County of Fresno

Hall of Records, Rm. 301
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Fresno, California
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Legislation Details (With Text)

File #:	19-1558	**Name:**	Hearing of Claimants' Rights to Excess Proceeds Resulting from 2016 Sale of Tax Defaulted Properties
		In control:	Auditor - Controller
On agenda:	12/10/2019	**Final action:**	12/10/2019
Enactment date:		**Enactment #:**	

Title: Conduct public hearings on claims for excess proceeds resulting from the 2016 sale of tax-defaulted property for two (2) items, including item 144 (APN 140-120-06) for excess proceeds in the amount of $29,685.22 and item 396 (APN 510-060-30) for excess proceeds in the amount of $89,622.77; and, make a determination if claimants for the two (2) items submitted information and proof sufficient to establish a right to all or any portion of the excess proceeds

Sponsors:

Indexes:

Code sections:

Attachments: 1. Agenda Item, 2. Documents received December 2, 2019 (Richard Sanchez), 3. Additional Information

Date	Ver.	Action By	Action	Result
12/10/2019	1	Board of Supervisors	Conducted Public Hearing	Pass

DATE: December 10, 2019

TO: Board of Supervisors

SUBMITTED BY: Oscar J. Garcia, CPA, Auditor-Controller/Treasurer-Tax Collector

SUBJECT: Hearing and Determination of Claimants' Rights to Excess Proceeds Resulting from 2016 Sale of Tax-Defaulted Properties

RECOMMENDED ACTION(S):

1. **Conduct public hearings on claims for excess proceeds resulting from the 2016 sale of tax-defaulted property for two (2) items, including item 144 (APN 140-120-06) for excess proceeds in the amount of $29,685.22 and item 396 (APN 510-060-30) for excess proceeds in the amount of $89,622.77.**

2. **Make a determination if claimants for the two (2) items submitted information and proof sufficient to establish a right to all or any portion of the excess proceeds.**

The excess proceeds are the remaining proceeds from the 2016 Tax Sale that the Board approved on December 15, 2015, and that the ACTTC conducted on March 4-7, 2016. The recommended actions allow the Board to receive information and make a determination regarding excess proceeds from tax sale items 144 and 396. The ACTTC will return to your Board at a later date with a resolution effectuating the Board's determination. November 5, 2019 was the last recommended excess proceeds item brought by ACTTC to your Board, for the 2016 Tax Sale. This item is countywide.

ALTERNATIVE ACTION(S):

There are no alternative actions. Revenue and Taxation Code section 4675, subdivision (e), requires the Board to distribute excess proceeds from the sale of tax-defaulted property.

FISCAL IMPACT:

The excess proceeds from the County's 2016 sale of tax-defaulted properties are the remaining proceeds after all taxes, penalties, costs, and fees have been paid to the County of Fresno for each property that was sold. Excess proceeds not claimed, or for which claims are not granted, will be distributed to the County's General Fund under Revenue and Taxation Code section 4674. Therefore, depending on the Board's determination an amount not to exceed $119,308 will fiscally impact the County's General Fund as a one-time revenue increase if all claims are denied or an amount not less than $10,537 will fiscally impact the County's General Fund as a one-time revenue increase if all claims are granted.

DISCUSSION:

On November 5, 2019, the Auditor-Controller/Treasurer-Tax Collector (ACTTC) presented a recommendation for the disposition of all the claims for excess proceeds from the County's 2016 sale of tax-defaulted property. Claimants and representatives of claimants for excess proceeds from tax sale item 144 (APN 140-120-06) and item 396 (APN 510-060-30) appeared, raised preliminary objections to the recommended action for those items, and requested a continuation of the hearing on those items. Based on that request, your Board continued the hearing on those two items, but approved the disposition of all of the other claims for excess proceeds from the 2016 tax sale. For the continued hearing, your Board requested the ACTTC to include all additional information received along with an updated recommendation from the ACTTC.

For item 144, as of November 15, 2019, the deadline for submitting agenda items to the County Administrative Office (CAO) for the December 10, 2019 board meeting, the ACTTC has not received any additional documents from any claimants or their representatives.

For item 396, as of November 15, 2019, the deadline for submitting agenda items to the CAO for the December 10, 2019 board meeting, the ACTTC has not received any additional documents from any claimants or their representatives.

