

Overview

In 2023 the United States Supreme Court issued a unanimous ruling in *Tyler vs. Hennepin County*, a case related to property tax foreclosure sales and resulting surplus funds over and above taxes owed to the county. The plaintiff in the case owed approximately \$15,000 in property taxes, interest, and penalties on a condominium they owned in Minneapolis. To collect the amounts owed, Hennepin County foreclosed on the condominium and sold it for \$40,000. This resulted in a surplus amount after all taxes and other fees were paid of approximately \$25,000. Under Minnesota law, Hennepin County retained these surplus funds and did not return them to the property owner. The property owner filed a case in district court asserting that this was a violation of their rights. After losing in district and Circuit courts, the case was eventually heard in the U.S. Supreme Court. The Supreme Court unanimously voted in favor of the plaintiff, finding that a government entity could not take more property than what is owed to satisfy the debt, and that this constituted a violation of the Takings Clause of the U.S. Constitution's 5th Amendment.

House Bill 4056 was approved during Oregon's 2024 legislative session in response to *Tyler vs. Hennepin*. This bill required the Department of Revenue to coordinate with county tax officers and interested parties to create a process for determining surplus and distribution of proceeds of property lien foreclosures, and to report recommendations from the interested parties to the legislature by September 15, 2024.

In response to the bill, the department invited representatives from all counties (including tax assessors, collectors, treasurers, and counsel); select legislators and staff; and other interested parties and groups to participate in a workgroup to identify a process to address the issues defined in the bill. The list of invitees was developed based on the oral and written testimony submitted to the record on HB 4056, and included over 200 individuals. Six meetings were held between April and August 2024. This report provides an overview of the key discussion points and action items of each meeting.

Resources related to HB 4056 and workgroup agendas, meeting materials, and video recordings of each meeting are posted on a department website at

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx.

Meeting materials are also included as exhibits at the end of this report.

Summary of Workgroup Suggestions

The suggestions below encompass feedback from all workgroup participants. Due to the diversity of participants, there may be multiple differing suggestions related to one particular topic or process.

General

- Statutory changes should address any additional administrative burdens placed upon counties to avoid creating unfunded mandates.
- Expand statute to allow for reimbursement of all expenses related to administering the surplus process, in addition to the expenses already deductible under ORS 275.275.
- Utilize the state's existing Unclaimed Property process for surplus proceed claims.
- Current case law dictates that the sale price of a property at auction is considered the real market value; this should be codified in statute for the purposes of surplus proceeds.
- There should be no duty required for counties to maximize the value of a surplus.
- Statutory changes will need to address county-retained properties or properties transferred to a non-profit for public interest purposes.

Look-Forward and Look-Back Periods

- Two bills will be needed to address the tax foreclosure issue: one bill addressing adjustments to the process for future sales (the look-forward period), and one bill addressing policy for sales prior to implementation of any legislative changes to the process (the look-back period).
- A state funded account should be established to cover any surplus refunds required for sales during the look-back period.
- The definition of a claimant may differ between the look-back and look-forward periods.
- Previously extinguished liens cannot be resurrected for the look-back period.
- A six year statute of limitations should be utilized for the look-back period.
- Legislation addressing the look-back period should be postponed pending a final decision in *Western States Land Reliance Trust vs. Linn County*.

Pre-Sale Notices

- Make tax foreclosure related notices available in the most commonly used languages in the county.
- Do not require all notices be published in multiple languages in all instances, but add language to all notices that the information can be made available in other languages or formats by contacting the County.
- Include notification of the potential for surplus in the one-year redemption notice already required under ORS 312.125.

Pre-Sale Publication Requirements

- Allow publications to be made on a public website, such as the main County or Assessor or Tax Collector website.
- Develop a centralized State website that counties can post information and publications to accordingly.
- Adjust print publication requirements to address increasing difficulty in finding printed publications that meet statutory requirements.

Tax Sale Process

- Utilize the public auction process; do not require the use of an appraiser or real estate agent.
- Utilize Real Estate agents and independent appraisals to assist in obtaining the maximum possible sale price and maximize potential surplus for a property; this can be a tiered process in which only appropriate, marketable properties would be listed with an agent.

County Retained Properties and Deed Transfers

- Acquire an appraisal for properties the County wishes to retain or transfer title to, and pay the market value of the property.
- Offer properties for sale with an agent or at auction; non-profits interested in these properties can purchase through these means. If the property sells for less than the taxes, penalties, and fees due, there would be no surplus to distribute.
- Do not change the process for County retained properties or deed transfers. These properties are used for public benefit.

Land Sale Agreements

- Allow counties to continue offering land sale agreements for tax foreclosed properties.
- Add statutory language to indemnify counties from responsibility for paying surplus funds for properties upon which the land sale agreement is not completed and full payment is never received.

Post-Sale Process

- County holds sale funds in an internal interest-bearing account for a maximum of 60 days to allow time to complete all post-sale administrative processes.
- County deducts amounts appropriate to pay all taxes, fees, administrative, and other allowable costs within this timeframe.
- The County notifies the Department of Justice of excess proceeds available on individual properties.
- No later than 60 days post sale, and after deducting all allowable costs, the County forwards remaining funds and all accounting, property, and owner and party of interest information to the Department of Treasury for handling through the existing Unclaimed Property process.
- The Department of Justice may assert claims and issue garnishments to the County or Department of Treasury for any relevant child support and restitution liens against individual property owners; the Department of Treasury will process these claims and garnishments upon receipt of funds and information if they are handling the surplus proceeds claims process.
- Claimants must file claims with Department of Treasury 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.

- Surplus proceeds not claimed within the statutorily required timeline must be returned to the originating county to be disbursed to taxing districts.

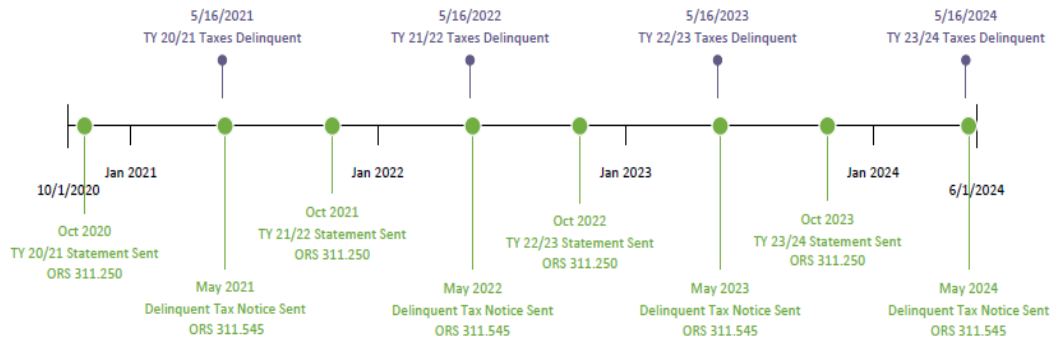
Post-Sale Noticing

- Publication of available surplus proceeds, property description, and owner names will be made available on appropriate County and/or State centralized website(s).
- If utilizing the Department of Treasury Unclaimed Property program, information regarding this program and how to access the claims process should be made available on County websites and in written communications.
- Require written notice be sent to the former owner at their last known address no less than 180 days before the filing deadline (notice to be sent by the Department of Treasury, if they are handling the claims process).
- Annual publication of expiring surplus claims no later than 60 days before the filing deadline (to be published by the Department of Treasury, if they are handling the claims process).

