

To: HB 4056 Oregon Department of Revenue Workgroup

**From: AARP Oregon
AFT-Oregon
Columbia Cascade Housing Corp.
DevNW
Fair Housing Council of Oregon
Oregon Consumer Justice
Oregon AFL-CIO
Oregon Law Center
Oregon Trial Lawyers Association
Urban League of Portland**

Date: June 24th, 2024

Re: Workgroup Proposals

The following provides the recommendations from the above listed groups.

Rights of Owners

Prohibit any requirement that a homeowner must file an action or claim to qualify or obtain access to their equity (e.g. no “opt-in” or “demand” requirement).

Counties with proceeds from sales beyond what was due for taxes and allowable expenses should have an affirmative obligation to notify the consumer and return surplus money to the consumer rather than requiring the consumer to jump through hoops to obtain the money to which they have a constitutional right. Without this protection, even if there is a known significant value beyond owed taxes and allowable county costs and a known homeowner, a county would be under no obligation to return the money.

Ensure the Owners, Including Persons who have Inherited an Ownership Interest, Receive Notice at each Stage of the Foreclosure

The goal is to use all opportunities for notice to happen, to prevent unnecessary foreclosure, keep people in their homes, and ensure homeowner retention of surplus in the event of home loss.

- Provide information about existing property tax deferral programs during the foreclosure process to inform property owners about how to avoid foreclosure for back taxes if they qualify.
- Provide clear and regular information (available in both plain language, large font size, and multiple languages) about homeowner rights and how to make claims. Engage local service providers working with low-income and culturally specific populations in drafting notices.

- Conduct adequate individualized outreach and posting which should include:
 - By USPS First Class mail, certified mail, and, when possible, email.
 - By publication in local media, social media, posting at the property, outreach to community partners, and posting online.
 - Upon losing rights to property i.e.: when judgment is applied for in the Circuit Court, there should be personal service with hand delivery using a process server, delivered upon the initiation of the process used to terminate the owner's rights in the property.

- Due diligence should be used by the county to locate the owner(s) of the property. “Due diligence” includes a search of land, court, and other records and online resources such as a LexusNexis public records search that charges per search. If the owner is deceased, the state should appoint an attorney ad litem to conduct due diligence in locating heirs. In the alternative, the county should use due diligence in finding the heirs and rightful owners of the property.

Provide Effective Assistance & Outreach to Individuals and Communities About Their Rights to Remaining Equity

Without adequate notice and outreach, consumers will not understand their rights or how to access them. We must ensure community-wide outreach to ensure that an owner who cannot be reached individually may still have access to their constitutional rights. If an individual is seeking to assert their rights, we must ensure access to assistance to help navigate the process. The statute should provide consistent standards for community outreach and homeowner assistance. Specifically:

- Provide help to families navigating the claims process.
- Provide assistance for homeowners in determining the current value of amounts inappropriately taken.
- Provide consumer-centered processes when ownership and heirs are not clear.

Establish appropriate pre- and post-sale processes and standards that maximize sale proceeds

- Attempt to sell the property using a real estate agent before conducting a public auction.
- If the property does not sell on the open market, conduct a high bid public auction with a minimum bid amount based on a percentage of the property’s recently appraised or assessed value, whichever is higher to allow for the best determination of current value.
- Appraiser should be licensed and unaffiliated with the county.
- Provide and document reasonable, fair, and clear methods to calculate charges related to the tax foreclosure process, such as taxes owed, costs associated with maintaining and selling the property and appropriate attorney fees.
- The statute should specify that the only expenses that the county can retain from the proceeds of the sale are: the expenses of the sale; the taxes and interest owed; and expenses related to property cleanup for nuisance properties while the property was in

government care. No other expenses should be allowed to be retained by the county. All expenses should be documented in writing.

- Return any sale proceeds beyond what is owed for taxes and any allowable expenses to the former owner, including heirs if the former owner is deceased. This should be done by the county using due diligence, noted above, to find former owners/heirs and provide them with sale proceeds beyond what is owed for taxes and any allowable expenses within 90 days of the sale.
- Along with an affidavit, establish an expansive list of documents from which heirs can choose one document to establish ownership. The list may include birth certificates, death certificates, will, if available, and the list of documents used by FEMA.
- In the case of multiple heirs, create a presumption that heirs who have resided in the property as their primary residence for more than a year at the time of the sale have the authority to receive the excess proceeds on behalf of all heirs, in the absence of a written agreement between heirs or objection by a non-resident heir.

Oversight

- Ensure that there is adequate and appropriate process management oversight and accountability to audit counties' processes for the distribution of surplus values.

Provide Appropriate and Meaningful "Look-Back"

We view the issue from the perspective of property owners who have had their property unconstitutionally seized. Their government should make things right, full stop. The cases filed in federal court make the point that there is no statute of ultimate repose in cases involving constitutional claims.

In that light, we feel that a ten-year limit is a reasonable compromise between the counties' position of six years and the potential for the courts to rule that claims cannot be time-barred.

Ten-year limits are common in Oregon law:

ORS 12.115 negligence

ORS 12.135(1) construction defects

ORS 30.905 products

There is a power imbalance between the government and property owners. The legislature should go the extra mile to ensure that the rights of the individuals who have lost property are centered in constructing this legislation.

We recognize the outcome in *Walton v. Neskowin Regional Sanitary Authority* and believe that the case is not applicable since issues of Constitutional rights were raised in *Tyler V. Hennepin*.