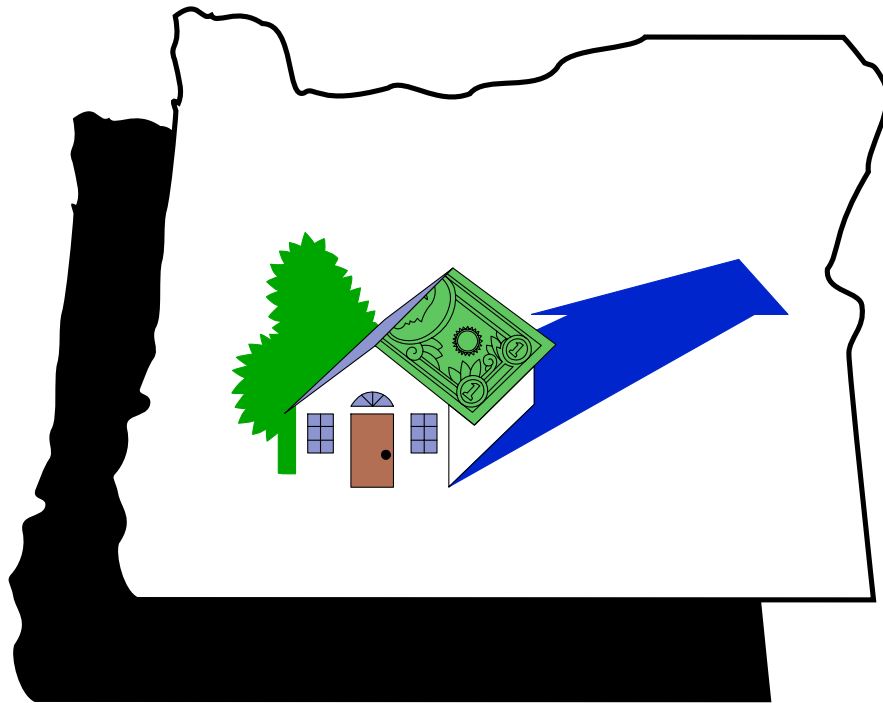


Oregon Department of Revenue

Real Property Foreclosure Guidelines

2000



Real Property Foreclosure Guidelines

Finance and Taxation Unit
Property Tax Division
Oregon Department of Revenue
Salem, Oregon

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Introduction

Foreclosure is the legal process used by counties to enforce payment of real property taxes. In Oregon the foreclosure of real property tax liens is part of a process that begins with the identification of taxable property, the assessing of taxes on that property, and the mailing of tax statements. The process continues with the issuing of notices of unpaid delinquent taxes and ends with the county acquiring the deed to the property more than six years later.

Property taxes are due November 15 of every year and are payable in trimesters. Taxes on real property not paid on or before May 15 are deemed delinquent. The tax collector is required to send a notice of delinquent taxes if there is a balance outstanding on the account after the third trimester due date of May 15 (ORS 311.505).

The property becomes subject to foreclosure when three years have elapsed from the earliest date of delinquency. Persons with an interest in the property subject to foreclosure receive a variety of notices during the next several years including certified letters and notice by publication of the foreclosure list in a local newspaper.

At the end of the foreclosure process the property on which the delinquent taxes are owed is deeded to the county. The county may sell the property to pay for the taxes, interest, fees, and charges owed to the county.

The foreclosure process must meet the legal requirements of the due process provision in the 14th Amendment to the United States Constitution because of the potential loss of property. The process is a legal action against the property with the county as plaintiff.

Tax collectors work in conjunction with the county district attorney or legal counsel throughout the foreclosure process. Because legal documents are generated and filed with circuit court, cooperation and coordination between the tax collector and county counsel are very important.

This manual is written as a guideline for county tax collectors and their staffs. It is designed to give collectors an overview of their responsibilities in the foreclosure process and to provide information on those responsibilities for the county counsel.

Chapter 1:

Delinquent Taxes

Tax statements are mailed on or before October 25 to each person shown on the tax roll as an owner of real property. Included on the tax statement is a warning of when foreclosure proceedings will begin. The statement also shows any unpaid balances due for specified tax years (ORS 311.250 and OAR 150-311.250).

Taxes on real property become delinquent May 16 in the tax year they are due (ORS 311.510). Taxes added or increased because of an error, an omission, or because of the addition of omitted property value become delinquent as of the date other taxes for the year in which additional taxes are billed become delinquent (ORS 311.206, 311.229).

The county tax collector is responsible for sending delinquent notices after May 15 of the tax year. The notice is sent to the person, firm, or corporation shown on the tax roll as owning the real property on which taxes have not been paid.

Procedures for notifying the taxpayer of taxes due and delinquent taxes are considered part of the foreclosure process even though property is not subject to foreclosure until three years after the property taxes have become delinquent. Appropriate notification affects the legality of the foreclosure proceedings.

This was confirmed by the Oregon Supreme Court in *Grant County vs. Guyer*, 296 Or 14 22 (1983) when it noted:

To accomplish this objective [collecting taxes due] the laws of this state contain an elaborate statutory scheme designed to ensure efficiency and fairness to carrying out that objective. They provide numerous notices by mail to the taxpayer of the assessment of taxes, delinquencies, notices of possible foreclosure and notice of pending redemption expiration and procedures to accomplish a redemption.