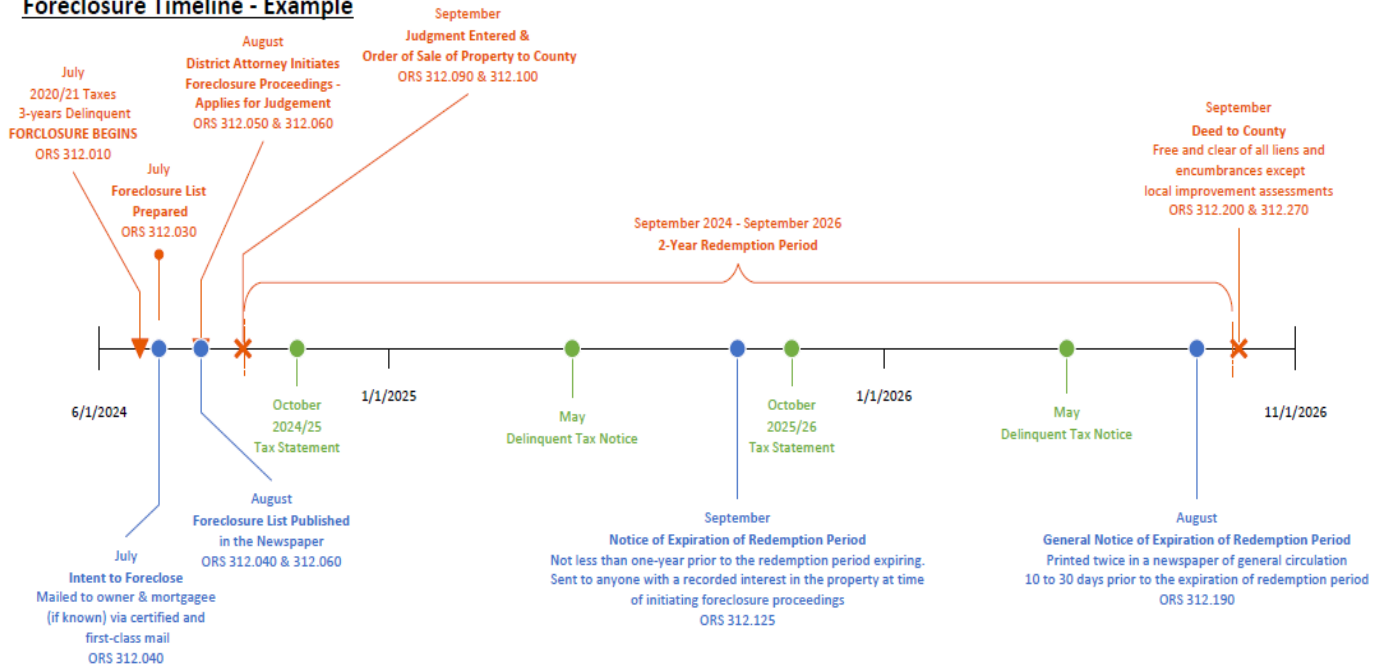
Overview of the Oregon Tax Foreclosure Process

Tax Statement and Notice Example – Pre Foreclosure

- The tax year runs July 1 – June 30
- Tax statements are mailed annually by October 25
- Taxes are payable in trimester installments due Nov. 15, Feb. 15, & May 15
- Taxes are delinquent when any balance remains unpaid on May 16 of the tax year
- Delinquent tax notices are mailed annually after May 16



Foreclosure Timeline - Example



April 17, 2024 Meeting

Recording: <https://vimeo.com/936319748>

The initial meeting of the Workgroup was held April 17, 2024 with 94 individuals in attendance, including representation from multiple counties, Department of Revenue (DOR), stakeholders, and interest groups. The group reviewed the key provisions of HB 4056: the task given to counties to establish a process to determine surplus proceeds after a property sale due to property tax lien foreclosure and notify interested parties of said surplus and their right to make a claim against the funds; and the task assigned to the department to assist the counties and interested parties in establishing these processes by facilitating the discussion and preparing and delivering a report documenting the discussion and outcomes to the Legislature by September 15, 2024.

The department reviewed HB 4056 testimony and identified several key topics for potential discussion by the workgroup: determining fair market value of a property; maximizing property value; determining costs that should be deducted from the proceeds post-sale; identifying and defining claimant in relation to a tax foreclosure property sale; how and when to notify potential claimants; outreach and assistance to homeowners and claimants; handling liens; handling errors; statute of limitations; special provisions for unusual properties; and oversight and audit of the tax foreclosure sale process.

Department staff presented an overview of the tax foreclosure statutory requirements and timelines, including activities required pre-foreclosure.

The Legislative Revenue Office presented information regarding the Supreme Court decision in *Tyler vs. Hennepin County*, and the current policy related to tax foreclosure sales in Oregon.

Representative Nathanson advised the group that Representative Conrad and Representative Emerson Levy would be facilitating the workgroup discussions, with the goal of the counties collaborating to develop policy recommendations to introduce in future legislative sessions. It was acknowledged that there were several potential avenues towards an ultimate outcome that would address the key issues raised by *Tyler vs. Hennepin*, including the potential for multiple bills addressing different areas of the process.

Representative Conrad requested data regarding the amount, type, and condition of properties sold at auction. The Department of Revenue agreed to develop a data request to be distributed to Counties to capture relevant information regarding tax foreclosure sales, including information regarding Senior Deferrals in relation to property tax foreclosure sales, and to report back with a summary of the data at the next workgroup meeting.

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May 1, 2024 Meeting

Recording: <https://vimeo.com/943305528>

The second meeting of the workgroup was held May 1, 2024, with 54 individuals in attendance representing multiple counties, Department of Revenue, Department of Justice, stakeholders, and interest groups.

County Foreclosure Data Request

The department provided a high-level overview of the foreclosure sale data requested in the prior meeting. The data has also been posted to the website. Counties who had not yet submitted data were encouraged to do so. The spreadsheet containing the data provided by the counties is included in this report as Exhibit (?), page (?).

Chris Coughlin, Oregon Consumer Justice asked if there was any data regarding property value or the financial magnitude that we may be dealing with in the foreclosure process. While the data does include information regarding the number of sales resulting in excess proceeds, it does not include information regarding the average value of properties foreclosed on.

Sybill Hebb, Oregon Law Center expressed interest in knowing what the estimated value of the surplus resulting from sales was, and why properties that had prior contact with a deferral program may end up in the foreclosure process. Properties in active senior deferral would not be included on the foreclosure list; however, it is possible for properties to come off of deferral if the appropriate paperwork is not completed. Properties that have been in deferral at one point but have come off of deferral may be subject to foreclosure. Additionally, some counties have experienced cases in which a senior homeowner has passed away, the property has become ineligible for deferral, and the family has not been able to redeem the property.

Andrea Meyer, AARP Oregon asked for clarification on the definitions of vacant and abandoned properties. Representative Conrad advised that his interpretation would be that nobody was currently residing on the property, that the property is bare or dilapidated, and nobody is physically living or residing there. There was no consensus from counties regarding if there was a current standard definition for these terms. The group will need to work to develop a shared understanding of the foreclosure process and definitions going forward to ensure we are all discussing the same scenarios.

Foreclosure by Property Type

Representative Conrad asked if there should be different considerations for commercial vs. residential properties in the foreclosure process. Kimberly McCullough, Department of Justice advised that all real property should be included in the discussion because either property type can be encumbered by liens, and there should be no distinction. Tom Holt, Cascade Policy Institute indicated that *Tyler vs. Hennepin* applied to real property regardless of type. Real property would include a commercial building, a house, a farm, or any other property deemed as real property by definition. The suggestion was made to use the term “real property” moving forward, because personal property covers a broad array of items that are out of the scope of *Tyler vs. Hennepin*.

The question was raised regarding personal property such as furnishings, belongings, or other properties such as automobiles, airplanes, or mobile homes not affixed to real property and if these should be a part of this discussion. Jodi Gollehan, Yamhill County advised that there are separate processes for property such as mobile homes. Stacie Smith, Lane County advised that mobile homes situated on owned land would be considered real property and the county would foreclose on both the home and the land, while mobile homes situated on land owned by a different party would be treated as personal property. Personal property such as mobile homes or automobiles are not foreclosed on but could be seized by tax warrants through a separate process.

