Sybil Hebb
Director of Legislative Advocacy
Oregon Law Center
503.936.8959 (cell)
shebb@oregonlawcenter.org

To: House Committee on Revenue
From: Sybil Hebb, Oregon Law Center
Re: Opposition to HB 4056
Date: February 16, 2024

Dear Chair Nathanson, Vice-Chairs Walters and Werner Reschke, and members of the Committee,

On behalf of the Oregon Law Center and our low-income clients, thank you for the opportunity to present concerns regarding this important bill. We respectfully advocate that this legislation be delayed until an interim workgroup can provide recommendations for the 2025 Session.

The Tyler v Hennepin County US Supreme Court ruling has important policy implications for Oregon and the other states that have for decades failed to return surplus amounts to homeowners who have fallen into foreclosure as a result of property tax delinquencies. The case, and this bill, bring up complex questions, and we urge caution and careful consideration, as well as the opportunity for input of impacted communities, before acting to pass legislation.

For most Americans, home equity is their largest savings account. This is disproportionately true for BIPOC homeowners, who have had historically fewer opportunities to accumulate wealth in this nation. The past practice of county governments retaining surplus amounts after sales of properties for tax delinquencies has stripped families of generational wealth. The voices of impacted communities must be taken into account when designing solutions to remedy this unconstitutional practice.

Regarding the substance of the Dash 1 Amendments, there are several important concerns that illustrate the complexity of the issues and the need for further work. Without addressing these issues, the bill risks putting and families at risk of further harm and counties at risk of further litigation.

- **Statute of Limitations:** The statute of limitations for consumers seeking a remedy for county retention of surplus should be generous, in recognition of the complexity of these issues and the differences in power and access to information between the parties. In particular, the statute of limitations should run from the date that the homeowner or beneficiary knew or should have known that the county had retained surplus money owed to them. Homeowners who

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have already lost resources as a result of past County actions are suffering from that loss, but may have no reason to know they now have rights. These cases are complicated by probate or inheritance issues, and we must be sure that all with interest in the property have access to information and opportunity to seek remedy.

- **Determination of Fair Market Value and Surplus Amounts:**
  - A fair and impartial process must be in place to determine the amount of surplus owed to the consumer. How is the fair market value of the home to be determined? It cannot be presumed to be the sale price of the home, if the sale process does not meet certain standards, or the sale is not conducted by an impartial third party. We cannot presume that the FMV can be assessed by the creditor of the tax debt.
  - It is reasonable for a county to be compensated for the expenses associated with the sale of a property, but expenses a county may add to their costs should be narrowly defined.
  - A process that is not fair and impartial, with expense allowances that are not narrowly tailored, raise similar constitutional concerns to the ones in the statute that was recently struck down.

- **Payment of Liens:** It is important to ensure that the foreclosure process and surplus distribution accounts for any recorded liens on the property – particularly those related to judgments of child support, spousal support or crime victim restitution. These judgments are critical to many low-income Oregonians and there is well-established public policy precedent in prioritizing enforcement of these judgments. A foreclosing county would be in possession of information about recorded liens, so ensuring payment of these liens prior to the return of surplus proceeds should be relatively simple.

- ORS 86.794 could be a good example to guide the process of return of surplus – this statute addresses bank foreclosures, and requires that proceeds of the sale be distributed to the creditor first to pay the expenses of the sale, then to the obligation secured by the deed, then to all persons with recorded liens, and then to the homeowner or successors. There are no other expenses allowed to be detracted.

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- **Significant focus on outreach and communication to impacted communities and homeowners, to ensure that people understand their rights and how to access them**. The Dash 1 Amendment to HB 4056 does not provide consumers with adequate information or assistance to understand or assert their rights, all the while imposing a too-short statute of limitations that begins to run right away. Counties that retain surplus without having provided adequate notice of rights and remedies will be at risk of litigation for due process violations. **As a starting place, below are some immediate items that should be included in an effective notice and outreach plan:**
    - Broad, language-accessible outreach and education, to inform people of the potential of past violations (newspaper, radio, tv, social media, ad campaign, non-profit service providers, 211, and other outlets as advised by representatives of impacted communities)
    - Specific language-accessible outreach to identifiable claimants, through phone calls, mail, in-person outreach, and other best-practice methods.
    - Consider whether a publicly accessible list of impacted individuals or addresses should be maintained. While there are important privacy considerations to be addressed here, there may be significant benefits that would outweigh those concerns.
    - Advocacy and legal assistance ought to be made available for homeowners seeking to make claims.
    - Assistance should be available for homeowners in determining the current value of surplus amounts.
    - Notices should be in plain language, as reviewed by advocates and representatives of impacted communities, and should be in multiple languages.

We have heard from proponents that the legislature must take action right away, but we urge caution. Acting too quickly could cause a layer of additional challenges and litigation that would further complicate matters for all parties. A new statute could give counties a false sense of security – as the Tyler v Hennepin County case shows, statutes can get these things wrong. Passage of this bill as drafted would do more harm than good, complicating an already-complex situation to the detriment of communities, and leading to even more potential for litigation.

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In closing, we appreciate the work done to-date and would be honored to be good faith partners in ongoing efforts to incorporate consumer advocate feedback moving forward. We respectfully advocate that an inclusive workgroup be formed to prepare legislation for the 2025 session.

Sincerely,

Sybil Hebb