

House Bill 4056

Sponsored by Representative CONRAD; Representatives DIEHL, GOODWIN, HELFRICH, HIEB, LEVY B, LEWIS, MANNIX, MCINTIRE, OSBORNE, OWENS, RESCHKE, WRIGHT (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act lets people claim a tax foreclosure surplus. (Flesch Readability Score: 75.5).

Allows former owner, or their heirs or successors, to claim from the county any surplus from a property tax foreclosure. Establishes conditions and time limitations for making a claim. Requires county tax foreclosure notices to include information about claims.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to property tax foreclosure surplus; amending ORS 275.275, 312.125 and 312.190; and pre-
3 scribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 4 of this 2024 Act are added to and made a part of ORS chapter**
6 **312.**

7 **SECTION 2. Definitions. As used in sections 2 to 4 of this 2024 Act:**

8 (1)(a) **“Claimant” means a former owner of a property that was subject to a foreclosure**
9 **sale, or the former owner’s estate, heirs, devisees or a successor in interest that has ac-**
10 **quired substantially all of the former owner’s assets by merger, acquisition, dissolution or**
11 **takeover.**

12 (b) **“Claimant” does not include:**

13 (A) **The creditors or garnishor of a former owner or the former owner’s estate;**

14 (B) **Other persons holding an interest in the property that was foreclosed by the county;**

15 **or**

16 (C) **Voluntary or involuntary assignees of a claim against a surplus by a former owner.**

17 (2) **“Surplus” means the value of the property less the allowable costs to the county as**
18 **calculated under section 4 of this 2024 Act.**

19 **SECTION 3. Claim of surplus. (1) A claimant is entitled to a return of the amount of a**
20 **surplus from the county, if any, as calculated under section 4 of this 2024 Act upon the**
21 **earlier of:**

22 (a) **The county selling, transferring, exchanging, leasing for a period of more than one**
23 **year, or otherwise disposing of the property under ORS chapter 275;**

24 (b) **The county making a determination that the county will retain the property for public**
25 **purposes; or**

26 (c) **The date 120 days after the property is deeded to the county following tax foreclosure**
27 **under ORS 312.122 or 312.200.**

28 (2)(a) **A claim for a surplus must be made by delivering the claim in the form and format**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 prescribed by the county and must include sufficient proof of identity, the basis for the claim
 2 and such other information as may be required by the county.

3 (b) A county may require that a claim made under this section be made as a sworn affi-
 4 davit or upon declaration under penalty of perjury.

5 (3) If the estate of a deceased former owner will not be probated, a county shall allow a
 6 claim to be made by heirs, devisees or a person named as a personal representative in the
 7 deceased former owner's will. A claim made under this subsection must include:

8 (a) A copy of the former owner's death certificate;

9 (b) A copy of the former owner's will, if any;

10 (c) A statement that the estate is not being probated and that a small estate affidavit is
 11 not being filed for the estate;

12 (d) The identity of each beneficiary of the claim;

13 (e) The proportion of the surplus distributable to each beneficiary; and

14 (f) Signatures of all beneficiaries of the claim acknowledging their participation in the
 15 claim.

16 (4) A claimant does not have any interest in a surplus during the period of redemption
 17 or any other time prior to the date the claim arises under subsection (1) of this section.

18 (5) A person other than a claimant may not claim the surplus under this section and does
 19 not have a claim against the county based upon the surplus or a valid lien against the pro-
 20 ceeds before their delivery to the claimant. Any purported assignment of a claim of proceeds
 21 is void except for an assignment made for the protection of the interests of the claimant,
 22 including an assignment via a power of attorney or custodianship or guardianship pro-
 23 ceedings.

24 (6) The statute of limitations on claims for a surplus under this section is not governed
 25 by ORS 312.230, but is the earliest of:

26 (a) Two years after the date that the claim arises under subsection (1) of this section;

27 (b) For a claimant who, after the deeding of the property under subsection (1) of this
 28 section, received actual notice from the county of the claimant's ability to claim a surplus,
 29 the date of a deadline provided in the notice that is at least 60 days following its receipt; or

30 (c) Sixty days following a county's final determination of a claim under ORS 34.030.