County Retained Property

In certain situations, a county may retain a foreclosed property for county use rather than selling the property. Typically, there are no surplus proceeds on a property that a county retains as the property was not actually sold.

Garnishments, Restitution, and Liens

Representative Conrad asked DOJ to speak about garnishments and restitution in relation to the foreclosure process. In instances in which there is a reason to attach a debtor’s interest in real property, this would be accomplished via the judgement and/or lien process, and the lien would attach to all real properties in a county regardless of type. Any interception of rent or proceeds from a commercial building would be accomplished via a bank garnishment.

Representative Conrad asked if all liens are treated equal, or if some may take precedence over others. This information would be useful in the group's work to identify and define a claimant, develop a process, and determine statutes or rules to review in the process. Michael Grant, DOJ identified several types of liens that may attach to a property. Liens outside of judgement liens are typically attached in order of priority. Child support liens attach individually for each payment at the time a payment comes due and is not paid. There may be many child support liens related to the same child support order. This can create complications when identifying lien order because each individual lien will have a different lien date and may fall before or after other liens.

Sybill Hebb, Oregon Law Center suggested looking to the bank foreclosure process to further inform the group's work, particularly as it relates to liens. The department agreed to collect and disseminate information related to the bank foreclosure process to the group.

The workgroup decided that the word "lien" would be used as a blanket identifier for all lien types relevant to the discussion going forward. The group will need to determine if lienholders will be considered a claimant for the purposes of surplus proceeds, and if claimants and lienholders should be addressed in the same bill in relation to *Tyler vs. Hennepin*, since the case specifically calls out claimants. Additionally, if the response to *Tyler vs. Hennepin* will encompass both a look back and look forward period, the workgroup will need to identify a process related to liens extinguished during the lookback period. Further research into any precedent for previously extinguished liens being reinstated is needed.

Kimberly McCullough, DOJ addressed the idea of developing separate bills in response to *Tyler vs. Hennepin* and encouraged the group to address the matter holistically to reach a more fair and equitable solution that addresses not only returning funds to the property owner but also to lienholders and other financial parties of interest. These lienholders may be parties that have experienced significant harm that may be affected by decisions related to these liens, such as children, crime victims, environmental concerns, victims of discrimination, and others, and it is important to approach any solution with these parties in mind as well. In other processes such as Sheriff's Sales, lienholders can assert claims against the funds from the sale to recoup what is owed.

Representative Levy acknowledged the complexity of the issue and the goal of a holistic solution but reiterated that the group is responsible for developing a process to become

compliant with *Tyler vs. Hennepin*, and the first goal is for the counties to have a clear process to do so moving forward. Once we have done that, we can begin to tackle the larger and more complex issues surrounding the foreclosure process.

County Outreach During the Foreclosure Process

Representative Conrad asked about additional information, activities, or outreach the counties may provide during the foreclosure process to assist property owners. Deschutes County advised that they proactively work any properties entering the foreclosure timeline by making site visits, calling property owners, and trying to locate the property owners or relatives to advise them of the impending foreclosure ahead of time. The county has experienced a positive response to their efforts and have had owners respond by paying off at least the oldest year of taxes to keep the property out of foreclosure and avoid additional fees. The county also offers outreach and information regarding the senior deferral program and a federal program called the Homeowner's Assistance Fund and has seen success in homeowners applying for the fund and receiving payment to redeem the property. The county uses a software program that allows them to dive deep into the property history and find connections to relatives and others connected to the property owner, which assists them in their outreach efforts.

Statute of Limitations

Representative Conrad asked the group to consider the look back period, and what that might look like for properties that have previously gone through the foreclosure process and on which there were surplus funds after sale. In addition to defining claimant in relation to foreclosure sales, we need to determine a statute of limitations, and when the clock is triggered for that statute of limitations. Two timelines have been discussed: six years, and ten years.

Sarah Foreman, Clackamas County advised that there are several lawsuits currently in process dealing specifically with the existing statute of limitations. Existing statute prescribes a two-year statute of limitations for bringing suit once the foreclosure process starts, and the lawsuits question whether that statute of limitations also holds for surplus claims. It is unlikely the court cases will be resolved before this workgroup concludes its work and so the group will need to move forward with drafting legislation but should monitor these cases moving forward for any necessary amendments.

The group needs to consider when the statute of limitations will be triggered: upon deeding to the county, or upon disposition of the property via sale or transfer. Timing and triggering mechanisms will be important considerations.

Linn County indicated that there is a Circuit Court opinion, *Western States Reliance vs. Linn County*, that indicates that the statute of limitations begins from the date of judgement and runs concurrent with the redemption period. If the individual has not appeared in court and made a claim or redeemed the property within those two years, their interest is terminated.

Look Back Period and Previously Disbursed Funds

In relation to the look back period, it is important to acknowledge that counties have likely already distributed surplus funds from prior year sales to taxing districts under ORS 275.275. This means that the counties do not have the surplus funds anymore. This raises the question of how the county would fund any claims resulting from prior sales. In some cases, the same districts may no longer be in place as were at the time of distribution, and the likelihood of this increases with the length of the lookback period. Additionally, counties may have records of the aggregate amounts collected and disbursed but would not have detail levels by property as those were not required to be kept at the time. There is no precedent for pulling back previously distributed funds from taxing districts; while small amounts may occasionally be pulled back for refund credits or utilities, these are not related to prior years and there is no precedent for something of the magnitude this workgroup is considering. In *Tyler vs. Hennepin*, the state of Minnesota established a fund to pay to claimants for prior years partly in response to the issues related to pulling funds back from districts or counties. This is something that will need to be considered, and likely the least problematic option, for any look back process that Oregon establishes. Requiring counties or taxing districts to cover these funds is an untenable solution.

Surplus Proceeds from Prior Year Foreclosure Sales

The group expressed interest in data regarding surplus proceeds resulting from sales in prior years. This information exists, but there may be quite a bit of work involved for counties to research and compile the data. Some counties have already compiled the data for several years, although the detail level may vary as not all counties kept track of the same expenses and not all counties have historically handled surplus proceeds in the same manner. Some counties have also established a claims process to use going forward in response to *Tyler vs. Hennepin*.

Key Suggestions

- The group will use the word lien to describe all lien types.
- All real property types are treated the same in foreclosure proceedings, regardless of type (commercial vs. residential etc.).

Action Items for Next Meeting

- Representative Levy will compile information regarding how other states are handling the foreclosure process, and asked counties to forward any legal research, cases, or information that may be helpful.
- John Powell, John Powell & Associates, will provide information regarding the bank foreclosure process.
- Workgroup members should review HB 4056 and the -6 amendment, read the definition of claimant, and be prepared to discuss who would qualify.
- Workgroup members should think about the statute of limitations and what makes sense in relation to a look back period.
- Counties having data available regarding foreclosure sales, fees, and surplus proceeds from prior years were asked to provide this to the department.
- Counties which have established processes in response to *Tyler vs. Hennepin* were asked to provide this information to the department.
- The department will compile the above requested information and provide to the workgroup at the next meeting.

May 22, 2024 Meeting

Recording: <https://vimeo.com/949287273>

The third meeting of the workgroup was held May 22, 2024, with 71 individuals in attendance representing multiple counties, Department of Revenue, Department of Justice, stakeholders, and interest groups.

Tax Foreclosure Sales Process in Other States

Representative Levy presented information covering the tax sale foreclosure process in several other states. The full PowerPoint presentation is included in this report as **exhibit (?)**. Of particular note is Minnesota's response to *Tyler vs. Hennepin* in which the legislature established a \$109m fund to address surplus proceeds from foreclosure sales during a 7 year look back period. The legislature determined that counties should not be penalized as they were fulfilling state law at the time of sale. This alleviates the financial burden on counties and taxing districts when considering claims during the look back period. While *Tyler vs. Hennepin* does not specifically address a look back period, there were several class action lawsuits filed in both Michigan and Minnesota in relation to the tax foreclosure process and so the settlement fund and look back process was established proactively. There are currently several class action suits pending in Oregon which should be taken into consideration when considering a look back provision in our response to *Tyler vs. Hennepin*.