Three years after the date of delinquency, the property is subject to foreclosure. Thus, property on which the taxes became delinquent on May 16, 2000 (1999–2000 tax year), would be subject to foreclosure on May 16, 2003 (ORS 312.010).

Non-Ad Valorem Taxes

Fees and charges not traditionally thought of as property taxes may meet the statutory definition of tax on property. Tax on property is defined as any tax, fee, charge, or assessment imposed by any government unit upon property or upon a property owner as a direct consequence of ownership of that property (ORS 310.140).

ORS 312.010 (2) provides that:

All special assessments, fees or other charges charged against the property subject to foreclosure which are due and unpaid . . . and for which there is no other provision of law for their payment out of the foreclosure proceeding shall be listed with the delinquent ad valorem taxes in the foreclosure proceedings and foreclosed and collected in the same manner as the delinquent ad valorem taxes.

Special assessments, fees, or charges that have been placed on the tax roll and remain unpaid for three years are included in the next foreclosure proceeding and foreclosed and collected as part of that proceeding (Attorney General letter of advice, November 9, 1965).

Date of Delinquency—ORS 311.510

Taxes not paid on real property by May 15 of the tax year are delinquent.

The period beginning May 16 gives the tax collector an opportunity to contact delinquent taxpayers and to secure the payment of the taxes. This time period can be used effectively to minimize the number of properties that will become subject to foreclosure.

The Delinquency Notice—ORS 311.545

Written delinquency notices are sent out as soon as practical after the date of delinquency. The notice must state:

- A brief description of each parcel of real property.
- The total amount of taxes due and delinquent on the real property.
- The rate of interest and applicable penalties.
- The date on or after which foreclosure proceedings may be started.

The notice should be mailed to the last known address of the person, firm, or corporation shown on the tax roll or to the address as otherwise reported to the tax collector.

Document 1: Example of Delinquency Notice (page 5)

Document 2: Example of Optional Letter to Taxpayer (page 6)

**Designation of Newspaper—
ORS 312.040**

The county governing board selects a newspaper for the publication of the legal notices in the foreclosure process, the first of which is the foreclosure list. This designation may be included within a general

order by the county governing body or it may be a separate order.

Statutes covering legal notices are in ORS Chapter 193. This chapter includes the definition of newspaper [ORS 193.010(2)] and rates of compensation for publication (ORS 193.090).

(DOCUMENT 1: DELINQUENCY NOTICE)

NOTICE OF DELINQUENT REAL PROPERTY TAXES May 16, 2000
 Sample COUNTY, OREGON
 (Oregon Revised Statutes 311.545)

PLEASE RETURN THIS NOTICE AND TAX STATEMENT, IF AVAILABLE, WITH PAYMENT, TO:
Sample County Tax Collector, Courthouse, Sample City, Oregon

I. M. Taxpayer
567 Any Street
Sample City, OR 97000

Property Description
15 4W 16 AA 11500
Smith's 2nd Add.
L10, 11 BL 9

Years	Tax	Interest thru 6/15	Total Due
1999-2000	160.35	8.55	168.90
1998-99	186.60	39.81	226.41
1997-98	180.26	67.30	247.56
1996-97	170.00	90.67	260.67
	Total Amount Due		903.54

Interest accrues at 1 $\frac{1}{3}$ % per month. Foreclosure proceedings will begin after July 15, 2000, on real property with unpaid taxes for the year 1996-97.

NAME OF OWNER AND AUTHORIZED AGENT,
IF ANY:

NOTICE
REAL PROPERTY is subject to foreclosure for delinquent taxes whenever three years have elapsed from the earliest date of delinquency (ORS 312.010). The taxes on MANUFACTURED STRUCTURES assessed as REAL PROPERTY are subject to both real and personal property collection laws (ORS 311.512).

NOTE:

DOCUMENT ORIGINATED BY: Tax office
DOCUMENT SENT TO: Owner of record or designated agent
APPROXIMATE DATE: May 16
AUTHORITY: ORS 311.545

(DOCUMENT 2: OPTIONAL LETTER TO TAXPAYER)

TAX COLLECTOR

Sample County
Sample City, Oregon

I. M. Taxpayer
567 Any Street
Sample City, OR

June 5, 2000

Our records show no response to the final delinquency notice sent to you for your real property tax now three years delinquent.

This real property in your name is now subject to foreclosure.

Unless payment is made, the below-described property will be foreclosed as required by law (ORS 312.010).

This urgent matter compels us to urge you to contact or call this office (telephone 555-7829).

Tax collector

Owner's name and property description I. M. Taxpayer — owner

Property Description — 15 4W 16 AA 11500

Smith's 2nd Add

L 10, 11 BL 9

NOTE:

DOCUMENT ORIGINATED BY: Tax office
DOCUMENT SENT TO: Owner of record
APPROXIMATE DATE: Early June
AUTHORITY: Optional office practice

Chapter 2:

Foreclosure

Property subject to foreclosure is property with unpaid taxes for which three years have elapsed since the earliest date of delinquency (ORS 312.010 (1)).

