

**IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF BAKER**

In the Matter of Adopting a Policy for
Disposition of Tax Foreclosed Real Property

ORDER No. 2024-112

WHEREAS, on May 25, 2023, the Supreme Court of the United States delivered an opinion in which they determined that any proceeds from a tax foreclosed property sale that exceeds the tax debt is protected by the Fifth Amendment's Takings Clause (see *Tyler v. Hennepin County*, 598 U.S. 631 (2023)); and

WHEREAS, the Policy for Disposition of Tax Foreclosed Real Property provided in Exhibit A includes provisions and procedures that satisfy the decision in *Tyler v. Hennepin County*; and

WHEREAS, it is in the County's best interest to adopt the policy as provided in Exhibit A until such time as the Oregon legislature passes legislation that addresses the *Tyler v. Hennepin County* decision; and now, therefore

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

1. The Baker County Policy for Disposition of Tax Foreclosed Real Property is hereby adopted as provided in Exhibit A, attached hereto and incorporated herein.
2. The policy provisions shall take effect immediately.
3. County staff tasked with the proper administration of sale of foreclosed property to take all actions necessary to implement the policy.

DONE and Dated on this 7th day of February, 2024.

BAKER COUNTY BOARD OF COMMISSIONERS



Shane Alderson, Chair



Christina Witham, Commissioner



Bruce Nichols, Commissioner



BAKER COUNTY ADMINISTRATIVE POLICY

POLICY NAME	DISPOSITION OF TAX FORECLOSED REAL PROPERTY
POLICY NUMBER	TBD
EFFECTIVE DATE	2/7/2024

A. Purpose. To establish County policy and procedures regarding the County’s disposition of tax foreclosed real property, that are consistent with state and federal law.

B. Definitions

1. “Acquisition Date” means the date on which a Tax Foreclosed Real Property (TFRP) is deeded to the County following foreclosure proceedings.
2. “Board” means the Baker County Board of Commissioners.
3. “Claim Period” means the period from the Acquisition Date to one (1) year after the Sale Date, except as provided in sections C.2. and C.3., below.
4. “County” means Baker County, Oregon.
5. “Heir(s)” means a person, persons or entity who succeeds to the rights and occupies the place of, or who is entitled to succeed to the state of a decedent, whether by act of the decedent or by operation of law.
6. “Prior Owner” means the Record Owner, or their heirs, assigns, or successors as demonstrated through court order and/or other legal document(s).
7. “Property Costs” means any/all taxes, interest, penalties, fees; a 10% of sale price property management fee; other actual property maintenance and supervision expenses incurred by County, pursuant to ORS 275.275(1)(a)-(c); any municipal corporation local improvement lien, plus interest and penalties as of the Sale Date, pursuant to ORS 275.275(3)(a)(A); and any administrative fees paid by purchaser pursuant to a land sale contract.
8. “Real Market Value” (“RMV”) means the property value established by the tax assessor for either the year in which the TFRP was acquired, or the year of the Sale Date, whichever is lower.
9. “Record Owner” means the individual(s) and/or entity(ies) identified as the owner in tax records at the time of foreclosure.
10. “Sale Date” means the earlier of the date on which title to property is conveyed from County to a purchaser or the date on which a memorandum of land sale contract is recorded. Sale Date shall also include the date on which the County issues a Board Order retaining the property for public use.

11. “Successor(s)” means a person or entity that acquires the assets and liability of a business entity by merger, takeover or dissolution.
12. “Tax Foreclosed Real Property” (“TFRP”) means real property acquired by County as a result of tax foreclosure following expiration of the period of redemption.

C. Eligible Property.

1. This policy shall apply to all TFRP acquired on or after the date the policy is enacted.
2. For TFRP acquired on or after May 25, 2017, and sold on or after the date the policy is enacted, the claim period shall be one (1) year from the Sale Date.
3. For TFRP acquired on or after May 25, 2017, and sold prior to the date the policy is enacted, the claim period shall be one (1) year from the date the policy is enacted.
4. TFRP acquired by County prior to May 25, 2017, shall be excluded from this policy.