Non-Judicial Foreclosure Processes

John Powell, John Powell & Associates, presented an overview of the non-judicial foreclosure process. While this process and the tax sale foreclosure process are very different, there may be some themes that could be considered when looking at the tax foreclosure process. These include the notification process, defining interested parties, and the claims process for lienholders. The full document is included in this report at **exhibit (?)**.

Sarah Foreman, Clackamas County raised the issue of locating owners and parties of interest for notice. The last known address is generally the property being foreclosed on, which may no longer be a good address. The non-judicial foreclosure process requires a public notice in addition to notice sent to the last known address.

Representative Conrad asked if there was a difference in the non-judicial foreclosure process between commercial and residential properties. John Powell advised that the process is generally the same, with perhaps some additional notification requirements for residential properties.

Representative Conrad asked if there are ever foreclosures on commercial properties where there is an existing tenant. Deschutes County advised that it is rare to foreclose on a commercial property, but it is possible and is something counties will need to be prepared for. Sybill Hebb, Oregon Law Center advised that there are specific provisions in statute that address obligations to tenants after foreclosure.

Prioritization of Liens

Josh Polk, Pacific Legal Foundation, suggested a bifurcated claim period to assist in addressing the interest of third-party lien holders.

Scott Norris, Marion County, advised that there are existing statutes that may be in conflict with the concept of lien holders having a claim against surplus proceeds. The first, ORS 312.214, states that when a county has acquired or hereafter acquires real property by foreclosure for delinquent taxes, the county's title to the property shall have the utmost stability. The second, ORS 312.270, states when a county acquires real property by foreclosure for delinquent taxes, that conveyance vests in the county title to the property free from all liens and encumbrances, except assessments levied by municipal corporation for local improvements to the property. If it is determined that lienholders have a claim to surplus proceeds, these statutes may need to be addressed.

Current tax foreclosure sale processes call for most liens to be extinguished upon deeding of the property to the county. There is no legal precedent for resurrecting extinguished liens, and this is not something we will seek to do in our response to *Tyler vs. Hennepin*. Because of this, the definition of claimant will differ between the look back and look forward periods.

Fair Market Value

Josh Polk, Pacific Legal Foundation, asked about fair market value in the foreclosure sales process, and asked if there would be standards set in relation to minimum advertising and time spent advertising to assist in capturing an accurate fair market value of the property. His firm is

currently working on legislation in other states to address this. He will provide information on the work his firm has done for the group to review.

Scott Norris, Marion County, advised that he does not believe that *Tyler vs. Hennepin* obligates counties to maximize the surplus on any given sale of tax foreclosed property. Josh Polk responded that *Tyler* only recognized a new form of taking, and did not address or alter the government's obligation to pay fair market value for property that it takes.

Carlos Rasch, Multnomah County, advised that he is not aware of any foreclosure process that requires maximization of fair market value. The sale dictates the price, which may or may not result in a surplus.

County Foreclosure Data

The department presented a high-level summary of the prior year foreclosure data provided by counties. Information was provided by several counties, but because a format was not prescribed for the data there was not consistency across the information from all counties. The department compared and compiled like data where available to determine averages for several key areas. The summary document is included in this report as **exhibit (?)**.

Some counties also provided information regarding their surplus and claims processes. These have been compiled and posted to the website, and are also included in this report as **exhibit (?)**.

Statute of Limitations for the Look Back Period

Two potential statutes of limitations have been identified for the look back period: 6 years, which was based off of ORS 12.080 and which is supported by case law, and 10 years. Representative Conrad asked Sybill Hebb, Oregon Law Center, and Chris Coughlin, Oregon Consumer Justice, and other parties in support of a longer statute of limitations to draft a document identifying the rationale and intent behind the longer statute of limitations.

Issues supporting a longer statute of limitations include the question of whether ORS 12.080 is the ultimate guideline, or if the ultimate repose guideline of 10 years would be more appropriate. Additionally, there are concerns regarding the time it will take to notify claimants, and when the statute of limitations timeline will begin.

Key Suggestions

- Previously extinguished liens cannot be resurrected.
- The definition of claimant will differ between the look back and look forward period.
- Any additional administrative burden imposed on counties through this process will need to be addressed through statutory changes or other means to ensure counties can recoup costs and there is no unfunded mandate created.

Action Items for Next Meeting

- Sybill Hebb, Oregon Law Center will provide statutory information regarding obligations to tenants after a foreclosure.
- Pam Leavitt, Oregon Credit Unions will provide foreclosure information from a Credit Union perspective.
- Sybill Hebb, Oregon Law Center, and Chris Coughlin, Oregon Consumer Justice, will provide information regarding the proposed 10-year statute of limitations.
- Department of Justice will provide a summary of their garnishment and other related processes.
- Josh Polk will present information regarding the bifurcated claim period.

June 26, 2024 Meeting

Recording: <https://vimeo.com/969915941>

The fourth meeting of the workgroup was held June 26, 2024, with 72 individuals in attendance representing multiple counties, Department of Revenue, Department of Justice, stakeholders, and interest groups.

Western States Land Reliance Trust vs. Linn County

Representative Levy provided an overview of *Western States Land Reliance Trust vs. Linn County* and the resulting court opinion. The plaintiff in the case sued Linn County for surplus funds resulting from a tax foreclosure sale, asserting violation of the Takings Clause. The Court issued an opinion with several key findings: Oregon's statute is silent on the disposition of surplus funds after a tax foreclosure sale, the plaintiff had an opportunity to redeem the property prior to sale, and had an opportunity to file an answer asserting a claim to surplus at the time the County obtained the judgement. Because Oregon's statute is silent on disposition of surplus, and because the plaintiff did not redeem the property or file an answer to the judgement, the County's retention of the surplus funds was not a violation of the takings clause. The plaintiff has filed an appeal. Because this court opinion supports the practice of counties retaining surplus funds, and because the appeal process is likely to take time to move through the courts, the group should take a wait and see approach to move forward with any policy change recommendations regarding the look-back period pending the ultimate outcome of the case. The group will continue to focus on policy recommendations for the look forward period.

Recommendations From Interest Groups

AARP, AFT-Oregon, Columbia Cascade Housing Corp., DevNW, Fair Housing Council of Oregon, Oreogn Consumer Justice, Oregon AFL-CIO, Oregon Law Center, Oregon Trial Lawyers Association, and the Urban League of Portland provided a written statement including several recommendations. Sybill Hebb, Oregon Law Center, Chris Coughlin, Oregon Consumer Justice, and Arthur Towers, Oregon Trial Lawyers presented the recommendations to the group. The statement is included in this report as exhibit (?), page (?). The coalition's recommendations focus on more robust attempts at notification, outreach, education, and assistance on the part of the county. The coalition also maintains that any requirement that a homeowner must file an

action or claim, or opt in or demand the surplus proceeds in any way, should be prohibited. Jim Manley, Pacific Legal Foundation, voiced support for this and indicated that his firm believes that requiring a homeowner opt in to receive surplus is unconstitutional.

Emily Vario, Lane County, asked if the coalition had considered how additional noticing and personal service requirements would be paid for, as these costs can be expensive. Sybill indicated that ideally these outreach efforts would cut down on future costs to the county as they would result in more properties being redeemed. Jim Manley advised that these costs could be included in the property price and recouped at the time of sale.

