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To: Senate Committee on Finance and Revenue
From: Sybil Hebb, Oregon Law Center
Re: Support for HB 4056A
Date: March 6th, 2024

Dear Chair Meek, Vice-Chair Boquist, and members of the Committee,

On behalf of the Oregon Law Center and our low-income clients, thank you for the opportunity to testify in support of HB 4056A. We greatly appreciate the work of Representative Conrad and Representative Nathanson to address the myriad and complex issues raised by the recent U.S. Supreme Court ruling in Tyler v Hennepin County, establishing that it is a violation of the U.S. Constitution for counties to retain surplus values in a home after forcing a foreclosure sale to repay back property taxes.

The Tyler v Hennepin County 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. This process has stripped many families of the value of their home equity, and it is imperative that we institute fair, equitable, and accessible means of re-claiming that value return.

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.

As introduced, HB 4056 would have created barriers to homeowners seeking relief, reduced surplus amounts owed, and instituted narrow statutes of limitations, thus further harming Oregonians. **As amended, HB 4056A will move Oregon towards fair policy, and compliance with the Constitution, by requiring:**

1. Counties to establish processes for notice, valuation, and right for a surplus;
2. Surpluses to be held in an interest-bearing escrow account until returned;
3. Protection of the ability for lienholders to collect from the surplus, including for child support and victim restitution;
4. A pause in the new transfer of deeds to the county at the last step in the foreclosure process while surplus processes are being developed; and
5. Oregon Department of Revenue to coordinate stakeholder input to develop recommendations for a uniform statutory process.

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HB 4056A provides the consumer protections that are needed now and creates a path to develop a uniform process during the interim to bring back in 2025.

Some of the important concerns that will require thoughtful work with representative stakeholders over the interim include the following:

- **Burden on Injured Party:** After having profited through decades of having wrongfully withheld home equity from low-income homeowners, counties should do their best to remove barriers to justice for impacted families. Counties that have control over surplus values should have an affirmative obligation to return surplus money to the consumer, rather than requiring the consumer to jump through hoops in order to obtain their money.
- **Statute of Limitations:** Without adequate outreach and education, homeowners will not know about their rights and will have trouble asserting them. Without adequate notice, is it fair to start the statute of limitations running against homeowners? 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 the opportunity to seek remedy. Any statute of limitations should be generous and should run from the time of discovery.
- **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.
- **Conflict of Interest:** Is there someone other than the county that audits the subtractions that are made from the equity that the county has taken from the homeowner? If the homeowner did not have the wherewithal to avoid foreclosure in the first place, how likely is it that the homeowner could parse out the subtractions from the equity.
- **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

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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.

- **Heirs:** Many individuals impacted by prior deprivation of property values may have passed away since the date of foreclosure. Their heirs ought to be able to assert their rights, regardless of whether they have inherited via a will or have gone through probate. These questions get more complicated if heirs have inherited property over multiple generations.
- **Outreach and communication to impacted communities and homeowners:** Without adequate notice and outreach, consumers will not understand their rights or how to access them. The statute must provide standards around language access (including plain language notices, in multiple languages, and accessible font sizes) sequencing of notices, and outreach to impacted communities and homeowners.

In closing, HB 4056-A ensures that a thoughtful process will be put into place designed to protect Oregonians' constitutional right, after discussions with stakeholders and representatives of impacted communities. And in the meantime, during the interim, the bill protects against further harm to consumers by pausing new title transfers and requiring the use of an interest-bearing escrow account for surplus values.

We appreciate the work done on this concept to-date, and would be honored to be good faith partners in interim discussions looking forward to the 2025 legislative session.

Sincerely,

Sybil Hebb

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