D. Process for Selling or Retaining Tax Foreclosed Real Property

1. Within sixty (60) days of Acquisition Date, County shall extend an offer to sell the TFRP to the Record Owner, pursuant to ORS 275.180. Record Owner shall have thirty (30) days to enter into an agreement with County to purchase the property.
2. If no agreement is reached with Record Owner, within one (1) year of the Acquisition Date Board shall issue an Order determining whether to retain or sell the TFRP. If applicable, Board may determine whether to designate the property to Parks, or for another use.
3. TFRP to be sold shall be placed on a Sheriff’s Sale, except those with a real market value less than \$15,000 and unsuited for development pursuant to ORS 275.225(1).
 - i. The minimum bid shall be set at not less than the total Property Costs at the time of the sale, plus 15%, unless the Board determines it is in the best interest of the County to set a lower minimum bid.
4. TFRP not sold at auction or otherwise exempt from the auction requirement shall be available for private sale, placed on a Sheriff’s Sale, and/or retained by County at the Board’s discretion.
 - i. The sale price shall be not less than the total Property Costs at the time of the sale, unless the Board determines it is in the best interest of the County to set a lower minimum price. In no circumstances will the property be sold at a price less than 15% of the minimum bid set as described in Section C. (3), above. ORS 275.200
5. The Board Order authorizing sale of TFRP shall distribute amounts for any known Property Costs at the time of sale to the appropriate account(s). Any remaining proceeds shall be placed in a designated fund for further distribution pursuant to this policy.

E. Notice of Right to Claim Proceeds from Sale of TFRP

1. For all property acquired after the date of adoption of this policy, general notice of the right to submit a claim for proceeds from Sale of TFRP shall be provided as follows:
 - i. As part of any notice to any person or entity entitled to redeem the property pursuant to ORS 312.125.
 - ii. As part of the general notice of expiration of redemption period pursuant to ORS 312.190.
 - iii. Included in the Sheriff's notice of sale pursuant to ORS 275.120.

F. Distribution of Proceeds from Sale of TFRP

1. Proceeds from the sale of TFRP shall be distributed in the following order:
 - i. To County in the amount of Property Costs.
 - ii. To Prior Owner(s) who have submitted to the Board Office a completed claim form (Appendix A) and W-9 within the Claim Period.
 - (1) Surplus Proceeds paid to Prior Owner shall not exceed the lower of:
 - a. The sale price less any Property Costs; or
 - b. The RMV of the property less any Property Costs.
 - (2) The burden of demonstrating entitlement to surplus proceeds shall be on the Prior Owner. Where it is not clear to County that the claimant meets the definition of the Prior Owner and is entitled to receive surplus proceeds, a court order as to the status of the claimant shall be required to demonstrate entitlement.
 - (3) Where there is more than one Prior Owner, any individual Prior Owner may submit a claim form on behalf of all Prior Owners if such claim identifies all other Prior Owners entitled to claim surplus proceeds, includes proof of notice to all other Prior Owners, and includes either their approval of or court order as to distribution apportionment.
 - (4) Upon distribution of proceeds to one or more Prior Owners any future claim for proceeds shall be barred.
 - (5) Prior Owners who purchased the property from County shall not be entitled to surplus proceeds.
 - (6) Claim forms shall be retained for seven (7) years from the date of receipt.
 - iii. Any remaining proceeds shall be distributed pursuant to ORS 275.275(3)(a)(B), or to Parks, if so designated.
2. Proceeds received pursuant to a land sale contract shall be applied in the order described in Section F.1., except that any amounts paid to Prior Owner(s) or

taxing districts pursuant to Section F.1. shall be distributed annually less any additional Property Costs incurred since the last distribution.

3. In the event a cash sale or land sale contract is not completed and title is not conveyed to the purchaser, any proceeds received shall be applied in the order described in Section F.1. Any additional proceeds received from a subsequent sale shall be distributed in the same manner.
4. Upon expiration of the Claim Period any remaining proceeds from the sale of TFRP shall be distributed pursuant to this policy.

G. Payment on Claims for Retained TFRP

1. Where TFRP is retained by County pursuant to Board Order, the County shall place funds in the designated fund equal to the RMV less any Property Costs. If a claim is submitted within the Claim Period the funds shall be distributed pursuant to Section E.1. (ii), above. If there is no claim submitted in the Claim Period, the funds shall be returned to the County fund from which they were provided.