Jodi Gollehon, Yamhill County, asked about the coalition's recommendation that counties ensure that heirs also receive notice of the foreclosure. It is likely not possible for a county to know who heirs and potential heirs to a property would be. Sybill advised that if there are specific identified individuals that the county is aware of the recommendation would be individualized notices. For heirs and potential heirs the county is not aware of, this could be accomplished through means other than individualized notice, such as media publications.

Claudia Ciobanu, Oregon State Treasury, advised that the Treasury has authority over estates of individual who die without a will, and would have information regarding potential heirs in these cases. The Treasury would need to be notified so that they could take action on behalf of the estates they represent.

Trent Wilson, Clackamas County, asked about the recommended noticing procedures and media outreach from a public affairs perspective. Property specific information may be difficult to disseminate through social media avenues, and radio and newspaper may become expensive. Sybill advised that various forms of media could be used for more general messaging regarding the tax foreclosure and surplus claims processes, which may minimize the costs related to individual properties.

Chris Coughlin, Oregon Consumer Justice, advised that historically public notice was accomplished by purchasing advertising space in newspapers; however, printed media has changed over time and the group will need to be cognizant of best practices in the current media landscape. Representative Conrad acknowledged that media has changed, and that the group will need to address concerns such as electronic access to newspapers and notices being published behind a paywall to ensure that notices are accessible.

Robert Tintle, Deschutes County, expressed concerns regarding the costs associated with additional notice and publication requirements. Many counties are struggling to provide assessment and tax collection services under tight budgets. These processes are usually funded by the county general fund, and many counties are experiencing reductions in the general fund and in staffing levels. The preference for any expanded notice or publication requirements would be to allow these to be published on the County website to minimize the associated costs. Reimbursement of costs through the sale process may not occur within the same year, or may not occur at all depending on what happens with the property, so reliance on reimbursement through the sale process is not a viable option.

Chris Coughlin, Oregon Consumer Justice, advised that in addition to individual notices, the coalition is advocating for community wide outreach and assistance to property owners to help them understand and overcome any potential barriers that may prevent them from taking necessary action regarding their property. The goal is to help consumers and property owners navigate these systems effectively. There should be consistent standards for community outreach and assistance included in the statute. Additionally, the County should be maximizing the sale proceeds as part of the foreclosure process in order to return the maximum net proceeds back to the property owner. This would be accomplished by obtaining an independent appraisal of the property, and attempting to sell the property with a real estate agent first before conducting a high bid public auction in which a minimum bid amount is set based on a percentage of the appraised or assessed value, whichever is higher. The coalition is also recommending that the statute should specify that the only costs the county may retain are the expenses of the sale, the taxes owed, and expenses related to property cleanup for nuisance properties. The coalition is also recommending that if an heir has resided in the property as their primary residence for more than a year at the time of sale, that that heir has the authority to receive excess proceeds on behalf of all heirs in the absence of a written agreement between heirs or objection from a non-resident heir.

Tom Holt, Pacific Legal, asked what the rationale was for inserting a real estate agent into the sale process, particularly when this would add additional costs in the form of commissions. He also advised that the presumption that the surplus should go to an individual living in the house as their primary residence is risky. Chris Coughlin advised that there is some question as to whether an auction results in the highest possible price for a property, and they believe a real estate agent may be a good way to maximize the sale price. In the case of presumptive heirs,

the surplus would only be awarded to the heir if there were no objections. This would avoid a complicated process such as forced probate in the case where there is family agreement regarding the distribution of the funds.

Sarah Foreman, Clackamas County, expressed concerns regarding using a real estate agent and independent appraiser in the foreclosure sale process. Both of these will have significant costs involved, and there is no budget for this if counties are not able to recoup this from the surplus. Utilizing these services will also significantly slow down the process of getting properties to market. Additionally, some of the properties that go to foreclosure are not necessarily marketable properties so it may be difficult to list them with a real estate agent and ultimately sell them.

Tom Holt advised that there should be an option available to counties to purchase a property for the appraised value if the property may be useful for public purpose. Representative Conrad asked how a county purchase would look from a budgeting and accounting perspective. Would the county be effectively purchasing the property from themselves since they have taken deed to the property? Chris Coughlin advised that in these cases there must be due diligence to ensure that the property is purchased at an appropriate appraised value and that the resulting surplus is returned to the property owner.

Oregon State Treasury Unclaimed Property Process

The Oregon State Treasury has an established unclaimed property process. Their processes include notification to owners, a searchable database, and other tools. Claudia Ciobanu offered to assist and support counties in the work to develop a surplus proceeds process.

LLCs and Assignment of Surplus Rights

Sarah Foreman, Clackamas County, advised that the county is seeing claims from LLCs that have surplus rights assigned to them. An example of a pleading by Washington County involving an LLC is included in this report as exhibit (?), page (?). In this case, an LLC sued the county for surplus funds resulting from a tax foreclosure auction. The former homeowner subsequently made a claim for the surplus funds through the county. The county interpleaded the funds with the court and brought the former homeowner in to the proceedings as a third party, and filed a counterclaim against the LLC saying that the assignment was not valid. The LLC provided a copy of an agreement with the homeowner in which they would take 50% of any awarded proceeds

plus attorney fees and court costs. These LLCs are researching property auctions, obtaining property owner information through public records requests, and approaching property owners and having them assign their rights to the LLC. The LLC then makes the requests for the surplus funds, pays themselves the fees and costs as outlined in the assignment agreement, and returns the remainder of the surplus to the homeowner.

Other counties indicated that they are seeing claims from LLCs as well. Jason Bush, Washington County, advised it can be difficult to verify the legitimacy of the assignment. There are concerns surrounding a county's liability if a claim is paid to an LLC based on an assignment that is later determined to be invalid. It may make sense to establish some model of protections for counties in these cases. Some states have made assignment of surplus and claims by LLCs illegal in statute. Oregon may wish to consider this as well.

Claudia Ciobanu, Oregon State Treasury, indicated that the treasury sees claims from LLCs regularly in the unclaimed property process. Treasury requires the LLC to submit the original agreement or contract with the property owner before they will pay out a claim. It is a lot of work to research and determine if the correct individual did sign the contract and make the assignment. Claudia offered assistance to counties in the form of best practices or information on how their process has evolved and how they currently handle these claims. Representative Conrad, Representative Levy, and DOR will meet with Treasury to discuss the unclaimed property process and how Treasury might assist with the work of this group.

Kimberly McCullough, Department of Justice, advised that DOJ has attempted to address the issue of LLCs and assignment of rights in the past. This has been happening in other contexts outside of surplus proceeds, and the DOJ views this as an important consumer protection issue. ORS 18.924 was adopted to help with this issue, and requires cautionary language regarding these LLCs be added to notices served to debtors in judicial foreclosures or executions or sale of property. The DOJ remains concerned about this issue and would support limitations on this practice in any bill put forward by this group.

DOJ Garnishment Process

Kimberly McCullough, Department of Justice, gave a presentation of the Department's garnishment process for Child Support and Restitution. The presentation is included in this report as exhibit [\(?\)](#), page [\(?\)](#). DOJ collects more than \$366 million annually in child support that is returned to support Oregon families, and collects funds for restitution which is compensation

ordered to be paid to the victims of crimes and their families in order to make them whole. In some cases, DOJ collects restitution funds on behalf of other state agencies and in some circumstances may pay money to the crime victim proactively before the funds are collected. In these cases, the restitution is actually owed directly to DOJ and it becomes crucial to recoup those funds so that they may be returned back to the pot of money available to be paid out to crime victims.

While DOJ case managers do work with parents and other responsible parties to attempt to obtain voluntary compliance, in the case of non-compliance they are federally mandated to collect funds by an income withholding process similar to garnishment, which is the interception of funds from a third-party owing money to a debtor. Child support and restitution orders automatically by operation of law create a lien against real property owned by the debtor. While the DOJ may not always record a judicial lien, in the case of a standard real property sale the title company will identify these liens against the property and pay the balance from the proceeds of the sale prior to finalizing the sale and releasing funds to the property owner.

