

Property Tax

Tax Implications of *Tyler v. Hennepin County*

House Committee on Revenue

LRO | February 28, 2024

State of Oregon

LEGISLATIVE REVENUE OFFICE





Presentation Outline

- Background
- Recent U.S. Supreme Court Decision
- Current Policy in Oregon
- Lawsuits in Oregon
- Recent Policy Committee Discussion





Background

- Geraldine Tyler owed \$15,000 in property taxes, interest and penalties on a condominium she owned in Minneapolis.
- To collect the debt, Hennepin County placed her home in foreclosure, sold it for \$40,000 and, under Minnesota Law, did not pay her the \$25,000 surplus.
- After Tyler lost in the district court and 8th Circuit Court, Tyler's case made it to the U.S. Supreme Court.





Recent U.S. Supreme Court Decision

- Tyler claimed her rights were violated under the U.S. Constitution's 5th and 8th amendments:
 - **5th Amendment:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; **nor shall private property be taken for public use, without just compensation.**
 - 8th Amendment: Excessive bail shall not be required, **nor excessive fines imposed**, nor cruel and unusual punishments inflicted.
- *Tyler v. Hennepin County* (598 U.S. 631) was decided in U.S. Supreme Court on May 25, 2023.
- Unanimous, 9-0 decision in favor of Tyler:
 - Chief Justice Roberts delivered the opinion.
 - Gorsuch and Jackson filed a concurring opinion.





Current policy in Oregon

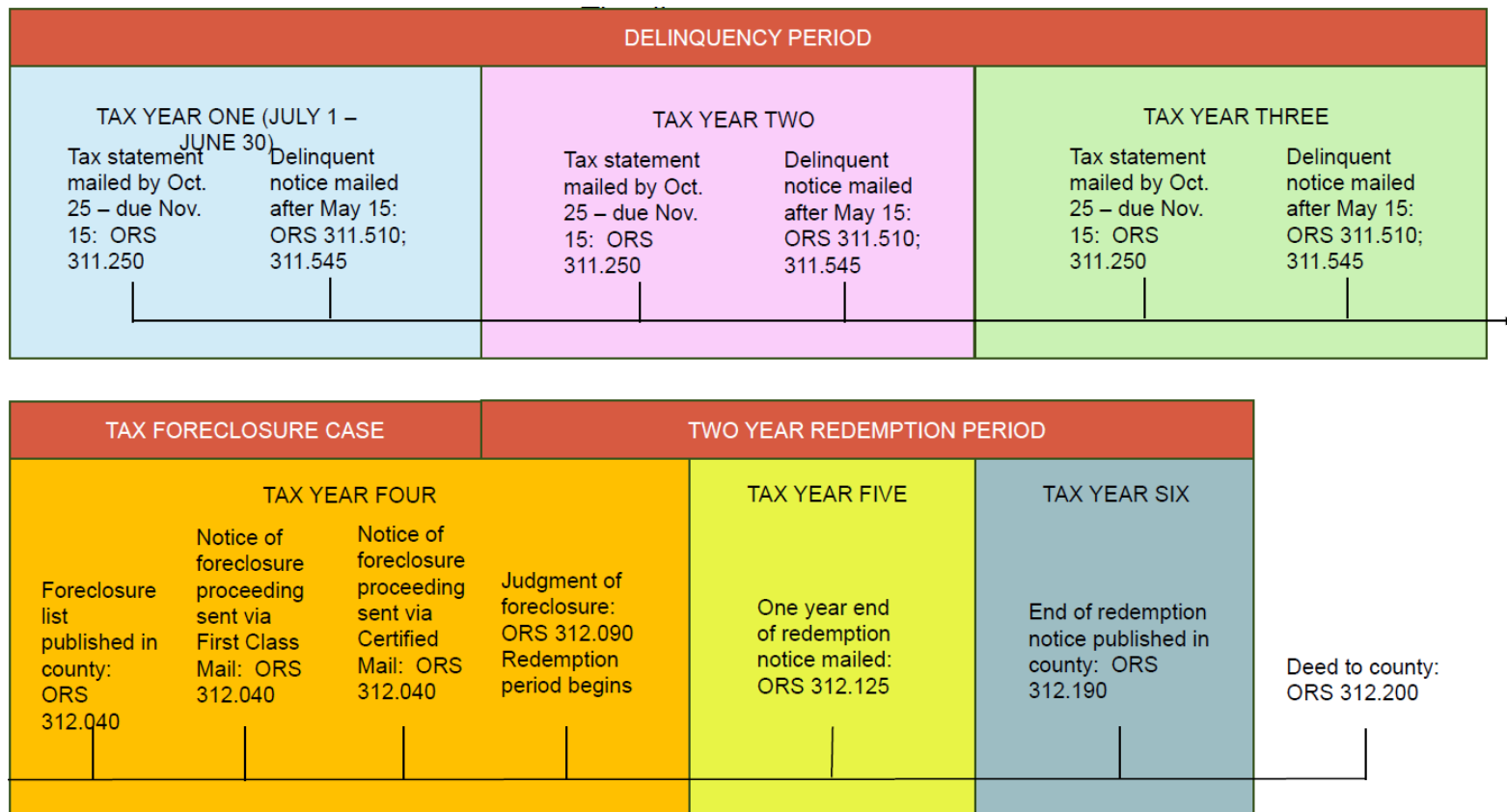
- Counties are not required to return to the former property owner any surplus of a property tax foreclosure. No system in place to do so.
- After a county reimburses itself for amounts owed and additional costs, the county may elect to distribute any surplus to taxing districts, including the county (ORS 275.275(1)(d)).
 - That distribution of surplus to taxing districts is mandatory in Multnomah County.
- Additional costs costs under ORS 275.275 (1)(b)-(c) include:
 - Redemption penalty and fee
 - Property maintenance and supervision
 - Legal costs