In general, the ACTTC only recommends granting a claim when it appears from the face of the documents timely submitted that the claimant is entitled to excess proceeds. The ACTTC tries not to make assumptions about the documents. For example, the ACTTC generally would not conclude that documents are "close enough" when names are spelled differently, or when dates do not match. In those situations, the ACTTC expects claimants to submit documents that are adequate to explain the discrepancies. What follows is a detailed discussion of the reasons for the ACTTC's recommendations for item 144 and item 396.

Item 144 (APN 140-120-06)

Regarding item 144, there are excess proceeds in the amount of $29,685.22. During the statutory period for filing claims for excess proceeds from the 2016 tax sale, the ACTTC received one claim for excess proceeds from the sale of this parcel. The claim was submitted by Marie F. Tygart, requested the entirety of the excess proceeds available, and included the following documents:

(1) A copy of a Judgment of Final Distribution on Waiver of Accounting, dated February 10, 1982, in the Estate of Allen Bensen, aka Allen Lawrence Benson, Fresno County Superior Court Case No. 262243-9, recorded in the Fresno County Recorder's Office, Book 7858, Page 22, stating in relevant part that Ms. Tygart and Leonard Jensen, Jr., were to receive "equal shares" of the property identified by APN 140-120-06, which is the item 144 property;
(2) A copy of a Grant Deed, recorded July 19, 2000, naming "Leonard L. Jensen, trustee or his successor

of the Jensen Irrevocable Trust" property identified by APNs 140-120-06, which is the item 144 property, and 140-300-58, which is not relevant to this matter;

(3) A copy of "The Jensen Irrevocable Trust," which in its Schedule A identifies the "Trust Assets" as "Fifty percent (50% interest in real property located in Fresno County (APNs 140-120-06 [which is the item 144 property] and 140-300-58 [which is not relevant to this matter])";
(4) A copy of several pages from "The Jensen Family Trust Dated June 23, 2000, Restatement dated December 5, 2005," but those pages do not specify either the trust assets or the beneficiaries for that trust;
(5) A copy of a Certificate of Death for Leonard Jensen, stating a December 28, 2015 date of death;
(6) A copy of a Certificate of Death for Ruth Jensen, stating a January 19, 2007 date of death;
(7) An October 16, 2017 letter from attorney Jeff S. Shepard asserting that half of the property identified by APN 140-120-06 (the item 144 property) belonged to the Jensen Irrevocable Trust and that the other half of the property belonged to Ms. Tygart;
(8) A copy of Ms. Tygart's California driver's license; and
(9) A note from Ms. Tygart stating: "The Jensen Irrevocable Trust was placed under the Jensen Family Trust. I am the executor of that trust. I'm not sure how the 50% of interest in property was dispersed if thru the Family Trust or Irrevocable Trust. So I have included the executor name + address of the Irrevocable Trust."

Based on review of the documents timely submitted during the statutory claim period, it appears to the ACTTC that Ms. Tygart held record title to a 50% interest in the property, based on the 1982 distribution, and was therefore entitled to 50% of the excess proceeds from the sale of the property at the 2016 tax sale. The trust documents were inconclusive for purposes of the claim because "The Jensen Irrevocable Trust" does not identify her as a trustee, and "The Jensen Family Trust" document was incomplete. As well, the note from Ms. Tygart, by referring to "the 50% interest in property," appeared to clarify that her claim was based on her 50% interest in the property. It is not unusual for claimants with only a partial interest in the property to claim the entire amount of the excess proceeds. The fact that Ms. Tygart claimed the entirety of the excess proceeds does not tend to show that she had a 100% interest in the property. Furthermore, although Ms. Tygart's claim mentioned "Glenn Jensen executor of trust," Mr. Jensen did not submit a claim, and Ms. Tygart did not submit documents tending to show that she had any authority to submit a claim on Mr. Jensen's behalf. The ACTTC's recommendation remains the same as originally presented: that, as a titleholder of 50% of the property, Ms. Tygart is entitled to $14,842.61, or 50% of the excess proceeds from the 2016 tax sale of item 144 (APN 140-120-06).