The DOJ historically not had any viable option to assert lienholder rights in a property tax foreclosure auction. In order to assist them in recouping these funds as a part of the tax foreclosure sale process, they propose that counties provide information to them regarding relevant liens, and the date sale proceeds will be returned to the taxpayer. The DOJ should then be allowed to issue a garnishment to the county to intercept funds owed for child support and/or restitution. There was legislation introduced in a prior session which specifically prohibited the DOJ from issuing garnishments to counties, so the language allowing them to do so should be added to the statute to preserve this right.

Other options identified by DOJ would be providing notice of surplus proceeds after a tax sale to all lienholders, and allowing all lienholders to assert claims directly with the county during the claim process, or allowing all lienholders an opportunity to issue a garnishment before funds are distributed. There is also an interpleader process through the courts, which would allow for court oversight and the opportunity for counties to recover legal fees and costs from the surplus proceeds.

Representative Levy acknowledged that there is an existing process for secured liens such as mechanics liens, and any solution we pursue should not disrupt that process. Using an escrow

service to handle funds in the initial 30 days after sale may be one way to preserve the secured lien process while also allowing the DOJ an opportunity to pursue a garnishment for child support or restitution.

Key Suggestions

- Policy decisions regarding a potential look back period will be put on hold pending the outcome of *Western States Land Reliance Trust vs. Linn County*.

Action Items for next meeting

- Because the meeting ran long, the County Time that was allotted for the end of this meeting will be the first item on the agenda for July's meeting.
- Representative Conrad, Representative Levy, and DOR will meet with Treasury to discuss the unclaimed property process and how Treasury might assist with the work of this group.
- Representative Conrad asked counties to review the interest group memo and draft responses to the points made.
- Representative Conrad asked the Department of Treasury to provide information on the process and costs associated with their unclaimed property process, and any information related to the Department of Justice garnishment process from a Treasury perspective.

July 17, 2024 Meeting

Recording: <https://vimeo.com/986012469>

The fifth meeting of the workgroup was held July 17, 2024, with 71 individuals in attendance representing multiple counties, Department of Revenue, Department of Justice, stakeholders, and interest groups.

Oregon State Treasury Unclaimed Property Program

Claudia Ciobanu gave a presentation covering the Oregon State Treasury's Unclaimed Property program. A copy of the presentation is included in this report as pages ? through ?. This program is utilized by many agencies to assist in returning funds that have been escheated to the state to rightful parties of interest. The DOT has access to databases and tracking tools that can help in locating heirs, has experience working with assigned claims and third party claimants, and has a fully developed and robust automatic claims process. Additionally, the DOT has established processes in place to deal with fraud and other issues. Utilizing the unclaimed property process would indemnify the counties in the event of fraud or other issues. Claudia advised that DOT is open to assisting and supporting counties in working with tax foreclosure sale surplus funds. While DOT does not currently have the staff or resources available to fully absorb and sustain the tax foreclosure surplus process, they are open to performing a fiscal analysis to identify necessary resources.

Identifying When Surplus Funds Arise

Sarah Foreman, Clackamas County, indicated that they have received claims for surplus funds on properties that have not yet been auctioned. The claims assert that the county owes the claimant the difference between the assessed value of the property and the taxes owed at the time of the claim, prior to the sale. It will be important to include language in any legislation identifying when the surplus arises. This should be after the sale of the property and receipt of the funds by the county over and above the amounts owed.

Emily Vario, Lane County, advised that legislation should also address claims related to properties retained by the county or sold to non-profit organizations. There may be cases where a property was leased to an entity which made improvements to the property. Specifics of the disposition of property will also need to be addressed.

Jason Bush, Washington County, advised that legislation should also address private sales, properties that can't be sold, and properties that may need to be held for longer lengths of time.

County Responses to Interest Group Recommendations

Several counties provided written responses to the interest group recommendations discussed in the June 26 meeting. These documents are included in this report as **pages ? through ?**. Counties were in agreement that a public auction is the best option for tax foreclosure sales, advocated for the ability to publish foreclosure and other notices on county websites to satisfy the publication requirements, and identified the necessity to deduct the additional administrative costs related to the claims process from sale proceeds. Counties are not in favor of the suggestion to utilize a real estate agent to attempt to sell properties. Many of the properties that go to foreclosure are not suitable for a traditional sale. Several counties voiced concerns regarding the additional administrative burden the surplus claims process will create, and are supportive of utilizing the DOT Unclaimed Property process to handle the process.

Action Items for next meeting

Representative Conrad asked the group to be prepared to focus on recommendations for the look forward period at our final meeting on August 14.

- DOR will create a summary of key points and timelines for the look forward period and disseminate to the group in advance of the next meeting.
- Review materials and be prepared to discuss any gaps, concerns, or discussion items related to the look forward period that have been missed.

August 14, 2024 Meeting

Recording: <https://vimeo.com/998830697>

The sixth meeting of the workgroup was held August 14, 2024, with 78 individuals in attendance representing multiple counties, Department of Revenue, Department of Justice, stakeholders, and interest groups

Discussion and Finalization of Suggestions

The group reviewed the summary of key points and timelines disseminated after the last meeting. Several counties provided feedback prior to the meeting, which was incorporated in to the document. Additional information discussed during the meeting has also been incorporated. The final document is included in this report as **pages ? through ?**. Key points from this document and discussion are also included in the Summary of Workgroup Suggestions at the beginning of this report.

Association of Oregon Counties Response

Mallorie Roberts, Association of Oregon Counties, gave a high level summary feedback the association submitted on behalf of Grant, Lane, Josephine, Clackamas, Multnomah, Yamhill, Marion, and Washington Counties. This group strongly supports all counties partnering with the Department of Treasury to handle claims through the unclaimed property process. Counties do not have the tools to handle the surplus process, particularly tasks like lien priority determination. This group also recommends that the Department of Treasury return unclaimed surplus funds to originating counties to be disbursed to taxing districts after the claim period has expired. Currently, funds held by the Department of Treasury for the unclaimed property program go to the Common School Fund if they are not claimed.

Utilizing the Unclaimed Property Process

Andrea Meyer, AARP Oregon, asked for information regarding the Department of Treasury's process for contacting claimants and voiced concerns regarding funds being returned to counties after a period of time.

Jim Manley, Pacific Legal Foundation, advised that it is important that once funds are transferred to the Department of Treasury it is treated as unclaimed property and does not

have special handling or rules that require it revert back to the county. The county does not have a claim to the surplus funds, it belongs to the owner of the property. Transferring funds back to the county may create constitutional problems.

Robert Tintle, Deschutes County, advised that they are also supportive of utilizing the unclaimed property process; however, their understanding throughout these discussions was that there would be a limited period in which parties of interest could submit a claim, after which the funds would be returned to the originating county.

Carlos Rasch, Multnomah County, advised that returning funds to the counties after a claim period is in compliance with the findings in *Tyler vs. Hennepin County*. Jim Manley, Pacific Legal, disagreed with this and advised that *Tyler vs. Hennepin County* does not address the question of how funds should be handled after the surplus is created other than to say that it is a property of interest to the owner.

Claudia Ciobanu, Department of Treasury, advised that they do work proactively to locate owners of unclaimed property, although they do not perform this due diligence on every type of property they handle. Staff spends approximately 25% of their time attempting to locate property owners. The priority is always to focus on active claims waiting to be processed, but as this workload fluctuates more time will be spent on location efforts. There are also certain property types that will always require proactive location attempts. Safe deposit boxes and stocks are examples of this. If legislation required the Department of Treasury to perform due diligence on every surplus property resulting from a tax foreclosure sale, they can do that. This would require additional staffing and budget, and there would be a fiscal impact.

