

Surplus proceeds of property tax foreclosure sales

Suggested Pre-Sale Changes **Highlights** = Edits/comments 8/19/24

Five Years Through Three Years Prior to Deed to County

Tax statements indicating past due amounts sent annually to property owners per ORS 311.250

Delinquent tax notices sent annually to property owners per ~~311.345~~ 311.545 (Correction per DOJ)

- Interest groups recommend notices are drafted in the most commonly used languages in the County. ([Secretary of State ORS 251.167](#))
 - **Deschutes County** would recommend adding some language, “If you need this information in an alternative format, please call or email” or “Spanish Version available upon request” for examples. Note, that if the requirement was to provide notices and other documents in different languages in all instances, that this would be an administrative burden and costly due to software limitations and other logistical challenges

Two Years Prior to Deed to County

Intent to Foreclose mailed to owner & mortgagee via certified and first-class mail two years prior to county taking deed per ORS 312.040

- Interest groups recommend notices are drafted in the most commonly used languages in the County. ([Secretary of State ORS 251.167](#))

Foreclosure list published in newspaper per ORS 312.040 & 312.060

- County recommendation to allow posting to county website
 - **Deschutes County** recommends the State consider developing a centralized State website that Counties can post information accordingly.

One Year Prior to Redemption Period Expiring

Notice of Expiration of Redemption Period sent to anyone with a recorded interest in the property at time of initiating foreclosure proceedings per ORS 312.125

- Interest groups recommend notices are drafted in the most commonly used languages in the County. ([Secretary of State ORS 251.167](#))

One Month prior to Redemption Period Expiring

General Notice of Expiration of Redemption Period printed twice in a newspaper of general circulation 10 – 30 days prior to expiration of the redemption period per ORS 312.190

- County recommendation to allow posting to county website

- **Deschutes County** recommends the State consider developing a centralized State website that Counties can post information accordingly.

Outstanding Questions

Is there additional clarification needed regarding noticing? Some recommendations from counties:

- Include notification of the potential surplus in the one-year redemption notice already required under ORS 312.125.
- Require written notice be sent to the former owner at their last known address no less than 180 days before the filing deadline.
 - **Deschutes County** requesting confirmation, is this 180-days related to the filing deadline to claim the funds? If yes, would the DOT be responsible for the 180-day notice since funds would have been transferred to DOT after 30-days of sale?
- County website must publicly post all available surplus proceeds, along with an adequate property description and the respective former owner's name.
 - **Deschutes County** recommends the State consider developing a centralized State website that Counties can post information accordingly.
- Annual newspaper posting of expiring surplus claims no later than 60 days before the filing deadline.
 - **Deschutes County** believes that because the funds would have already been turned over to the State after the 30-day post sale, the State/DOT would be responsible for this portion. Also, this would pose a challenge to counties due to cost and often in cases where advertising locally is no longer an option.
 - **The Association of Oregon Counties (AOC)** reiterates and endorses the recommendations and adds one additional note - **Notice** and publication requirements can be very costly to counties, reimbursement through the sale process is often not viable to mitigate these costs as the sales do not occur within the same year, or sometimes at all.

Suggested Post-Sale Timeline

Immediately After Sale

Counties receive funds from sale and pay all past due taxes, fees, and admin costs.

- County recommendation to expand statute to allow for reimbursement of all expenses in administering the surplus process, in addition to the expenses already deductible under ORS 275.275.
 - **AOC recommends** that *all* claims be transferred to Oregon State Treasury Unclaimed Property –
 - Suggested process: county takes deed, executes sale, deducts past due taxes, fees, admin costs from proceeds, and turns the remaining proceeds over to OST.

- Counties are neither equipped to handle lien priority determinations nor indemnified if that priority determination is challenged.
- We anticipate that leaving priority lien determination to counties will result in additional uncertainty, litigation, and unrecoverable costs to counties/the taxpayer.

County notifies the Department of Justice of excess proceeds available for each individual owner.

County deposits proceeds to an escrow account and holds for 30 Days.

- **Deschutes County** recommends that the term “escrow” should be defined to only include an internal account to the county, separately accounted for and interest bearing. The intent is not to transfer funds to a neutral third party (escrow) for the 30-day period. Instead, the county will hold the funds and account for separately in an interest-bearing account.
- **Malheur County** does not want it referred to as an ‘Escrow’ account. We have no problem placing it into an interest-bearing account and calling it an ‘Interest Bearing’ account.

DOJ may assert claims and issue garnishments to the county for any relevant **DOJ child support and restitution (edit per DOJ)** liens against individual property owners within this timeframe.

