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February 25, 2019

via email only
Cindy Robert
16200 SW Pacific Hwy, #H-182
Tigard, OR, 97224

Re: Proposed amendment to housing receivership statute

Dear Ms. Robert:

The City of Medford has instituted a housing receivership program pursuant to ORS 105.420 *et seq*. We appreciate the opportunity to weigh in on the proposed amendments to these statutes. We believe some unintended consequences of the proposed amendments could result in housing receivership actions becoming logistically impossible, or at least extremely costly, in a number of cases.

## I. Requiring all "interested parties" to be named as defendants.

One of the most significant changes how "interested parties" besides the record owner are treated. These are typically entities with some sort of money judgment against the record owner, who thus have a lien against all real property owned by the record owner in the county where the money judgment was entered. These can be individuals with no connection whatsoever to the property itself, such as collection agencies, former business partners, or individuals who filed personal injury actions or other tort actions against the property owner. In some cases, they are corporate creditors who went defunct years ago. As the statutes currently exist, a municipality pursuing a housing receivership action must provide written notice of the receivership action to these "interested parties," and have a right to intervene in the case if they choose to do so. However, the interested parties besides the property owner do not need to be named as defendants when the lawsuit is filed.

The proposed amendments would make all interested persons necessary parties to the lawsuit, which means that every single interested person with a lien on the property would need to be named as a defendant in the lawsuit. For example, instead of simply receiving notice of the action through any reasonable means (such as certified and first-class mail), all interested

parties must receive service via process server or other method described in ORCP 7:

> *[Notice of the application]* **The petition** for the appointment of a receiver pursuant to ORS 105.420 to 105.455 *[shall]* **must** be served on all interested parties **in the manner provided by ORCP 7 D.**

(HB 2285, page 2, lines 16-18). On page 2, line 34, reference is made to whether interested parties appear within 30 days of service. This is language consistent with the interested party being named a defendant in the receivership action, not language consistent with the interested party merely having notice of the action and a right to intervene.

This change would require significant cost as the municipality would need to actually successfully locate each interested party and serve each with a process server (or serve them via publication, an expensive and impractical solution). If even one "interested party" was not served, the Circuit Court would dismiss the receivership action for want of prosecution, no matter how dire the structure's physical condition would be and how unlikely the creditor would want to become involved in the situation.

The process server costs and logistical problems successfully serving each interested party as a "defendant" are not the only concern. If an interested party who has no ownership interest in the property is served with summons and complaint by a process server, and sees themselves named as a "defendant" in a lawsuit simply because the owner of a decrepit property owes them money, they will be both confused and frustrated. They may demand that the City Attorney's Office dismiss them from the receivership action, which the proposed amendments would not allow a municipality to do. They may incur significant attorney fees educating themselves about a process and engaging in that process to no benefit of themselves or anyone else. And if they choose not file an appearance, the City Attorney's Office will have to incur the costs of seeking a default judgment against them (proving to the Court that the "interested party" is not active-duty military, etc).

## II. The new subsection 9 presents multiple challenges.

The proposed change to ORS 105.430(9) (page 3, lines 3-18) appears to be intended to address uninhabited properties where the only viable abatement is demolition of the property. However, as drafted, it is unworkable. First, it never actually authorizes the municipality to demolish the structure, only to enter a money judgment against the property for the anticipated cost of demolishing the structure. It says that this judgment is "in lieu of the appointment of a receiver," and appointment of a receiver is normally where the authority to abate the conditions (including through demolition) is conveyed, and it does not give any other authority to demolish the property. Simply placing another lien against an uninhabited-and-uninhabitable building will not solve the problem.

Second, it requires service of the motion for judgment "on all interested parties, including interested parties in default, in the manner provided for by ORCP 9 C[.]" Service as described in ORCP 9 is intended to describe service upon active litigants in a lawsuit, and thus requires certain certifications that an attorney may not be able to ethically make in some cases

of defaulted entities (such as long-dissolved entities or other interested parties who could not be actually located and thus have no "last known address," who were served with summons and complaint via publication). Furthermore, ORCP 9 A states that it was never intended to be used against parties in default.

### III. Requiring multiple ORS 37.200 receivership reports in every case is unhelpful.

Up until now, housing receiverships under ORS 105.420 *et seq*. have been entirely separate from and unrelated to estate receiverships under ORS Chapter 37. The rules described in ORS Chapter 37 are specifically not intended to apply to situations where a state agency or officer is authorized by statute to seek or obtain the appointment of a receiver. ORS 37.040(1). Receiverships under ORS Chapter 37 exist to preserve property for distribution consistent with a money judgment; receiverships under ORS Chapter 105.420 *et seq*. exist to abate building code violations. The rules from ORS Chapter 37 make no sense in a housing receivership context. Selling real property and distributing its cash value is a central part of ORS Chapter 37 receiverships, but is not even part of a housing receivership because simply transferring title does not abate building code violations. These two separate receivership schemes should not be linked together as they are not compatible.

Specifically, ORS 37.200 receivership reports make no sense in a housing receivership. These reports include details such as "beginning and ending cash balances," "a statement of receipts and dispositions of estate property outside the ordinary course of business," and "a statement of accounts receivable," which have no applicability to a Building Safety Department overseeing the demolition of a burned-out-and-abandoned house.

Furthermore, the proposed change to ORS 105.440 (page 3, line 44 through page 4, line 21) requires that receivership reports be filed at least twice in every receivership. Even if ORS 37.200 reports were an appropriate format for housing receiver reports—and they are not—there is generally no need for multiple housing receiver reports. As a practical matter, many receivership actions will consist of demolition of a long-abandoned structure, oftentimes with no roof, severe fire damage, et cetera. The abatement in these sorts of situations may be accomplished in a single day and may cost less than $10,000. Requiring multiple reports from the receiver in such a situation is onerous and of no utility.

### IV. Conclusion.

The City of Medford appreciates the stated intention of this amendment "to have the receivership statute easier to use for cities and counties." However, these amendments, as currently drafted, would actually have the opposite effect. The changes could substantially drive up the administrative costs of performing housing receiverships, and in some cases, with hard-to-locate interested parties who have no connection to the property besides a money judgment against its owner, may make receivership impossible to successfully pursue to completion.

For all the reasons stated herein, the City of Medford respectfully recommends against the changes to ORS 105.420 *et seq*. as proposed in HB2285.

Sincerely,

Eric B. Mitton
Deputy City Attorney