Claudia advised that they were not aware of the counties desire to have surplus funds returned after a period of time. Unclaimed property belongs to the owner forever, and the Treasurer feels strongly that surplus proceeds should be considered unclaimed property and should remain with the Department of Treasury. In addition, based on program experience, two years may not be long enough as it can take some time for individuals to initiate the claim process. The department does not currently have a process or precedent for sending money back to an originating entity. This would increase Treasury's liability and change the conversation around utilizing the unclaimed property process.

Administrative Timeline for Counties Post-Sale and Garnishment/DOJ Claims

Representative Conrad asked if the 30 day holding period post-sale was long enough for counties to accomplish the administrative tasks related to a property sale prior to forwarding funds on to the Department of Treasury for handling. The consensus was that this was too short, and a 60 day is preferred. Several counties also voiced concerns regarding holding sale funds in an account referred to as an “escrow” account, as this has very specific implications. The group agreed that the funds would not be held by an escrow company, but would be deposited to an internal, interest-bearing County account during this period.

Representative Conrad asked if counties would process garnishments or Department of Justice liens during this time, or document them and forward the information to the Department of Treasury for processing prior to making the surplus available as unclaimed property. Counties support the Department of Treasury processing and paying these garnishments and liens. Caludia Ciobanu advised that this is not something that the Department of Treasury has been in a position to do before, but she is sure there is a way to accomplish it.

Look-Back Period

The group discussed the look-back period and handling for surplus funds from prior sales. There is overwhelming support for a State-funded solution for paying out any claims in a lookback period. Counties support a six year statute of limitations from the date of legislation on any look-back period process.

Determining Value and Sale Process

Jim Manley, Pacific Legal, advised that it is important to his group and many of the interest groups that counties make an attempt to maximize the value of the properties being sold. It is important to leave owners with resources to continue their lives after they’ve lost what is likely the largest asset that they own. Pacific Legal supports counties utilizing a Real Estate agent to assist in selling properties for the maximum potential value. Recognizing that some properties may not be suitable for listing with an agent, this can be a tiered process in which certain suitable properties are listed with an agent. If these properties are not sold in a certain period of time, they can then go through a robust auction process.

Representative Conrad advised that it would be practical to put a time limit on the period of time between a county taking deed to a property and the property being sold. Contracting with

a real estate agent to sell a property can take a long time. There are also concerns about opening the county up to liability if the agent is not doing due diligence or putting full effort in to selling the property. Utilization of a real estate agent also incurs costs, which would need to be paid from the proceeds and would decrease the amount of surplus available to the owner. Jim Manley, Pacific Legal, advised that other states that utilize a real estate agent have implemented a 12 month timeline to market the property with an agent, after which the property can be sold at auction. Both Jim Manley and Andrea Meyer, AARP Oregon, agree that the costs of retaining a real estate agent would be paid from the surplus funds after sale. Department of Treasury has experience working with real estate agents as part of the unclaimed property process and may be able to offer guidance to counties.

Sarah Foreman, Clackamas County, voiced concerns that counties marketing properties with a real estate agent absolves delinquent owners from some responsibility and advised that ORS 275.180 allows an owner to purchase their property back from the county for the taxes, penalties, and fees owed prior to sale. In some cases this amount may be minimal. This offers an owner to regain ownership of the property and market it themselves if they wish to do so.

Stephanie Nuttall, Josephine County, raised concerns regarding the concept of counties being required to maximize the value of a property. In many cases counties must hold properties for a length of time it can be sold. Often this is due to illegal activity, unsafe conditions, or other issues with the property and there may be added liability to the counties in these circumstances if there is a requirement to maximize value.

There is also a concern with holding the properties for longer periods in an attempt to maximize value, as this means the property remains off of the tax roll for longer. One primary reason properties are offered at auction is to get the taxes paid and return the property to the tax roll so that the county can begin collecting the annual taxes again to help support county functions.

Robert Tintle, Deschutes County, agreed with the points raised by Clackamas and Josephine counties. He reiterated that owners have at least five or six years prior to a property going to auction, and advised that Deschutes encourages increased outreach by the special interest groups to assist owners in selling their property or reaching a resolution prior to sale.

County Retained Properties

Amanda Rapinchuk, Clatsop County, asked how value and surplus would be determined in the cases where a county decides to retain or transfer deed to a property. Current statute allows for this in certain cases, often when there is a public benefit to doing so such as transferring the property to a non-profit for affordable housing. In these instances the property is not actually being sold, so there are no funds available. If counties will be held responsible for determining and paying surplus funds out of pocket in these cases in the future, that is a concern. Jim Manley, Pacific Legal, advocates that county retained properties be appraised by an independent appraiser and counties pay the market value of the property and return any surplus to the owner. Another option would be to sell the property and allow the market value minus the tax debt would be the surplus.

Emily Vario, Lane County, advised that if counties will be expected to pay market value for properties in these instances, there will need to be a funding source set up to do so. The properties are not actually being sold, so no funds exist. Counties are not able to absorb this in the general fund. Without a funding source, this creates an unfunded mandate.

Jim Manley advised that these properties can still be offered for sale or at auction, and non-profit agencies can choose to buy them through those means. In these cases, if the property sells for less than the amounts due, there would be no surplus available.

Jodi Gollehan, Yamhill County, pointed out that many counties routinely transfer properties to non-profit agencies for affordable housing or other public interest projects, and requiring counties to maximize value in these cases will end this practice. This is a public interest concern and there may be advocacy around this issue.

Properties Sold by Land Sale Contract

Stephanie Nuttal, Josephine County, asked if counties would still be allowed to sell properties by land sale contract per ORS 275.190, and how that would work. In these instances counties enter in to a pay over time agreement for the property purchase and receive monthly payments, rather than one lump sum. The sale is not considered final until the end of the repayment period when all amounts due are paid. How would surplus be handled in these instances if the Department of Treasury is handling the surplus proceeds process? Would funds

be sent to Treasury monthly, or at the end of the contract period? In many cases, the contract is not fulfilled, title is never transferred, and the total amount is never collected.

Caludia Ciobanu advised that they could work with either method. From an administrative perspective it may make sense to transfer funds when the sale is final and the surplus is available.

Emily Vario, Lane County, requested that if the ultimate requirement is to forward funds from land-sale contracts to Treasury monthly, indemnification language be included in statute to not require counties to pay out any funds received during the sale process to a claimant, or make up any difference between amounts received and the value of the property.

DRAFT

AGENDA – April 17, 2024 – 9:00am-11:00am - Teams

- Welcome and Introductions
- Review provisions of HB 4056 and role of DOR
 - Meetings will be recorded, posted online, and be made part of the report to legislature
 - Current participant list – Who is missing?
 - Topics as outlined in testimony – What is missing?
 - Structure of conversation (topic by topic over next several months)
 - Meeting dates and materials (send to DOR to post on website)
 - Writing report, review by everyone, and submit to legislature
- Current foreclosure process and distribution of proceeds in Oregon
- Overview of *Tyler v. Hennepin County, Minnesota*
- Goal of HB 4056 discussion
- Wrap-up

Future Meeting Dates – 9:00am-11:00am - Teams

- Wednesday, May 1
- Wednesday, May 22
- Wednesday, June 26
- Wednesday, July 17
- Wednesday, August 14

DOR Website for Meeting Materials and Information

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov (503)476-7644

Summary of comments from written and oral [testimony](#) on [HB 4056\(2024\)](#)

The following illustrates major topics to be discussed with regard a process for distribution of surplus proceeds on the sale of tax foreclosed properties.
This list is not exhaustive, nor should it imply support or opposition for any part of this brief summary.