31 **SECTION 4. Calculation of surplus.** (1)(a) The value of the property is the purchase price
 32 received by the county from a bona fide purchaser, as defined in ORS 275.088, if any.

33 (b) If the county has not sold the property to a bona fide purchaser, the value of the
 34 property is the fair market value of the property at the time that it is deeded to the county.
 35 The fair market value may be based on a reliable appraisal.

36 (c) In the absence of a sale or an appraisal or other reliable indication of fair market
 37 value of the property, the value of the property is the real market value of the property as
 38 shown on the tax statement for the property tax year in which the property was deeded to
 39 the county.

40 (2) In calculating the surplus, the allowable costs that the county may elect to deduct
 41 include:

42 (a) The amount of the judgment under ORS 312.090 and accruing post-judgment interest;

43 (b) The amount of taxes and interest thereon that would have been due following the
 44 judgment during the redemption period and through the earlier of:

45 (A) The date that the county sold or conveyed the property to a third-party; or

1 (B) The date that the claim is made;

2 (c) Additional costs that the county may claim under ORS 275.275 (1)(a) to (c);

3 (d) Costs to reimburse the claim of a municipal corporation that has filed a claim notice
4 under ORS 275.130;

5 (e) Amounts recoverable by waste caused by the former owner, including penalties al-
6 lowed under ORS 312.990, or the costs paid by the county to mitigate or abate a nuisance,
7 including as described in ORS 105.555, that was caused or permitted by negligence or neglect
8 of the former owner; or

9 (f) In lieu of the penalty and fee under ORS 312.120, the reasonable fees of the foreclosure
10 and sale of the property, including the costs of legal fees, delivering notices, county staff
11 time, court filing fees, appraisals, professional real estate activity and auction fees.

12 **SECTION 5. Applicability.** (1) Sections 2 to 4 of this 2024 Act apply to claims for a surplus
13 made on or after the effective date of this 2024 Act.

14 (2) The statute of limitations under section 3 (6) of this 2024 Act applies to claimants of
15 properties deeded to the county before, on or after the effective date of this 2024 Act. Claims
16 for a surplus based on a property that was deeded to the county more than two years prior
17 to the effective date of this 2024 Act and not filed before the effective date of this 2024 Act
18 are therefore barred.

19 **SECTION 6.** ORS 312.125 is amended to read:

20 312.125. (1) Not less than one year prior to the expiration of the period of redemption of any real
21 property ordered sold to the county under a judgment under ORS 312.100, the tax collector shall
22 provide notice of the expiration of the period of redemption to any person or entity entitled to re-
23 deem the property under ORS 312.120 (2) whose interest appears in the records of the county as of
24 the date foreclosure proceedings were instituted. Any person or entity whose interest has terminated
25 by any means other than a judgment of foreclosure under ORS 312.120 shall not be entitled to such
26 notice.

27 (2) The notice shall contain:

28 (a) The date of the judgment;

29 (b) The date of expiration of the period of redemption;

30 (c) A warning to the effect that the property ordered sold under the judgment, unless sooner
31 redeemed, will be deeded to the county immediately on expiration of the period of redemption and
32 that **upon the expiration of the period for claiming a surplus** every right or interest of any
33 person in the property will be forfeited forever to the county;

34 (d) A legal description of the property and a tax account number; *[and]*

35 (e) The name of the owner as it appears on the latest tax roll[.]; **and**

36 (f) **Information regarding an owner's right to claim a surplus, if any, under sections 2 to**
37 **4 of this 2024 Act.**

38 (3) The notice required to be given under subsections (1) and (2) of this section shall be given
39 by both certified mail and by regular first class mail and subsections (4) and (5) of this section shall
40 apply to both mailings. **Copies of notices must be publicly posted to the county's website.**

41 (4)(a) If the notice required under subsections (1) and (2) of this section is to be given to an
42 owner, the notice shall be addressed to the owner or owners, as reflected in the county records of
43 deeds, at the true and correct address of the owner as appearing on the instrument of conveyance
44 under ORS 93.260 or as furnished under ORS 311.555 or as otherwise ascertained by the tax collec-
45 tor pursuant to ORS 311.560.

