FARLEIGH WADA WITT

Harold B. Scoggins, III
Attorney
Admitted in Oregon and Washington

hscoggins@fwwlaw.com

121 SW Morrison Street, Suite 600
Portland, Oregon 97204
phone 503.228.6044
fax 503.228.1741
www.fwwlaw.com

April 8, 2025

TESTIMONY REGARDING HB 2089
Before the House Committee on Revenue

Harold B. Scoggins, III
Farleigh Wada Witt
Counsel for the GoWest Credit Union Association

My name is Hal Scoggins. I am an attorney with Farleigh Wada Witt, outside counsel for the GoWest Credit Union Association, on whose behalf I submit this testimony. Our firm also represents many individual credit unions throughout Oregon and across the U.S. Oregon Credit Unions are grateful to Representative Levy for her work year after year on this issue. We support most of the bill but do have one issue we see that could be of concern for Oregon Credit Unions. The comments below assume that the -2 amendment will be adopted, but the ultimate concern for Oregon Credit Unions is the same irrespective of whether the amendment is adopted.

Under the tax lien foreclosure process as revised by HB 2089, a tax lien foreclosure starts a two year redemption period during which either the owner or any lienholder can redeem the property by paying the taxes plus penalties and interest. Section 2 of the bill requires the county to give notice to owners and lienholders one year in advance of the expiration of the redemption period. At expiration of the redemption period, the property is deeded to the county by the tax collector. The county can sell the property at any time after that.

Section 5 provides that when a property is sold any amount in excess of the county's taxes, penalties, interest, costs of sale, etc. is considered a surplus. Section 5 also states that the only party entitled to claim the surplus is the former owner or the former owner's estate. **Mortgage holders, including credit unions, do not have a claim to those funds. We believe this is a problem in that it creates the type of taking that the U.S. Supreme Court ruled was unconstitutional in the *Tyler v. Hennepin* case that this bill is intended to address.**

Although financial institutions would get paid ahead of the borrower in a voluntary sale of the property pre-foreclosure, or from the proceeds of a non-tax foreclosure sale, the county would not allow our rights when it takes the property in a tax foreclosure. Before *Hennepin*, it also stripped away the right of the borrower and the county kept all the proceeds. That is what the Supreme Court said was an unconstitutional taking. We believe (along with most legal scholars and practitioners that have considered the issue) that the same principle applies to lienholders. In other words, if lienholders are

unable to assert a claim to the surplus, the statute will be subject to claims by lienholders that it violates their Fifth Amendment rights.

We recognize that lienholder claims would be rare. In most instances where there is value in the property, a lienholder would pay the taxes before foreclosure or redeem it out of foreclosure. But we believe it could come up in at least two circumstances:

- When the county resells the property (after the two-year redemption period) for more than the credit union thought it was worth. There could be a number of reasons for this:
    - The credit union simply misjudged the property value and didn't believe it was worth it to pay the taxes
    - There is a change in the property status or the area. For instance, the property was outside the urban growth boundary, but the boundary expanded to include the property, or a technology company puts in a new server farm a mile down the road.
    - Other nearby development occurs that increases the property value
- The credit union simply missed the notice and didn't take the necessary action to prevent the tax lien foreclosure or redeem the property.

While these situations might be rare, lienholders have the same type of property interest that owners do and should be protected in these situations just as owners are. If this bill protects owners but not lienholders, it will only do half of the job it was intended to do – solve the problem identified in the *Tyler v. Hennepin* case. Oregon Credit Unions appreciate your consideration of this issue.

48M4800

Portland · 121 SW Morrison Street, Suite 600, Portland, Oregon 97204