Foreclosure List—ORS 312.030

The document that identifies all property subject to foreclosure is the foreclosure list. The foreclosure list is to be prepared by the tax collector within two months after the earliest date of delinquency. This means the list is generated on or before July 16.

If the foreclosure list can not be prepared by July 16, it should be completed as soon as possible after that date.

The annual foreclosure list must contain all real property that is subject to foreclosure. It lists:

- The names of the person(s) appearing in the latest tax roll as owner(s) of tax-delinquent properties.
- A description of each such property as it appears in the latest tax roll.
- The year or years for which taxes are delinquent on each property.
- The principal amount of delinquent taxes for each year and the amount of accrued interest to the day of publication. Normally, the publication date is August 16.

The principal amount of delinquent taxes of each year includes any special assessments, fees, and charges defined as tax on property and charged against the property subject to foreclosure [ORS 312.010 (2)].

Document 3: Example of the Foreclosure List (page 12)

District Attorney Action—ORS 312.050

The district attorney, or county legal counsel, becomes involved when the tax collector begins proceedings to foreclose the delinquent tax liens. The county's legal counsel prepares and files the legal documents. These include the application for judgment and decree, amendments to the judgment and decree, and the deed.

Application for the judgment and decree foreclosing the tax liens is a civil action and is filed along with a certified copy of the foreclosure list with the clerk of the court.

Flaws in the Foreclosure List— ORS 312.060

The content and accuracy of the foreclosure list is important. Flaws in the foreclosure list could cause specific properties to be removed from the list.

There are certain inaccuracies that won't invalidate the procedures. These are errors resulting from an irregularity in an assessment roll; an assessment roll not having been made, completed or returned within the time prescribed by law; or the property having been listed or changed in an assessment or tax roll without any name, or with a name other than that of the owner (ORS 312.060(2)).

Hood River County vs. Dabney, 246 Or 14 (1967), sets forth the present judicial standard for reviewing the property descriptions and lists. In this case, the Supreme Court indicated two circumstances in which it would deem a review of the foreclosure to be within its jurisdiction.

The first circumstance is if the proceedings deprived the taxpayer's constitutional right to due process of law. The second is if the procedures were followed incorrectly, resulting in a substantial denial of the taxpayer's rights.

Only limited latitude is allowed for error because the 14th Amendment to the United States Constitution prohibits states from depriving an individual of property without due process.

Even with the *Dabney* ruling, the attorney general's office opined in a letter of advice dated July 24, 1969, that:

Even though it is possible that the tax foreclosure using the erroneous property description was valid under the rule enacted in *Hood River vs. Dabney*, 246 Or 14, the safest course of action would be to reforeclose the property as though it had never been listed on a prior foreclosure list.

Another Attorney General letter of advice dated December 4, 1970, states that:

The standards for sufficiency of description are set by ORS 308.240... [providing] that if a property description is good enough for assessment purposes under 308.240, it is good enough for foreclosure purposes.

An inaccurate description or the omission of property on the foreclosure list means foreclosure may only proceed on those properties that are accurately described or included on the list, unless correction is al-

lowed by the court. Errors that affect one property will not impact other properties on the foreclosure list. The county should continue the process against the properties that are error-free.

The tax collector should advise county legal counsel of any potential inaccuracies. Legal counsel can determine if the problem property should be included on the foreclosure list.

If there is any doubt about the accuracy of the list, the county should consider making an accurate foreclosure in the following year.

Instituting Foreclosure Proceedings— ORS 312.050

Foreclosure proceedings are instituted three months after three years of delinquency. The proceedings cover all properties included in the foreclosure list. The person whose name appears in the latest tax roll is considered as the owner of the property. Each proceeding is against the property itself. The proceeding can be against property belonging to an unknown owner.

The statutory timeline to begin foreclosure proceedings is August 16. Delay of the proceedings will not invalidate the process but it should occur as soon as is reasonably possible [*Frederick v. Douglas County*, 176 Or 54 (1945)].

Notification—ORS 312.040

The notification process has expanded as the result of several court cases. It now includes telling those mortgagees and lienholders whose interest is discernable from county records.

The county must provide mortgagees notice before divesting them of their interest in a property. Requiring the mortgagee to request notice does not cancel the need for notification (*Mennonite Board of Missions v. Adams*, 462 US 791, (1983)).

Notification must be given to a mortgagee so the mortgagee is not deprived of due process guaranteed by the 14th Amendment to the United States Constitution [*Seattle-First National Bank v. Umatilla County*, 77 Or App 283, (1986)].

Publication was held to be constitutionally sufficient notice to an owner of property in the foreclosure process because “it is supplemental to other statutorily mandated notices given by mail . . .” in *Grant County v. Guyer*, 296 Or 14 (1983).

METHODS OF NOTIFICATION

There are two methods of notification of the foreclosure proceedings. Notice may be given by regular first

class mail and by certified mail along with publication of the foreclosure list. Another method of notification is by personal service.

The notices must identify the particular property that is subject to foreclosure.

METHOD 1

Publication and notice by mail (ORS 312.040). Notice is given by one publication and by both regular first class and certified mail.