Current Policy in Oregon (cont.)

Deeding real property to a county under ORS 312.200 is a six-year process.



Source: Meeting materials for Senate and House Interim Committees on Judiciary, January 12, 2024





Lawsuits in Oregon

- Class action lawsuits in several states following *Tyler v. Hennepin County*, including three currently in Oregon (all counties implicated).
- Multiple individual lawsuits in various counties in Oregon.





Recent Foreclosure Sales

Tax Acct No. R163425
6911 SE MITCHELL CT
PORTLAND, OR 97206
MIN. BID \$150,000
NO BID
SOLD PRIVATE SALE:
\$150,000



Tax Acct No. R186926
NW CORNELIUS PASS
PORTLAND, OR 97231
MIN. BID \$500
WINNING BID: \$2,300



Tax Acct No. R186929
NW CORNELIUS PASS
PORTLAND, OR 97231
MIN. BID \$500
WINNING BID:
\$4,100



Tax Acct No. R190184
2715 NE JARRETT ST
PORTLAND, OR 97211
MIN. BID \$200,000
WINNING BID:
\$265,000



Tax Acct No. R197014
7027 SE GLADSTONE
PORTLAND, OR 97206
MIN. BID \$150,000
WINNING BID:
\$191,000



Tax Acct No. R297004
3100 NE ROCKY BUTTE
PORTLAND, OR 9722
MIN. BID \$50,000
NO BID:
PRIVATE SALE OFFER:
\$35,000 (8.24.2023)



Tax Acct No. R117073
2150 N BLANDENA
PORTLAND OR 97217
MIN. BID \$500
WINNING BID:
\$500



Tax Acct No. R153869
11345 SE LEXINGTON
PORTLAND, OR 97266
MIN. BID \$250,000
WINNING BID:
\$345,000



Tax Acct No. R530195
1420 NW LOVEJOY ST
PORTLAND, OR 97209
MIN. BID \$15,000
WINNING BID:
\$15,000



Tax Acct No. R335456
~12000 SE MARTINS
PORTLAND, OR 97266
MIN. BID \$25,000
WINNING BID:
\$25,000



Tax Acct No. R336337
8200 SE HARNEY ST
PORTLAND, OR 97206
WITHDRAWN FROM
SALE. PENDING
PRIVATE SALE



Tax Acct No. R217191
10451 SE MARTINS
PORTLAND, OR 97266
MIN. BID \$2,000
WINNING BID:
\$28,000



Tax Acct No. R197108
4208 SE 67TH AVE
PORTLAND, OR 97206
MIN. BID \$100,000
WINNING BID:
\$159,000



Tax Acct Nos. R341715, R341751, R504179, R504184
38000 SE RICKERT RD CORBETT, OR 97019
MIN. BID \$50,000
WINNING BID:
\$150,000





