



OREGON DEPARTMENT OF JUSTICE

TO: House Committee on Revenue
FROM: Alicia Temple, Legislative Director to Attorney General Rayfield, Oregon DOJ
DATE: 1/29/2025
SUBJECT: Feedback on HB 2088, HB 2089 and HB 2096

Chair Nathanson and members of the committee:

Oregon Department of Justice has been a part of legislative conversations surrounding *Tyler v Hennepin County*, 598 US 631 (2023). HB 2088, HB 2089 and HB 2096 are the product of a 2024 Workgroup that DOJ participated in. While we do not have a position on these three bills, the agency has recommendations for technical amendments to improve the clarity of HB 2088, HB 2089 and HB 2096.

1. The bills require the property to be listed “at the highest price at which the property is reasonably expected to sell” but does not prevent the property from being sold at a significantly lower price. The Legislature could consider if it wants to provide any limits on how low a property may be sold for.
2. Clarify whether a living former owner of residential property may claim the ORS 18.395 homestead exemption. If so, it would provide them with a senior claim to other lienholders and other creditors. If the homestead exemption applies, it should also consider whether to state that the homestead exemption may be denied pursuant to ORS 18.398 if it’s a child support debt.
3. The bills do not specify who is an heir when the counties are supposed to search for heirs if the property owner is deceased. We recommend referencing the definition of “Heir” in ORS 111.005(18).
4. Replace “MORE THAN YOU OWE” with “MORE THAN THE UNPAID TAXES AND FEES” in the Section 1 and 2 notices. The suggested replacement language is more precise and reflects the fact that the notice will be sent to people other than the former owner.
5. Replace “searches of land” in Section 1(2) with “searches of records of the county as defined in ORS 312.125(7).”
6. Replace “searches of land” in Section 2(1)(c) with “searches of records of the county”.
7. Amend Section 2(b)(H) by revising “owner’s right to claim a surplus” to “owner or other person’s right to claim a surplus”
8. Additionally, DOJ has some technical suggestions that may improve the process in sections 8 and 9:

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- a) The bills allow lienholders and creditors to assert claims to Oregon State Treasurer (OST) but it does not specify how OST is supposed to determine if they are valid. One way to address this is to amend Section 9 to require the county to provide OST with a list of all known possible claimants and lienholders, copies of the notices sent out by the county and the title report that the county obtained when commencing the foreclosure.
- b) The bills do not specify what happens if OST receives competing claims that exceed the surplus proceeds.
- c) The bills do not specify what happens if OST receives a garnishment and other claims to the same funds. Normally, the garnishment must be honored first.
- d) A timeline on the disbursement of funds may help eliminate a race to submit claims to OST. As currently drafted, sophisticated claimants quickly submitting claims before unsophisticated claimants could cause an unfair distribution.

Thank you for considering these changes. We believe they will provide clarity to the process and help it to be more efficient.