- **Deschutes County** requests clarification that the State would issue the claim against the property vs an individual. It would be an administrative burden to verify a lien against an individual vs a lien for an actual property. Further, the county does not have personal/confidential information to verify on a property owner (social security number, etc.)
- Other holders of secured priority liens, such as mechanics liens, may also assert claims during this time
- Language will need to be included in legislation to specifically allow DOJ to issue garnishments to the counties

30 Days Post Sale

- **AOC recommends** that Oregon State Treasury handle all surplus claims; remove suggestion of counties handling DOJ liens

County disburses any available funds to DOJ and/or other priority secured lienholders to pay individual liens per DOJ/lienholder claims.

After any available funds have been disbursed towards DOJ or other priority secured liens, Counties will clear the escrow account and forward remaining funds, along with relevant owners/party of interest info on a per-account basis, to the Department of Treasury. At this point DOT would assume responsibility for processing, validating, and paying claims, and counties would be held harmless for any errors in disbursing funds to an incorrect claimant.

Property owners would utilize the existing unclaimed property process through the Department of Treasury to make a claim for any surplus funds.

- Counties would include information regarding the DOT unclaimed property/surplus funds process on their websites and in communications to the property owner.

Claimants must file claims with DOT within the timelines set forth in statute:

- One year from the date the property is sold or conveyed to a third-party up to a maximum of two years from the date the property is deeded to the county under ORS 312.122 or 312.200;
- One year from the date the county makes a determination that the county will retain the property for public purposes up to a maximum of two years from the date the property is deeded to the county under ORS 312.122 or 312.200; or
- If no action is otherwise taken by the county, two years from date the property is deeded to the county under ORS 312.122 or 312.200.

Outstanding Questions

- Who is a claimant?
 - **Deschutes County** further clarification specific to Claimant and the “look back period”, which still needs to be determined. As far as claims moving forward, the DOT takes on the responsibility of claims, so therefore the DOT would need to define this term.
- What happens to unclaimed surplus funds at the end of the claim period?
 - **Deschutes County** requests, at the expiration of the claim period, proposing that the State returns the unclaimed funds (minus any State administrative costs) to the Counties for distribution in accordance with ORS 275.275.
 - **AOC recommends** that any unclaimed surplus is returned to the originating county so the funds can be disbursed to the appropriate taxing districts.
 - **Malheur County** would like the proceeds returned to the County if there are no claims beyond the set date to have claims turned in. The taxing districts could really benefit from anything sent there way. If the Department of Treasury needs to take a percentage before returning it, that is completely appropriate for all the work they would have done.
- How will assignment of claims to third parties be handled?
 - **Deschutes County** believes if DOT takes on the responsibility of claims, then DOT would need to define this term.
- How is surplus determined/what is the process in the event a county retains a property?
 - **Deschutes County** recommends, counties that retain a property to further public interest would be required to have a third-party appraisal. Any qualified claimant “surplus” would be the appraised value minus associated/allowable expenses.

Additional items to be addressed based on participant feedback:

1. **Deschutes**: Need more information/language of the State pool of funds for the “look back period” to pay claims accordingly since funds have already been distributed.

Additionally, the “look back period” is still unclear in terms of timeframe. Recommend a short period.

2. **AOC:** Determining value

- Current case law dictates that the sale price at auction is considered the real market value – AOC suggests that statute codify this for purposes of surplus proceeds
- Independent appraisers and the use of real estate agents carry significant costs for which counties do not have a budget and would be inappropriate for many of the properties that go to foreclosure.
- AOC opposes any language creating a duty for the county to maximize the value of a surplus
 - Counties would no longer be able to transfer properties to nonprofits, for use as affordable housing, etc.
 - Counties would no longer be able to invest in cleaning up property, meaning nuisance properties etc. would remain in that state until sold and mitigated by the new owner

3. **AOC:** “Lookback period”

- Counties prefer to allow the current lookback legislation to run its/their course before enacting legislation dictating procedures.
- Alternatively, the counties fully support the State’s takeover of all lookback claims.
 - In most cases all of these funds have been distributed to taxing districts. Counties would have to consider claw backs to make payment on surplus funds.
- If requested, the counties prefer a six-year lookback period to align with ORS 12.080.

Additional Items From 8/14/24 Meeting

- **AARP** Oregon voiced concerns regarding Department of Treasury’s outreach process for unclaimed property.
- **Pacific Legal** advised that once funds are transferred to the Department of Treasury, they should be treated as any other unclaimed property and should not revert to the originating county; there should not be any expiration on the claim period for these funds.
- **Pacific Legal** advised that it is important to his and other interest groups that counties make an effort to maximize the value of properties being sold. This included county retained properties or deed transfers. These properties should be assessed and marketed, and counties should pay any surplus to the owner. Alternatively, if the property can’t be sold for market value it can be auctioned. If the property sells for less than amounts due, there would be no surplus.