DOR Role in conversation

- Coordinate, convene, and facilitate stakeholder input on complex legal and policy issues to develop recommendations for a uniform statutory process to determine the surplus, what counties can subtract, and notice requirements
- Report by September 15 and suggest legislation

Goal

Uniform process

- Need a statewide template on how to process tax foreclosure claims - who can submit claim, process, and length of time available to make a claim
- Consistent process across the state for surplus calculation and distribution of proceeds of surplus equity after property taxes, fees, and interest are paid

Considerations

- Process that benefits counties, property owners, and lien holders
- Promotes fairness, efficiency, and transparency in the process

What

How to determine fair market value and surplus

- Need fair and impartial process for determining the fair market value of a property and surplus amount

Maximizing value

- Role of the counties in maximizing the value of the property (Should they have one?)

Costs that can be deducted from sale

- Need reasonable and clear method to compensate counties for narrowly defined expenses

Who

Claimant

- Definition of a claimant - former property owners of tax foreclosed properties

Liens

Surplus proceeds of property tax foreclosure sales

- Payment of liens – surplus payment to go to recorded liens on the property; child support enforcement and victim restitution; and private entities like unpaid contractors and lenders
- Lienholder rights – liens are extinguished when a property is subject to tax foreclosures. Lienholders can seek payment of debt from surplus and creditors can use existing law to pursue claims

Lien topics

- Require county to give 30-day notice to lienholders – give deadline that funds go to owner unless garnishment is received
- Example in ORS 86.794 for a process to return surplus – example is bank foreclosure – proceeds to creditor to pay expense of the sale, then to the obligation secured by the deed, then recorded liens, then homeowner/successors. No expenses allowed
- Interplead funds into the court – that provides even playing field for everyone with a claim and allows county to recover attorney fees

Heirs

- Heirs should have access to excess surplus
- Heirs of small estates – Existing estate law addresses identification of heirs already

How

General interest in notice and outreach

- Essential requirement of outreach and communication to impacted property owners and communities – develop guidelines around sequence of notices and outreach

Language

- Offer clear and regular information about homeowner rights and claims process (plain language, foreign language, and large font)

Notice to former owners, family members, and heirs

- Place responsibility on county for outreach process that is consumer-centered and addresses multi-generational ownership

Disproportionate impact on older people and communities of color

- Engage older Oregonians and communities of color to develop a fair and equitable process

When

Length of statute of limitations

- Create a look-back, longer than six years, for owners who did not receive surplus
- Statute of limitations – Six-year statute of limitations is typical across constitutional claims

Other Topics

Auditing/oversight

- Ensure process management oversight and accountability
- Unusual properties**
- Exception process when a county attempts to sell property at public sale (nuisance property) – no buyers – county can't sell at private sale
- Homeowner assistance**
- Counties helping homeowners determine the current value of amounts inappropriately taken
- Suggestion to change the foreclosure process**
- Consider making the foreclosure process shorter than six years

DOR Website for Meeting Materials and Information

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov (503)476-7644

AGENDA – May 1, 2024 – 9:00am-11:00am – [Teams meeting link](#)

- Welcome and Introductions – Rep. Conrad and Rep. E. Levy
- Review county foreclosure data request
 - Initial request to counties (See blank spreadsheet used to request data)
 - County responses as of 4/29/24 will be available on website 4/30/24
With an ambitious response time (one week turn around), we appreciate data that are available now. More information may be added later.

Participants may want to be prepared to engage in discussion of several questions:

 - Are there types of properties (residential/commercial/agricultural) that may be excluded from much of this discussion?
 - Are there examples of unique properties that may be excluded?
 - Are there special considerations for frontier counties or large farm properties?
 - Other questions?
- Possible data/process questions for future meetings
 - What additional information or activities to counties provide to property owners?
 - How many liens are extinguished due to foreclosure? Commercial vs. Residential
 - How many liens are on properties in the foreclosure process but get resolved prior to the deed transfer? Commercial vs. Residential
 - What do lienholders do if an outstanding lien is extinguished due to foreclosure? Write it off as loss vs. pursue through other legal remedies.
 - Are there analogous situations where liens and garnishments are vying for the same funds? How is the competing interest in those funds resolved?
 - Any other data points or process info that would be helpful in the discussion
- Next Topics – Claimants. Liens. Lookback/statute of limitations. Look forward period.
- Wrap-up

Future Meeting Dates – 9:00am-11:00am - virtual

- Wednesday, May 22
- Wednesday, June 26
- Wednesday, July 17
- Wednesday, August 14

DOR Website for Meeting Materials and Information

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov (503)476-7644

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AGENDA – May 22, 2024 – 9:00am-11:00am [TEAMS LINK](#)

- Welcome and Introductions – Rep. Conrad and Rep. E. Levy
- Presentation – Response to *Tyler v. Hennepin* in other states – Rep. E. Levy
- Overview of bank, or other, foreclosure processes including claimants and liens
- Summary of response to recent county data request
 - Property value and surplus proceeds from prior foreclosure sales
 - County costs and fees associated properties
 - County processes responsive to *Tyler v. Hennepin*
- Discussion about factors related to a statute of limitations
- Possible data/process questions for future meetings
- Wrap-up

Future Meeting Dates – 9:00am-11:00am - virtual

- Wednesday, June 26
- Wednesday, July 17
- Wednesday, August 14

DOR Website for Meeting Materials and Information

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov (503)476-7644

AGENDA – June 26, 2024 – 9:00am-11:00am [TEAMS LINK HERE](#)

- Welcome and Introductions – Rep. Conrad and Rep. E. Levy
- Overview of [Western State Land Reliance Trust v. Linn County](#)
- Presentation – Oregon Consumer Justice, Oregon Law Center, Oregon Trial Lawyers, AARP
 - Residential tenants, eviction process
 - Suggestions regarding a possible look back
 - Suggestions for look forward
 - Appropriate notice
 - Other topics
- Presentation – DOJ – Brief overview of garnishment process
- Lookback and Prospective Options
- County time for comments, questions, ideas that have not been previously addressed
- Wrap-up
 - Summarize recommendations that have been made so far
 - Summarize decision points for future meetings
 - Task list

Future Meeting Dates – 9:00am-11:00am - virtual

- Wednesday, July 17
- Wednesday, August 14

DOR Website for Meeting Materials and Information

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov (503)476-7644

AGENDA – July 17, 2024 – 9:00am-11:00am [TEAMS LINK HERE](#)

- Welcome and Introductions – Rep. Conrad and Rep. E. Levy
- Presentation – Oregon State Treasury – [Unclaimed Property Program](#)
- Presentation – County responses and discussion regarding June 26 [Advocates’ presentation](#)
(Material provided by counties)
 - [Baker County](#)
 - [Clatsop County](#)
 - [Deschutes County](#)
 - [Morrow County](#)
 - [Washington County](#)
 - [Suggestions from a collection of counties](#) (Clackamas, Josephine, Lane, Marion, Multnomah, Washington, Yamhill)
- Additional discussion from DOJ regarding notification and garnishment (*pending availability*)
- Group discussion
- Wrap-up
 - Summarize decision points for next meeting
 - Task list

Final Scheduled Meeting Date – 9:00am-11:00am - virtual

- Wednesday, August 14

DOR Website for Meeting Materials and Information

https://www.oregon.gov/dor/programs/property/Pages/property_tax-foreclosure_sales.aspx

Agency Contact

Marjorie Taylor, Legislative Director, marjorie.taylor@dor.oregon.gov (503)476-7644

AGENDA – August 14, 2024 – 9:00am-11:00am [TEAMS LINK HERE](#)

- Welcome and Introductions – Rep. Conrad and Rep. E. Levy
- Group discussion
 - Review and finalize summary of suggestions ([available on web](#))
 - Review and modify draft report ([available on web](#))
- Wrap-up

Anticipated Next Steps for Legislative Report

- Fri. 8/16 – Publish last DRAFT on DOR website and share with email list
- Thurs. 8/22 – Final edits due back to DOR
- Tues. 8/27-9/10 – DOR final edits and formatting
- Tues. 9/10 – Distribute report to legislature and post on DOR website

DOR Website for Meeting Materials and Information

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