



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: February 15, 2024

TO: Chair Nathanson, Vice-Chairs Reschke and Walters, and
Members of the House Committee on Revenue

FROM: Kimberly McCullough, Legislative Director
Oregon Department of Justice

SUBJECT: HB 4056 – Tyler v. Hennepin

HB 4056 is a response to *Tyler v. Hennepin County*, 598 US 631 (2023), which prevents the government from retaining more than the amount owed when it forecloses on real property to collect unpaid property taxes. HB 4056 effectively requires that those surplus sale proceeds be returned to the owner.

As drafted, HB 4056 would prevent other lienholders from asserting a claim against the surplus funds. This would allow the property owner to avoid a variety of judgments and other liens, which would impact the work of the Department of Justice on behalf of the people of Oregon.

The Department of Justice collects child support, restitution, civil penalties and judgments owed by those who violate Oregon law. Restitution is collected both for crime victims and in civil cases where we have obtained restitution for various types of harm caused to Oregonians. These cases range from wage theft and discrimination to environmental contamination, to securities violations and elder financial abuse. Our ability to collect from debtors in these cases is crucial.

We believe there are multiple ways to address this problem, which we are currently discussing with the bill sponsor and proponents:

1. Requiring the county to notify all lienholders and the property owner, giving them an opportunity to assert claims. The notice could say that if no claims are received by the deadline, the funds will be returned to the original owner. This is what happens when a bank's nonjudicial foreclosure results in surplus sale proceeds.

2. Interplead the funds into the court. An interpleader would provide an even playing field where everyone with a claim to the funds could try to recover them, and it would allow the county to recover its reasonable attorney fees. *See* ORCP 31C.
3. Require the county to give 30-days advance written notice to every lienholder. The notice would say that the county is holding a particular amount of funds in surplus sale proceeds and that it intends to return these funds to the original property owner by a certain date unless the county receives a garnishment. If no garnishments are received, the county would send the funds to the owner.

One other observation about the attached proposal: it appears to be designed to prevent a creditor from garnishing the surplus sale proceeds. See Section 2(1)(b)(A). This will limit state debt collections and should be addressed.

We appreciate the willingness of the bill sponsor and proponents to engage in collaborative conversations with us about how to address these issues.