Item 396 (APN 510-060-30)

Regarding item 396, there are excess proceeds in the amount of $89,622.77. During the statutory period for filing claims for excess proceeds from the 2016 tax sale, the ACTTC received 11 claims for excess proceeds from the sale of this parcel. The claims are as follows:

- Global Discoveries on behalf of Christopher Steve Navarro, Raymond Richard Navarro Jr., and Patricia Anne Reyes. In total three claims were timely submitted for $7,468.56 each, in total $22,405.69, as titleholders. Because all of the claims were timely submitted in a single packet by Global Discoveries, based on the same documentation, the ACTTC has treated this as a single claim. The ACTTC has reviewed this claim and is recommending $4,979.04 each, in total $14,937.12, for the reasons stated in Attachment A to the ACTTC's original November 5, 2019 recommendation. No one appeared before your Board on November 5th in connection with this claim and the ACTTC has not changed its prior recommendation.

- Global Discoveries on behalf of Ronald Flores and David Flores. In total two claims were timely submitted for $11,268.75 each, totaling $22,537.50, as titleholders. Because all of the claims were timely submitted in a single packet by Global Discoveries, based on the same documentation, the ACTTC has treated this as a single claim. The ACTTC has reviewed this claim and is recommending

$9,602.44 each, in total $19,204.88, for the reasons stated in Attachment A to the ACTTC's original November 5, 2019 recommendation. No one appeared before your Board on November 5th in connection with this claim and the ACTTC has not changed its prior recommendation.

- Albert Varela timely submitted a claim for $11,202.84 as titleholder. The claim is based on the following timely submitted documents:

  (1) An "Affidavit of Death for Distribution of Decedent's Property," asserting that Mr. Varela is authorized to receive property of the deceased Lupe Varela;
  (2) An "Affidavit of Identity" executed by Mr. Varela stating his name, residence, and Social Security Number;
  (3) A copy of Mr. Varela's California driver's license;
  (4) A copy of an xfinity bill to Mr. Varela. Relevant documents timely submitted by another claimant, Barbara Amparano, also included:
  (5) A copy of a Grant Deed recorded on 1/11/1978 naming Sally V. Sanchez, Lupe V. Vareia, Angelina V. Navarro, and Lena V. Florez as grantees, each to one-quarter ownership, without providing for joint tenancy of the property;
  (6) A Certificate of Death for Lupe Varela, showing a 3/7/2000 date of death; and
  (7) A birth certificate for Albert Varela, born on 3/25/1960.

  Based on review of the documents timely submitted during the statutory claim period, it appears to the ACTTC that the documents are not sufficient to establish Mr. Varela's right to excess proceeds. Most importantly, the "Affidavit of Death for Distribution of Decedent's Property" submitted by Mr. Varela does not comply with California Probate Code section 13100 and following. In particular, California Probate Code section 13101, subdivision (a)(9), requires such an affidavit to state that "No other person has a superior right to the interest of the decedent in the described property." The affidavit submitted by Mr. Varela does not include that statement. To the contrary, the affidavit states: "I have personally served or mailed written notice to all other successors of the decedent identifying my claim and describing the property claimed. At least ten (10) days have passed since the service and/or mailing of such notice." That is, Mr. Varela refers to possible other successors, who may have superior rights. As well, another claimant, Barbara Amparano, submitted a nearly identical affidavit, also claiming under Lupe Varela, but neither she nor Mr. Varela submitted documents sufficient to demonstrate that either has a superior interest. Finally, although the 1978 deed refers to a "Lupe Vareia," the other documents submitted by Mr. Varela refer to a "Lupe Varela," and none of the documents attempt to explain the difference. The ACTTC recommends denying this claim due to insufficient evidence.

- Barbara Amparano timely submitted a claim for $11,202.84 as titleholder. The claim is based on the following documents:

  (1) An "Affidavit of Death for Distribution of Decedent's Property," asserting that Mr. Varela is authorized to receive property of the deceased Lupe Varela;
  (2) An "Affidavit of Identity," executed by Ms. Amparano stating her name, residence, and Social Security number;
  (3) A copy of Ms. Amparano's California driver's license;
  (4) A copy of a City of Fresno utility bill to Ms. Amparano;
  (5) A copy of a Grant Deed recorded on 1/11/1978 naming Sally V. Sanchez, Lupe V. Vareia, Angelina V. Navarro, and Lena V. Florez as grantees, each to one-quarter ownership, without providing for joint tenancy of the property;
  (6) A Certificate of Death for Lupe Varela, showing a 3/7/2000 date of death;
  (7) A copy of a 6/10/1948 Marriage License for Albert Varela and Lupe Vasquez;
  (8) A copy of a 6/16/1973 Marriage Certificate for Manuel Jesse Amparano and Barbara Margaret Varela; and
  (9) A copy of a Certificate of Live Birth for Alberta Varela, showing a 6/5/1948 date of birth.