1 (b) If the person or entity to whom the notice is required under subsection (1) of this section to
 2 be given is a lienholder, or person or entity other than the owner, having or appearing to have a
 3 lien or other interest in the property, the notice shall be addressed to the lienholder, person or en-
 4 tity at the address that the tax collector knows or after reasonable inquiry has reason to believe
 5 to be the address at which the lienholder, person or entity will most likely receive actual notice.
 6 For the convenience of the county, any lien, instrument or other document, memorandum or writing,
 7 filed on or after September 27, 1987, that creates an interest with respect to which notice is required
 8 to be given under this paragraph, shall contain:

9 (A) The address of the person or entity holding lien or other interest created by the instrument
 10 or other document, memorandum or writing; and

11 (B) The tax account number, if any, and if known, of the property subject to the lien or in which
 12 the interest is created.

13 (5) Failure of a lien, instrument or other document, memorandum or other writing to contain the
 14 address and tax account number information required under subsection (4)(b) of this section does
 15 not invalidate the lien, instrument or other document, memorandum or writing, nor shall the failure
 16 of the writing to contain the information relieve the tax collector of the duty to obtain and mail the
 17 notice required under subsection (4)(b) of this section to the address that the tax collector believes
 18 to be the address at which the lienholder, person or entity is most likely to receive actual notice.

19 (6) For purposes of subsection (4)(b) of this section, if the lienholder is a corporation or a limited
 20 partnership, the tax collector shall be considered to have made reasonable inquiry if the notice is
 21 mailed to the registered agent or last registered office of the corporation or limited partnership, if
 22 any, as shown by the records on file in the office of the Corporation Commissioner, or if the cor-
 23 poration or limited partnership is not authorized to transact business in this state, to the principal
 24 office or place of business of the corporation or limited partnership.

25 (7)(a) As used in this section, "records of the county" means the following:

26 (A) The grantor-grantee indexes.

27 (B) Other records of deeds, mortgages, powers of attorney, contracts and other instruments,
 28 documents or memorandum of conveyance or otherwise of real property that are described in ORS
 29 205.130 (1) and (2).

30 (C) The County Clerk Lien Record described in ORS 205.130 (3).

31 (D) Records of federal tax liens and other liens, instruments or other documents or writings
 32 reflecting an interest in real property described in ORS 205.246, if those records are kept separately
 33 from the records described in paragraph (b) of this subsection.

34 (E) Records of statutory liens on real property described in ORS 87.372.

35 (F) Any other records of interests in real property required to be kept by the county clerk, if
 36 the records contain a legal description of the property and an address specifically designated as
 37 indicated on the instrument, document or other memorandum or writing for purposes of mailing the
 38 notice required by this section.

39 (b) For purposes of this section only, "records of the county" includes:

40 (A) The appropriate records of the courts described in ORS 7.010 in the custody of the clerk of
 41 the appropriate court or court administrator under ORS 7.110; and

42 (B) Probate records in the custody of the clerk of the appropriate court or court administrator
 43 under ORS 7.230 and 7.240. Notwithstanding any provision to the contrary in ORS chapter 7 or other
 44 law, the clerk of the appropriate court or the court administrator shall make available to and assist
 45 the tax collector in the examination of the records described in this paragraph for purposes of car-

1 rying out the obligations of the tax collector under this section without charge.

2 **SECTION 7.** ORS 312.190 is amended to read:

3 312.190. Subject to an exemption from disclosure that applies under ORS 192.345:

4 (1) Not more than 30 days nor less than 10 days prior to the expiration of the period of re-
5 demption of any real property ordered sold to the county under a judgment under ORS 312.100, the
6 tax collector shall publish a general notice relative to the expiration of the period of redemption.