Regular first class mail. The notice of intent to foreclose is sent by regular first class mail to the owner(s) as shown in the county deed records at the address or addresses listed in the county records referenced in the following statutes:

- ORS 93.260 requires the following wording “Until a change is requested, all tax statements shall be sent to the following address:” on instruments of conveyance.
- ORS 311.555 requires that property owners furnish addresses to keep the tax collector informed of address changes.
- ORS 311.560 requires that the tax collector keep track of the address furnished as a result of ORS 311.555 above.

This notification is mailed after the preparation of the foreclosure list but not later than the date of application for judgment and decree, that is, usually between July 16 and August 15.

Document 4a: Example of the Notice of Foreclosure—Regular Mail (page 13)

Certified mail. This notice includes the same information and is sent by certified mail to the same people at the same addresses as the regular first class mail notification.

This notification is mailed no later than the date of application for judgement and decree, that is, usually August 15.

Document 4b: Example of the Notice of Foreclosure—Certified Mail (page 14)

Notices should be mailed in time to allow the taxpayer to pay before publication and application for judgment and decree. The tax collector may send the first class mail notice before sending the certified mail notice as long as both are sent before the publication date (Attorney General letter of advice, October 10, 1985).

The mailings are deemed notice of the foreclosure proceedings. The Attorney General has said that if the certified mail notice is returned to the tax office as refused by addressee, the notice has been made. If the notice is returned as having the wrong address and the

address is the one shown in appropriate tax records, the notice is considered to have been made.

The general rule is that where service of notice by certified or registered mail is expressly authorized by statute, service is complete when the notice is properly stamped, addressed, registered and mailed even though it may be unclaimed or refused by the addressee (Attorney General letter of advice, June 11, 1987).

METHOD 2

Personal Service. Notification of the foreclosure proceedings may be made by personal service instead of the two mailed notices and the publication of the foreclosure list. The names of those persons receiving personal notification and descriptions of their properties do not have to be included in the publication. They are, however, included in the application for judgment and decree.

Document 4c: Example of the Notice of Foreclosure—Personal Service (page 15)

Notification of Lienholders—ORS 312.140

A mortgagee or other lienholder of record may file a request with the tax collector to be notified when foreclosure is initiated. This request may be in the form of an informal letter from the lienholder. Information in the request should include the name and address of the lienholder, name of the record owner, property description, and the date of expiration of the mortgage or lien. If the request is in duplicate, the tax collector signs both copies and returns one to the requestor.

Ideally the lienholder request is made prior to the development of the foreclosure list July 16. There is, however, no statutory due date requirement. Because the lienholder of record at the time of judgment and decree has certain rights, the request is valid even after judgment and decree is granted.

Whenever any property described on the lienholder's request for notice is included in the foreclosure list, the tax collector must notify the mortgagee or other lienholder by registered mail or by certified mail with return receipt.

Upon mailing this notice, the tax collector must note the mailing date in ink on the latest tax roll opposite the description of the property. The notation in the tax roll is *prima facie* evidence that the notice was mailed. If ink notation of the roll cannot be done, the tax collector may add the lienholder and mailing information utilizing the voucher procedure provided by ORS 311.150. When the same mortgagee or lienholder has filed requests for notices on two or more properties,

one general notice may be issued covering all such properties.

If a tax collector fails to notify a mortgagee or lienholder upon request, the failure will not invalidate the foreclosure. However, if the notice was not given, the mortgagee or lienholder's right to redeem the property shall not terminate until the expiration of 30 days after the mailing of such notice to the mortgagee or lienholder (ORS 312.150).

Removal from Foreclosure Proceedings—ORS 312.110

Any parcel of real property may be removed from the foreclosure proceeding prior to publication by payment of the amounts that would have kept the property off the foreclosure list, plus any additional interest and penalties.

Before publication, the owner, or any mortgagee or lienholder of record, may remove the property from the foreclosure list by paying the delinquent taxes, penalty, and interest for the year(s) that caused the foreclosure.

Because ORS 311.260 requires collection and payment of taxes in "lawful money," the tax collector may specify that payment to remove property from the foreclosure proceeding be made in cash, or by cashier's check or certified check. This specification should be stated in all correspondence and notices to taxpayers.

Payment of the amounts that would have kept the property off the foreclosure list allows the tax collector to delete the information about that property from the foreclosure list.

The List Goes to the District Attorney—ORS 312.050

The tax collector gives the complete updated foreclosure list to the district attorney August 16, the date three months after the delinquency date of the latest year. This list becomes the basis for the judgment and decree application, a legal document used in the lawsuit. The county is the plaintiff in the lawsuit. Because the collector is not licensed to practice law, the county is represented by the district attorney (Attorney General letter of advice, February 26, 1969).

The Department of Revenue has general supervision over county foreclosure proceedings and it can compel foreclosure whenever a district attorney fails to institute or complete proceedings by calling on the Attorney General to do so (Attorney General letter of advice, September 3, 1985). Cost of such action is borne by the county (ORS 312.020).

Name changes or value changes cannot be made on any account listed on the foreclosure list after it is forwarded to the district attorney and publication occurs.

Publication of the List—ORS 312.040

Notification of the foreclosure proceeding is given through the publication of the foreclosure list in a newspaper of general circulation in the county. The notice is published only once.

The publication occurs no less than three months after the May 16 date of delinquency. The earliest date of publication then would be August 16.

Properties for which payment has been received prior to the publication are removed from the list before the list is sent to the district attorney. Those properties with taxes unpaid at the time the list is sent to the district attorney will be published.