APPENDIX A
Request for Surplus Proceeds - Instructions

If you believe you are entitled to surplus proceeds as a result of a tax foreclosure sale, complete this form and mail or otherwise deliver it, along with the required attachments and documentation outlined below, to the following address:

Board of County Commissioners
1995 3rd St
Baker City, OR 97814

Surplus Proceeds shall only be distributed to the Prior Owner of the property. “**Prior Owner**” means the Record Owner, or their heirs, assigns, or successors as demonstrated through court order and/or other legal document(s). “Record Owner” means the individual(s) and/or entity(ies) identified as the owner in tax records at the time of foreclosure. The burden of demonstrating entitlement to surplus proceeds is on the Prior Owner.

Where there is more than one Prior Owner, any single Prior Owner may submit a single claim form on behalf of all Prior Owners, if such claim identifies all other Prior Owners, includes proof of notice to all other Prior Owners, and includes either their approval of or court order as to distribution apportionment. For each additional Prior Owner an Additional Prior Owner Attachment must be included along with documentation of their entitlement to claim surplus proceeds.

A Prior Owner submitting this request must:

1. Attach a copy of the property deed or other record showing prior ownership. Only one copy is required if Prior Owner consists of multiple parties.
2. Attach a copy of the front and back of current photo identification (e.g., driver’s license). Provide proof of current mailing address if different from current photo identification.
3. If applicable, attach a copy of any court order or legal document establishing Prior Owner status for all Prior Owners.
4. If you are claiming surplus proceeds on behalf of another person, please provide documentation of legal authority to do so, such as a power of attorney, conservator, guardian, etc.
5. If you are claiming property as an heir to a deceased person, provide documentation such as a death certificate or obituary. If the probate is open, include original court-certified copies of Letters of Administration or Affidavit Claiming Successor. If the probate is closed, include an original court certified copy of the Final Decree of Distribution listing the heirs.
6. Sign the completed form in the presence of a notary public.

Incomplete requests will be administratively closed after the Claim Period has expired.



REQUEST FOR SURPLUS PROCEEDS

SECTION 1. PROPERTY INFORMATION

PROPERTY ID: _____

MAP/TAX LOT: _____

PROPERTY ADDRESS _____

PRIOR OWNER (IDENTIFY ALL PARTIES) _____

SECTION 2. PRIOR OWNER INFORMATION

SELECT ONE OF THE FOLLOWING AND COMPLETE THE SECTION.

_____ MORE THAN ONE PRIOR OWNER—COMPLETE THE SECTION BELOW AND THE
ADDITIONAL PRIOR OWNER ATTACHMENT(S)

_____ I AM THE ONLY PRIOR OWNER—SEE BELOW

FULL LEGAL NAME: _____

DATE OF BIRTH: _____

MAILING ADDRESS: _____

PHONE NUMBER: _____

EMAIL ADDRESS: _____

SELECT ONE OF THE FOLLOWING:

_____ RECORD OWNER

_____ HEIR, ASSIGN, OR SUCCESSOR
(DOCUMENTATION ATTACHED)

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

NOTARY PUBLIC

My Commission Expires: _____



ADDITIONAL PRIOR OWNER ATTACHMENT(S)

INSTRUCTIONS: COMPLETE THIS PAGE FOR EACH ADDITIONAL PRIOR OWNER

FULL LEGAL NAME:

DATE OF BIRTH:

MAILING ADDRESS:

PHONE NUMBER:

EMAIL ADDRESS:

STATUS (SELECT ONE):		RECORD OWNER	
		HEIR, ASSIGN, OR SUCCESSOR (DOCUMENTATION ATTACHED)	
NOTICE OF CLAIM FOR SURPLUS PROCEEDS WAS PROVIDED TO THIS PRIOR OWNER (ATTACH PROOF OF NOTICE)		YES	NO
DATE PROVIDED:			
BY (PERSON/ENTITY PROVIDING NOTICE):			
METHOD OF NOTICE:			

DISTRIBUTION OF SURPLUS PROCEEDS

A COURT ORDER REGARDING ALLOCATION OF SURPLUS PROCEEDS IS ATTACHED

**THE PRIOR OWNER IDENTIFIED ABOVE AGREES TO RECEIVE THE FOLLOWING
ALLOCATION OF PROCEEDS (IDENTIFIED PRIOR OWNER MUST SIGN BELOW IN THE
PRESENCE OF A NOTARY):**