7 (2) The notice shall contain:

8 (a) The date of the judgment[,];

9 (b) The date of expiration of the period of redemption[, *and*];

10 (c) **A warning to the effect that all the properties ordered sold under the judgment, unless**
11 **sooner redeemed, will be deeded to the county immediately on expiration of the period of redemption**
12 **and that upon the expiration of the period for claiming a surplus every right or interest of any**
13 **person in the properties will be forfeited forever to the county[.]; and**

14 **(d) Information regarding an owner's right to claim a surplus, if any, under sections 2**
15 **to 4 of this 2024 Act.**

16 (3) The notice [*shall be*] **must be publicly posted to the county's website and** published in two
17 weekly issues of a duly designated newspaper of general circulation in the county within the period
18 of 20 days as specified in this section. Proof of publication shall be attached to and made a part of
19 the deed issued to the county. The published notice may be a general notice and it shall not be
20 necessary to include therein descriptions of the several properties or the names of the respective
21 owners.

22 **SECTION 8. Applicability. The amendments to ORS 312.125 and 312.190 by sections 6 and**
23 **7 of this 2024 Act apply to notices given on or after January 1, 2025.**

24 **SECTION 9.** ORS 275.275 is amended to read:

25 275.275. (1) **Except as limited by sections 2 to 4 of this 2024 Act,** the proceeds arising under
26 ORS 275.090 to 275.290 and 275.296 to 275.310 must be:

27 (a) First, applied to refund the county general fund for the full amount actually paid by the
28 county to advance the state tax upon all properties upon which the county has foreclosed liens for
29 delinquent taxes;

30 (b) Second, applied to the county general fund in an amount equal to the penalty and fee de-
31 scribed in ORS 312.120 for each property upon which the county has foreclosed a lien for delinquent
32 taxes;

33 (c) Third, applied to refund the county general fund for all the costs and expenses actually in-
34 curred by the county in the maintenance and supervision of the properties and in any suits or pro-
35 ceedings by the county to quiet title to or to defend the county's title to property sold, including
36 suits or land use proceedings to ascertain and determine the actual boundaries of the properties;

37 (d) Fourth, in a county with a population of 650,000 or more or in a county with a population
38 of 200,000 or more and that elects to distribute funds under this subsection:

39 (A) First, distributed to a local government, as defined in ORS 174.116, that has filed a notice,
40 in accordance with ORS 275.130, relating to a local improvement lien arising under ORS 223.680 or
41 223.685 against the property in the principal amount of the lien, plus any interest and penalties that
42 have accrued to the date of sale of the property.

43 (B) Second, if the proceeds arise under ORS 275.090 from the sale of real property acquired by
44 foreclosure of delinquent tax liens or by exchange for land originally acquired by foreclosure of
45 delinquent tax liens, applied to an account or fund created in the discretion of the county treasurer,

1 in or outside of the county general fund, for use under ORS 271.330 to provide:

2 (i) Funds for housing placement and retention support services for youth and families with
3 children;

4 (ii) Flexible rental assistance for housing placement for youth and families with children; or

5 (iii) Funds to develop new low income housing that is affordable to youth and families with
6 children with 30 percent or lower median family income.

7 (C) Third, except as provided in subparagraph (B) of this paragraph, applied to the county gen-
8 eral fund; and

9 (e) Fifth, except as provided in paragraph (d) of this subsection, if the proceeds arise from the
10 sale of real property acquired by the county in a manner other than by foreclosure of delinquent tax
11 liens or by exchange for land originally acquired by foreclosure of delinquent tax liens, applied to
12 the county general fund. The proceeds described in this paragraph include payments for the real
13 property sold under a purchase agreement pursuant to ORS 275.190 or 275.200.

14 (2) The proceeds arising under ORS 275.294:

15 (a) Must be credited to the county general fund by the county treasurer, if received from a lease
16 or conveyance granting rights to explore, prospect for or remove biogas that is produced by de-
17 composition of solid waste at any land disposal site or former land disposal site owned by the
18 county. As used in this paragraph, "land disposal site" has the meaning given that term in ORS
19 459.005.