The published foreclosure list reflects interest calculated as of the date of the publication. A five (5) percent penalty of the total tax and interest owed accrues as of publication [ORS 312.120(2)].

Document 5: Example of the Published Foreclosure List (page 16)

Notice to Municipalities—ORS 312.040

A copy of the newspaper notice is mailed by the tax collector to each incorporated city in the county. This notice gives the municipality an opportunity to exercise its right to pay the delinquent taxes and remove the property from the foreclosure proceeding (ORS 312.170).

Document 6: Example of Notice to Municipalities (page 18)

Application for Judgement and Decree—ORS 312.060

The application to the circuit court for judgment and decree must be in writing, verified, and contain a succinct statement of the cause of the suit. Any amendments may be made which are permissible in a civil action.

The application for judgment and decree and a certified copy of the foreclosure list, provided by the tax collector, must be filed with the clerk of the court on the day of the publication of the foreclosure list. If notice is by personal service instead of publication, the service may be made on the day of publication of the foreclosure list.

Accompanying the application for judgment and decree and updated foreclosure list is an affidavit from the tax collector attesting to the accuracy of the foreclosure list.

The simultaneous actions of filing the application for judgment and decree with the clerk of the court and publishing the foreclosure list activates the foreclosure proceedings.

The updated foreclosure list, the application for judgment and decree and the affidavit from the tax collector are filed with the clerk of the court on the date of publication of the foreclosure list. After the filing of the three documents, all changes to the list are authorized only by the circuit court.

Removal after Publication—ORS 312.110

Throughout the foreclosure process, and until the county receives the deed to the property, the property can be removed from the process by the owner of record or other lienholders or persons having specific interest in the property. The payment necessary to accomplish this depends on when the action occurs.

Upon application for judgment and decree and publication of the foreclosure list, the county adds a penalty to the cost of removing a parcel of real property from the foreclosure proceeding. The penalty is five (5) percent of the total amount of taxes and interest owed on the property. The 5 percent penalty is charged at the time the foreclosure list is submitted to the designated newspaper (OAR 150-312.110). This penalty is credited to the county's general fund as part reimbursement for costs.

An owner of record or other person with a legal interest must pay the delinquent property taxes and accrued interest for the year(s) causing the foreclosure plus the five percent penalty once publication of the list and application for judgment and decree occurs. Such payment will cause the property to be removed from the foreclosure list. This is accomplished through the tax collector's requesting county counsel for a court order modifying the judgment.

A mortgagee or other lienholder of record who pays to remove the property from the foreclosure list receives an additional lien against the property (ORS 312.160). A municipal corporation that pays the application amount on property on which it claims a lien may add that amount to its lien (ORS 312.170).

Answer and Defense—ORS 312.070

Within 30 days of the publication, any person interested in real property included on the foreclosure list may object to the inclusion of the property in the foreclosure notice. The person files an "answer and defense," a written letter specifying the particular objections. The answer and defense, which can be in the

form of an informal notarized letter specifying the cause of objection, is filed with the circuit court.

If notice is by personal service in lieu of publication, the answer and defense must be filed within 30 days from the date of service. If the Oregon Department of Revenue has a lien on the property, the department has 60 days in which to answer (ORS 305.130).

The circuit court must examine the application for judgment and decree. If an answer and defense objection is filed by a taxpayer or any other interested party,

the matter shall be heard in a summary manner without other pleading (ORS 312.080).

Soldiers and Sailors Civil Relief Act

The application for judgment and decree triggers the Soldiers and Sailors Civil Relief Act of 1940. This act provides procedures that regulate legal action against armed forces personnel. It attempts to prevent judgments being rendered against them when military duties might keep them from appearing to defend themselves.

(DOCUMENT 3: FORECLOSURE LIST)

2000 FORECLOSURE LIST ISSUED BY Sample COUNTY, STATE OF OREGON

List no./ acct. no.	Name/address of owner/ agent, if any, as shown on latest tax roll	-----Description of property-----			Tax	Tax	Int. to	Total
		Assessor's tax lot no.	Code	Acres	year	amount	8/15/00	
6386	Taxpayer, I. M.	15 4W 16 A A 11500	42-01	.00	1999-2000	160.35	12.83	173.18
	567 Any Street	Smith's 2nd Add.			1998-99	186.60	44.78	231.38
327904	Sample City, OR 97000	L 10, 11 BL 9			1997-98	180.26	72.10	252.36
					1996-97	170.00	95.20	265.20
					Total amount due			922.12
6387	Green, Linda and John	12 2W 34 229	89-01	4.70	1999-2000	97.71	7.82	105.53
	c/o Brown, Lois	MF4-5 88, MF4-5 90C			1998-99	55.37	13.29	68.66
337911	501 G St. John Rd.				1997-98	61.64	24.66	86.30
	Sample City, OR 97000				1996-97	60.00	33.60	93.60
					Total amount due			354.09
6388	Brown, Bill A.	9 1E 25 1103	29-02	29.90	1999-2000	182.64	14.61	197.25
	c/o Richards, Jon	Deed			1998-99	105.00	25.20	130.20
337994	Richard, Trish				1997-98	98.02	39.21	137.23
	PO Box 649	337-693, MF4-72BC			1996-97	104.24	58.37	162.61
	Able, OR 97002				Total amount due			627.29
6389	Blue, Tobias	10 3W 22 A A 404	136-03	.00	1999-2000	54.57	4.37	58.94
	Rt. 2 Box 271	Ammon AC Sub L 3 BL 2			1998-99	55.37	13.29	68.66
350989	Charley, OR 97001				1997-98	37.57	15.03	52.60
					1996-97	25.92	14.52	40.44
					Total amount due			220.64