Recent Informational Meetings

Informational meetings on *Tyler v. Hennepin County* were provided to the following committees:

- Senate & House Interim Committees on Judiciary, Jan. 12, 2024
- House Committee on Revenue, Feb. 12, 2024





Tyler v. Hennepin County

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- To collect the debt, Hennepin County placed her home in foreclosure, sold it for \$40,000 and, under Minnesota Law, did not pay her the \$25,000 surplus.
- *Tyler v. Hennepin County* (598 U.S. 631) was a unanimous, 9-0, U.S. Supreme Court decision in favor of Tyler.
 - Ruled the government can't take more property than what is owed (U.S. Constitution's 5th amendment).
- Provided little guidance, if any, on timing of any surplus payments.





Tyler v. Hennepin County (cont.)

- Recent meetings on *Tyler v. Hennepin County* and HB 4056:
 - Senate & House Interim Committees on Judiciary, Jan. 12, 2024 – INF
 - House Committee on Revenue, Feb. 12, 2024 – INF
 - House Committee on Revenue, Feb. 15, 2024 – PH





HREV Questions

- Are sections of the bill separable? Do some now and some later?
- How are other senior/junior property lienholders treated?
- How much parallel there is with a bank foreclosure? Provide model for counties?
- What is the responsibility of county to maximize proceeds of foreclosure sale?





HB 4056

- The -2 amendment, dated, 2/24/24, is the most recent policy language from the workgroup.
- See the Section Contents posted under Meeting Materials in OLIS.





HB 4056 (cont.)

Section Contents – HB 4056-2

Section	Topic	Explanation
1	Editorial change	Adds sections 2-5 to ORS chapter 312 series.
2	Definitions	Defines terms for executing other sections.
3	Claim of surplus	Period before given right to a return of surplus. Period to make claim after right established. Period before outstanding funds treated as abandoned property.
4	Calculation of surplus	Value of real property foreclosed. County allowable costs.
5	Notice and payment of surplus	Notices of potential surplus sent to former property owner, DOR, DOJ and State Treasurer. Payment of surplus.
6	Claims statute of limitations	Disallows claims for a surplus that arose (right to a return) more than six years prior to the effective date of the bill. (6-year lookback)
7	Applicability to new foreclosures	Sections 2-5 apply to claims for which the claimant received a notice of surplus after January 1, 2025.
8	Applicability to existing claims	Sections 2-5 apply, with exceptions, for claims that arose on or after the beginning of the 6-year lookback period and for which a claimant received the expiration of redemption period notice before January 1, 2025.
9	Applicability to filed claims	Sections 2-5 and 8 apply to claims filed before, on or after the effective date of the bill, except for claims which were paid, settled or adjudicated before the effective date.
10	Amending ORS 312.125	Adds new information to expiration of redemption period notice.
11	Amending ORS 312.190	Adds new information to general notice of expiration of redemption period.
12	Applicability of Sections 10-11	Sections 10-11 apply to notices given on or after January 1, 2025.

13	Amending ORS 275.275	Clarifies how proceeds must be used, as limited by Sections 2-5.
14	Captions	Editorial note: Section captions are provided only for the convenience of the reader.
15	Effective Date	Takes effect on the 91st day after sine die.





Stakeholder Questions

- Senior/junior lienholders
- Interpleading funds into the court
- Garnishment of surplus funds
- Fair market value of property
- Allowable costs





Separability

- Questions remain on Sections 2-4.
- Sections 2-3 may be necessary first steps.
- Some counties have set up an account for holding the proceeds of a foreclosure sale until determinations are made regarding how to pay the correct amounts to the correct people.



For More Information

- Legislative Revenue Office
- ~~900 Court St. NE, Room 160~~
- 255 Capitol St NE, 5th Floor
 - Public Services Building
- Salem, OR 97301
- 503-986-1266
- <https://www.oregonlegislature.gov/lro>

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