20 (b) Must be segregated from the portion of the proceeds described in paragraph (a) of this sub-
21 section and deposited in a separate account maintained by the county. Interest earned on the seg-
22 regated portion of the proceeds must be credited to the account established under this paragraph.

23 (c) May be used, in an amount that does not exceed 10 percent of the proceeds, to reimburse a
24 taxing district within the county for costs and expenses necessarily incurred by the district in pro-
25 viding improved, additional or extraordinary services required on lands in the county as a result of
26 exploration, drilling, mining, logging or other activities authorized under a lease or conveyance un-
27 der ORS 275.294. As used in this paragraph, "improved, additional or extraordinary services" in-
28 cludes, but is not limited to, fire protection and road construction and maintenance.

29 (d) May be used to reimburse the county for its actual costs and expenses incurred under this
30 subsection and under ORS 275.294 for:

31 (A) The maintenance and supervision of a lease or conveyance granting rights to explore, pros-
32 pect for, mine or remove valuable minerals, oil or gas from the lands;

33 (B) The maintenance and supervision of a lease or conveyance granting rights to conduct
34 underground storage, as defined in ORS 520.005; and

35 (C) Litigation resulting from a lease or conveyance described in subparagraph (A) or (B) of this
36 paragraph.

37 (3)(a) After a portion of the proceeds arising under ORS 275.090 to 275.290 and 275.296 to 275.310
38 and a portion of the proceeds arising under ORS 275.294 are applied as provided in subsections (1)
39 and (2) of this section, the balance of the proceeds arising under ORS 275.090 to 275.290 and 275.296
40 to 275.310 and the balance of the proceeds arising under ORS 275.294, including the payments for
41 land sold under contract pursuant to ORS 275.190 or 275.200, must be distributed by the county
42 treasurer as follows:

43 (A) First, to a municipal corporation that has filed a notice, in accordance with ORS 275.130,
44 relating to a local improvement lien against the property from which the sale proceeds are derived.
45 The amount of the distribution to each municipal corporation must be in the principal amount of the

1 lien, plus the interest and any penalties that accrued to the date of sale of the property.

2 (B) Second, to governmental units in accordance with the formula provided in ORS 311.390 for
3 the distribution of tax collections. The amount distributed to governmental units must be the amount
4 remaining after the distribution, if any, under subparagraph (A) of this paragraph.

5 (b) Notwithstanding ORS 294.080, as used in this subsection, “balance of the proceeds” includes
6 all accumulated interest earned on the proceeds arising under ORS 275.294 that are segregated
7 pursuant to subsection (2)(b) of this section, unless a court of competent jurisdiction rules otherwise.

8 (4) Distribution of moneys under subsections (2) and (3) of this section must be made on or be-
9 fore June 30 in each year.

10 (5) The county treasurer or auditor shall verify the costs and expenses to be reimbursed under
11 subsection (2) of this section.

12 (6) The county treasurer shall distribute reimbursements under subsection (2) of this section in
13 accordance with an order of the governing body of the county.

14 (7) Notwithstanding subsection (1) of this section, a county with a population of 650,000 or more
15 may convey real property acquired by foreclosure of delinquent tax liens or by exchange for land
16 originally acquired by foreclosure of delinquent tax liens as provided in ORS 271.330.

17 **(8) In order to accommodate claims for surpluses that have been or may be made under**
18 **sections 2 to 4 of this 2024 Act, a county may delay, hold, offset or make subject to a claim**
19 **for reimbursement any distribution that is allowed or required under this section and that**
20 **is inferior in priority to a claim for a surplus.**

21 **SECTION 10. Captions. The section captions used in this 2024 Act are provided only for**
22 **the convenience of the reader and do not become part of the statutory law of this state or**
23 **express any legislative intent in the enactment of this 2024 Act.**

24 **SECTION 11. Effective Date. This 2024 Act takes effect on the 91st day after the date on**
25 **which the 2024 regular session of the Eighty-second Legislative Assembly adjourns sine die.**

26