NOTE:

DOCUMENT ORIGINATED BY: Tax office

DOCUMENT SENT TO: Used as basis for Application for Judgment and Decree and for
Published Foreclosure Notice (Document 5)

APPROXIMATE DATE: July 16

AUTHORITY: ORS 312.030

(DOCUMENT 4a: NOTICE OF FORECLOSURE — REGULAR MAIL)

SAMPLE COUNTY FORECLOSURE NOTICE

July 17, 2000

REAL PROPERTY

MAKE PAYMENT TO: Sample County
Tax Collector
Box 7829
Sample City, OR 97000

Account No. 327904
Property Description
15 4W 16AA 11500
Smith's 2nd Add.
L10, 11 BL 9

		Tax Amount	Interest	Total thru 8/15/00
Taxpayer, I. M.	1999-2000	160.35	12.83	173.18
567 Any Street	1998-99	186.60	44.78	231.38
Sample City, OR 97000	1997-98	180.26	72.10	252.36
	1996-97	170.00	95.20	<u>265.20</u>

Total amount due by 8/15/00: 922.12

The 1996-97 and prior tax and interest must be paid in full by 08/15/2000 to remove the property from the foreclosure process. If this payment is made by 08/10/2000 the account will not appear in the newspaper publication of the foreclosure list. This would avoid the 5% penalty assessment.

The payment must be made in the form of a cashier's check, money order, or cash. Personal checks will not be accepted. Please do not send cash through the mail.

Please return this statement with your payment.

NOTE:

DOCUMENT ORIGINATED BY: Tax office

DOCUMENT SENT TO: Owner(s) of record or designated agent

APPROXIMATE DATE: No sooner than July 16

AUTHORITY: ORS 312.040

(DOCUMENT 4b: NOTICE OF FORECLOSURE — CERTIFIED MAIL)

SAMPLE COUNTY FORECLOSURE NOTICE

August 2, 2000

REAL PROPERTY

MAKE PAYMENT TO: Sample County
Tax Collector
Box 7829
Sample City, OR 97000

Account No. 327904
Property Description
15 4W 16AA 11500
Smith's 2nd Add.
L10, 11 BL 9

		Tax Amount	Interest	Total thru 8/15/00
Taxpayer, I. M.	1999-2000	160.35	12.83	173.18
567 Any Street	1998-99	186.60	44.78	231.38
Sample City, OR 97000	1997-98	180.26	72.10	252.36
	1996-97	170.00	95.20	<u>265.20</u>

Total amount due by 8/15/00: 922.12

The 1996-97 and prior tax and interest must be paid in full by 08/15/2000 to remove the property from the foreclosure process. If this payment is made by 08/10/2000 the account will not appear in the newspaper publication of the foreclosure list. This would avoid the 5% penalty assessment.

The payment must be made in the form of a cashier's check, money order, or cash. Personal checks will not be accepted. Please do not send cash through the mail.

Please return this statement with your payment.

NOTE:

DOCUMENT ORIGINATED BY: Tax office

DOCUMENT SENT TO: Owner(s) of record or designated agent

APPROXIMATE DATE: No later than August 15

AUTHORITY: ORS 312.040

(DOCUMENT 4c: NOTICE OF FORECLOSURE — PERSONAL SERVICE)

SAMPLE COUNTY FORECLOSURE NOTICE

August 16, 2000

REAL PROPERTY

MAKE PAYMENT TO: Sample County
Tax Collector
Box 7829
Sample City, OR 97000

Account No. 327904
Property Description
15 4W 16AA 11500
Smith's 2nd Add.
L10, 11 BL 9

		Tax Amount	Interest	Total thru 9/15/00
Taxpayer, I. M.	1999-2000	160.35	14.97	175.32
567 Any Street	1998-99	186.60	47.27	233.87
Sample City, OR 97000	1997-98	180.26	74.51	254.77
	1996-97	170.00	97.47	<u>267.47</u>

Total amount due by 9/15/00: 931.43

The 1996-97 and prior tax and interest must be paid in full by 9/15/2000 to remove the property from the foreclosure process.

The payment must be made in the form of a cashier's check, money order, or cash. Personal checks will not be accepted. Please do not send cash through the mail.

Please return this statement with your payment.

NOTE:

DOCUMENT ORIGINATED BY: Tax office

DOCUMENT SENT TO: Owner(s) of record or designated agent

APPROXIMATE DATE: On publication date

AUTHORITY: ORS 312.040

(DOCUMENT 5: PUBLISHED FORECLOSURE LIST)

2000 FORECLOSURE LIST ISSUED BY Sample COUNTY

The tax collector of Sample County, Oregon, has prepared the following list of all properties now subject to foreclosure. This foreclosure list contains the names of those appearing in the latest tax rolls as the respective owners of tax delinquent properties, a description of each such property as the same appears in the latest tax rolls, the year of years for which taxes, special assessments, fees, or other charges are delinquent on each property, together with the principal of the delinquent amount of each year and the amount of accrued and accruing interest thereon through September 15, 2000.

