

Testimony before Senate Finance and Revenue Committee

In support of HB 2460A

On behalf of the Oregon State Bar Elder Law Section

May 28, 2019

Good afternoon. My name is Christopher Hamilton and I am an attorney with McGinty Belcher & Hamilton, Attorneys, PC here in Salem. I am here today as a representative of the Elder Law Section of the Oregon State Bar in support of HB 2460A. The Elder Law Section has close to 600 members who represent Oregonians across the state.

Oregon State Bar

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 15,000 active members. The Oregon State Bar supports and ensures public protection, access to justice for all, as well as the administration of justice and a fair and impartial judiciary.

Heir Liability for Senior Property Taxes

Oregon's deferred property tax program allows a senior to defer payment on their property taxes until he or she leaves the home. At that time, the Oregon Department of Revenue collects the deferred property taxes from the sale of the home from individuals that receive the home without purchasing it, and from the heirs and devisees of the senior.

In some cases, when a homeowner passes away, the home is encumbered by liens in excess of the value of the home and the estate is insolvent. In these cases, the homeowner's heirs and devisees have no duty to probate the decedent's estate and often, because of the cost and time required for probate, the best solution for the heirs and devisees – usually family members – is to walk away and let creditors foreclose on the property.

Under ORS 311.666(10), an "heir" or "devisee" of an estate is included in the definition of "transferee." In some cases, an heir or devisee might not receive anything from the estate because the estate is insolvent. However, under ORS 311.695(1), the transferee, which includes heir(s) and devisee(s), is jointly and severally liable for the difference between the liens and the real market value of the home. In this situation, under ORS 311.695 as currently written, the heir(s) and devisee(s) are arguably liable for payment of the property taxes out of their own assets, despite receiving nothing from the estate and having no contractual relationship with the Department of Revenue.

The Elder Law Section supports the Department of Revenue's efforts to collect all taxes to which the state is entitled. While the Department of Revenue has made strong efforts to

address these concerns via its rulemaking process, the Elder Law Section believes these protections should also be codified in statute. Placing these rules into statute is important for three main reasons:

- It would make clear that the debts from the Senior Property Tax Deferral Program of a deceased person are not passed on to an heir.
- It would provide taxpayers and their families clear and easy to find guidance for repaying the program.
- It would ensure that changes made to the collections process would go through the legislative process.

The goal of HB 2460A is to provide protection and guidance to family members, heirs, and devisees. If they have received no value from the estate, the bill's goal is to ensure that such heirs and devisees are not personally responsible for any difference between liens and the real market value of the property. HB 2460A will help ensure that taxpayers are treated fairly and avoids the risk of them being subject to tax liability incurred by the decisions of deceased family members.

HB 2460A was amended in the House Revenue Committee to clarify the narrow range of circumstances under which the Department could still seek payment from a transferee – such as occasions where the transferee was living in on the property, or was renting it out to another person.

Thank you for your time and we are happy to answer any questions you might have.