B) informs the former owner of that owner's rights to claim the excess proceeds under Section 34.04; and

(C) includes a copy or the complete text of this section and Section 34.04 and

(2) regardless of the amount, keep the excess proceeds paid into court as provided by Section 34.02(c) for a period of two years after the date of the sale unless otherwise ordered by the court.

(b) If no claimant establishes entitlement to the proceeds within the period provided by Subsection (a), the clerk shall distribute the excess proceeds to each taxing unit participating in the sale in an amount equal to the proportion its taxes, penalties, and interests bear to the total amount of taxes, penalties, and interest due all participants in the sale.

Sec. 34.04, Tax Code – Claims for Excess Proceeds

(a) A person, including a taxing unit, may file a petition in the court that ordered seizure or the sale setting forth a claim to the excess proceeds. The petition must be filed before the second anniversary of the date of the sale of the property. The petition is not required to be filed as an original suit separate from the underlying suit for seizure of the property or foreclosure of a tax lien on the property, but may be filed under the cause number of the underlying suit.

(b) A copy of the petition shall be served, in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor, on all parties to the underlying action not later than the 20th day before the date set for a hearing on the petition.

(c) At the hearing the court shall order that the proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:

(1) to the tax sale purchaser if the tax sale has been adjudged to be void and the purchaser has prevailed in an action against the taxing units under Section 34.07 (d) by final judgment;

(2) to a taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment or that were omitted from the judgment by accident or mistake;

(3) to any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law;

- (4) to a taxing unit for any unpaid taxes, penalties, interest, or other amounts adjudged due under the judgment that were not satisfied from the proceeds from the tax sale; and
- (5) to each owner of the property.
- (d) Interest and costs may not be allowed under this section.
- (e) An order under this section is appealable.
- (f) A person may not take an assignment of an owner's claim to excess proceeds unless:
 - (1) the assignment is taken on or after the 36th day after the date the excess proceeds are deposited in the registry of the court;
 - (2) the assignment is in writing and signed by the assignor; and
 - (3) the assignment document contains a sworn statement by the assignor affirming:
 - (A) that the assignment was given voluntarily;
 - (B) the date on which the assignment was made and that the date was not earlier than the 36th day after the date the excess proceeds were deposited in the registry of the court;
 - (C) that the assignor has received the notice from the clerk required by section 34.03;
 - (D) the nature and amount of consideration given for the assignment;
 - (E) the circumstances under which the excess proceeds are in the registry of the court;
 - (F) the amount of the claim to excess proceeds in the registry of the court;
 - (G) that the assignor has made no other assignments of the assignor's claim to the excess proceeds; and
 - (H) that the assignor knows that the assignor may retain counsel.
- (g) An assignee who obtains excess proceeds without complying with Subsection (f) is liable to the assignor for the amount of excess proceeds obtained plus attorney's fees and expenses.
- (h) An assignee who files a petition setting forth a claim to excess proceeds must attach a copy of the assignment document and produce the original of the assignment document in court at the hearing on the petition. If the original assignment document is lost, the assignee must obtain the presence of the assignor to testify at the hearing.
- (i) A fee charged to obtain excess proceeds for an owner may not be greater than 25 percent of the amount obtained or \$1,000, whichever is less.

This office cannot provide you forms or legal advice to claim the excess proceeds.

©TACSR2001

Sincerely,

Mary Moral

Fee Accounting Deputy for
Chris Daniel
Harris County District Clerk