List no./ acct. no.	Name/address of owner/ agent, if any, as shown on latest tax roll	-----Description of property-----			Tax year	Tax amount	Int. to 9/15/00	Total
		Assessor's tax lot no.	Code	Acres				
6386	Taxpayer, I. M. 567 Any Street	15 4W 16 A A 11500	42-01	.00	1999-2000	160.35	14.97	175.32
		Smith's 2nd Add.			1998-99	186.60	47.27	233.87
327904	Sample City, OR 97000	L 10, 11 BL 9			1997-98	180.26	74.51	254.77
					1996-97	170.00	97.47	<u>267.47</u>
							Total amount due	931.43
6387	Green, Linda and John c/o Brown, Lois	12 2W 34 229	89-01	4.70	1999-2000	97.71	9.12	106.83
		MF4-5 88, MF4-5 90C			1998-99	55.37	14.03	69.40
337911	501 G St. John Rd. Sample City, OR 97000				1997-98	61.64	25.48	87.12
					1996-97	60.00	34.40	<u>94.40</u>
							Total amount due	357.75
6388	Brown, Bill A. c/o Richards, Jon	9 1E 25 1103	29-02	29.90	1999-2000	182.64	17.05	199.69
		Deed			1998-99	105.00	26.60	131.60
337994	Richard, Trish PO Box 649 Able, OR 97002	337-693, MF4-72BC			1997-98	98.02	40.51	138.53
					1996-97	104.24	59.76	<u>164.00</u>
							Total amount due	633.82
6389	Blue, Tobias Rt. 2 Box 271	10 3W 22 A A 404	136-03	.00	1999-2000	54.57	5.09	59.66
		Ammon AC Sub L 3 BL 2			1998-99	55.37	14.03	69.40
350989	Charley, OR 97001				1997-98	37.57	15.53	53.10
					1996-97	25.92	14.86	<u>40.78</u>
							Total amount due	222.94

(DOCUMENT 5: CONT.)

Please take note that a complete and accurate legal description of the properties designated by the tax lot numbers on the previous page is made a part of the application as Exhibit "A" for judgment and decree, filed in the Sample County circuit court and available at the Sample County clerk's office. More particular descriptions are available at the office of the Sample County assessor.

TO ALL PERSONS OR PARTIES ABOVE-NAMED, and to all persons owning or claiming to own, or having or claiming to have, any interest in any property included in the foreclosure list above set forth, being the Sample County tax foreclosure list:

YOU ARE HEREBY REQUIRED TO TAKE NOTICE THAT Sample County, Oregon, has filed in the circuit court of the State of Oregon for Sample County, an application to foreclose the lien of all taxes shown on the 2000 Sample County tax foreclosure set forth, and that Sample County, as plaintiff, will apply to the court for judgment and decree foreclosing such tax liens not less than thirty (30) days from the date of the publication of this notice.

Any and all persons interested in any of the real property included in this foreclosure list are required to file answer and defense, if any there be, to such application for judgment and decree within thirty (30) days from the date of the publication of this notice, which date is August 16, 2000.

Notice of this foreclosure proceeding is given under ORS 312.040(1) by one (1) publication of the foregoing foreclosure list in the Sample County Times Herald, a daily newspaper of general circulation in Sample County, Oregon. This notice is pursuant to an order of the board of county commissioners for Sample County, Oregon, made and entered on the 1st day of August, 2000. The date of the publication of this foreclosure list is the 16th day of August, 2000.

Tax Collector

District Attorney

_____ County, Oregon

_____ County, Oregon

NOTE:

DOCUMENT ORIGINATED BY: Tax Collector, District Attorney

DOCUMENT SENT TO: Newspaper designated by county governing board

APPROXIMATE DATE: No earlier than August 16

AUTHORITY: ORS 312.040

(DOCUMENT 6: NOTICE TO MUNICIPALITIES)

NOTICE TO MUNICIPALITIES

Sample COUNTY, OREGON

DATE: August 21, 2000

TO: City recorder, Sample City, Oregon

SUBJECT: 2000 Published Foreclosure Notice

The attached 2000 foreclosure notice is sent to you, should you need to exercise those rights provided by ORS 312.170 for municipal and other public corporations.

Tax Collector

Sample County

NOTE:

DOCUMENT ORIGINATED BY: Tax Collector, District Attorney

DOCUMENT SENT TO: City recorder, auditor, or secretary of municipal corporation.

APPROXIMATE DATE: Within one week after publication of foreclosure notice

AUTHORITY: ORS 312.040 and 312.170

Chapter 3:

Judgment and Decree/Redemption

Granting Judgment and Decree— ORS 312.090

The court orders the delinquent taxes and the liens be foreclosed by the judgment and decree. Granting of judgment and decree occurs not less than 30 days after publication of the foreclosure list. If an objection has been filed, judgment and decree is granted after the summary hearing is held. The judgment covers each property on the application unless the court determines otherwise. The judgment bears the legal rate of simple daily interest of nine (9) percent per annum (ORS 82.010) on the judgment amount from the date the judgment and decree is entered.