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Based on review of the documents timely submitted during the statutory claim period, it appears to the ACTTC that the documents are not sufficient to establish Ms. Amparano's right to excess proceeds. Most importantly, the "Affidavit of Death for Distribution of Decedent's Property" submitted by Ms. Amparano does not comply with California Probate Code section 13100 and following. In particular, California Probate Code section 13101, subdivision (a)(9), requires such an affidavit to state that "No other person has a superior right to the interest of the decedent in the described property." The affidavit submitted by Ms. Amparano does not include that statement. To the contrary, the affidavit states: "I have personally served or mailed written notice to all other successors of the decedent identifying my claim and describing the property claimed. At least ten (10) days have passed since the service and/or mailing of such notice." That is, Ms. Amparano refers to possible other successors, who may have superior rights. As well, another claimant, Albert Varela, submitted a nearly identical affidavit, also claiming under Lupe Varela, but neither he nor Ms. Amparano submitted documents sufficient to demonstrate that either has a superior interest. Finally, although the 1978 deed refers to a "Lupe Vareia," the other documents submitted by Ms. Amparano refer to a "Lupe Varela," and none of the documents attempt to explain the difference. The ACTTC recommends denying this claim due to insufficient evidence.

- Richard Edward Sanchez, Cynthia Rose Crossley, Randy Rudolf Sanchez, and Paul John Sanchez together submitted claims for $5,634.38 each as titleholders. Their claims are based on the following documents:

  (1) A copy of a Grant Deed recorded on 1/31/1978 naming Sally V. Sanchez, Lupe V. Vareia, Angelina V. Navarro, and Lena V. Florez as grantees, each to one-quarter ownership, without providing for joint tenancy, of the property;
  (2) A copy of a Grant Deed signed on 8/7/1987 and recorded 8/11/1987 by which Sally V. Sanchez, Lupe V. Vareia, and Lena V. Florez granted their interest (subject to the life estate retained by the grantors under the 1978 deed) to Sally V. Sanchez, Lupe V. Vareia, Lena V. Florez, Ralph S. Vasquez, Richard Navarro, Steven Navarro, and Patricia Reyes, as grantees, without providing for joint tenancy, and thus each taking one-seventh as tenants in common (Civ. Code, § 686);
  (3) Death Certificates for Rafael Vasquez, showing a 6/29/1987 date of death, and Rosa Vasquez, showing a 6/7/1998 date of death;
  (4) A Declaration Under Penalty of Perjury Pursuant to California Probate Code Section 13100 for Collection of Personal Property of Deceased Not Exceeding $150,000.00 in Value stating that they are the grandchildren and successors of the property of Rosa Vasquez; and
  (5) Copies of birth certificates and California driver's license for each of the four claimants.

  Based on review of the documents timely submitted during the statutory claim period, it appears to the ACTTC that the documents are not sufficient to establish any of the claimants' rights to excess proceeds. The documents state that the claimants are the grandchildren of Rosa Vasquez. Rosa Vasquez had a life estate interest in the property, but that terminated upon her death in 1998, as shown by the death certificate provided by the claimants. That means her life estate terminated well before the tax sale occurred, and she no longer had any interest for the claimants to inherit. The ACTTC recommends denying these claims due to insufficient evidence.

For item 396, if your Board grants the claims submitted by Global Discoveries as recommended by the ACTTC, there would still be $55,480.77 in excess proceeds from the sale of this property that may be distributed.

The recommendations of the ACTTC are based on the documents that were timely submitted by the claimants. Under Revenue and Taxation Code section 4675, subdivision (d), "The claims shall contain any information and proof deemed necessary by the board of supervisors to establish the claimant's right to all or any portion of the excess proceeds." Your Board therefore has the authority to determine whether the

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information and proof provided by the claimants is sufficient to establish their right to all or any portion of the excess proceeds.

Based on what your Board determines after receiving comments from the claimants and their representatives, the ACTTC would return to your Board with a resolution effectuating the Board's determination.

REFERENCE MATERIAL:

BAI #22, November 5, 2019
BAI #21, August 21, 2018
BAI #22, January 31, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

Documents received December 2, 2019 (Richard Sanchez)

CAO ANALYST:

Debbie Paolinelli