Upon the issuing of the judgment and decree, the property is “sold” to the county and the two-year redemption period begins. The “sale” is validated by the certified copy of the judgment and decree.

Properties “sold” to the county under ORS 312.100 are held by the county for a period of two years, unless redeemed sooner. Any property held by the county during this redemption period is subject to assessment and taxation as if it had continued in private ownership.

During the two-year redemption period no name changes should occur. Value changes should not be made on the account for the years in foreclosure. The owner listed in the judgment and decree cannot sell the property; it has been sold to the county. The owner has the right of redemption.

The owner listed in the judgment and decree has the right of possession during the redemption period. If any waste against the property is committed the right of possession is forfeited to the county (ORS 312.180).

Payment During Redemption Period— ORS 312.120

During the two-year redemption period the property can be redeemed by:

- Any person having an interest in the property as of the date of the judgment and decree;
- An heir of a person with an interest in the property;
- A holder of a lien of record on the property, such as a mortgage company; or
- A municipal corporation with a lien on the property, such as a city or sewer district.

Redemption occurs when the full amount under judgment and decree is paid. That full amount is the delinquent taxes as shown in the published foreclosure list

and the accrued interest on those taxes, plus a penalty of five percent of that total, the accrued judgment interest of nine percent (ORS 82.010) per year calculated daily from the date judgment and decree is issued and a fee. The fee is \$50 if the property is redeemed prior to the mailing of the certified letter giving notice of the end of the redemption period under ORS 312.125. If the property is redeemed after the mailing of the certified notice, the fee is the greater of \$50 or the actual cost to the county for a title search and other expenses related to obtaining a title search. See page 23 for an example of the redemption calculation.

Any taxes on property assessed after the judgment and decree would not have to be paid to redeem the property; they would still be owed and be a lien outstanding against the account.

There is no provision for partial payment during the redemption period. There is nothing in the law that allows the tax collector to accept “installment payments” to redeem the property from judgment and decree (Attorney General letter of advice, August 12, 1964).

Payment by a lienholder to remove the property from the foreclosure process gives the lienholder an additional lien; the lienholder does not acquire title to the property. The lienholder may then initiate a separate foreclosure action.

Redemption—ORS 312.130

If, at the time of judgment and decree, a lienholder has a mortgage or lien covering a part of the real property included in the judgment and decree, the lienholder may redeem that part by paying the proportionate amount applicable under the judgment and decree and having the property segregated (Attorney General letter of advice, August 1, 1990).

A payment redeeming property in full releases all claims of the county under the judgment and decree. Upon receipt of money, the tax collector must make entries on the records showing that the delinquent taxes, interest and penalties have been paid.

Redemption Certificate—ORS 312.130

The tax collector provides a certificate of redemption to the person redeeming the property. The certificate must contain:

1. A description of the property;
2. The total amount of taxes, interest, and penalties paid;

3. The date of entry of the judgment and decree; and
4. Signature of tax collector or deputy.

The person who redeems the property is responsible for filing the certificate with the clerk of the court that issued the judgment and decree. The clerk enters the filing of the certificate of redemption in the court register and files the certificate of redemption as part of the case file in the foreclosure proceeding. No separate fee is to be charged for the issuance of a certificate of redemption. The certificate of redemption is the satisfaction of the recorded judgment. No separate satisfaction need be filed to clear the judgment.

Document 7: Example of Redemption Certificate (page 22)

Reduced Redemption Period— ORS 312.122

The redemption period on specific parcels of real property may be shortened if the property is subject to waste or abandonment. A county wanting to use this method must pass an ordinance requiring the tax collector to deed the parcels to the county and providing the collector the means to accomplish the deed transaction.

At least one of two conditions must exist to activate this process:

1. The property is subjected to waste which results in the forfeiture to the county of the right to possess the property under ORS 312.180, or
2. The property is not occupied by anyone named in the county's records as having a lien or interest in the property for a period of six consecutive months and the property is suffering substantial depreciation or will suffer substantial depreciation if it is not occupied.

The county determines if the property may be subject to waste or abandonment and sets a hearing to determine if the property should be deeded to the county for either of the two reasons listed. Procedures for the hearing must be compatible with due process requirements and must be stated in the county's ordinance.

The owner and any person with a recorded interest are notified of the hearing and are provided an opportunity to be heard. The county decides whether the property is subject to waste or abandonment. A period of 30 days is allowed after the hearing for anyone with a legal interest in the property to redeem it.

If the property is not redeemed and the county has determined that the property is subject to waste or abandonment, the county governing body directs the tax collector to deed the property to the county. All rights of redemption terminate when the property is deeded to the county.

Notice of Redemption Expiration— ORS 312.125

The tax collector must send a notice of the end of the redemption period to anyone who has an interest in the property. The notice must be sent at least one year prior to the end of the redemption period. The notice must be sent to any person or entity with an interest showing in the "records of the county" as of the date the foreclosure was instituted.

The notice must contain the following:

- The date of the judgment and decree;
- The date the period of redemption expires;
- A warning that the property ordered sold under the judgment and decree, unless sooner redeemed, will be deeded to the county immediately when the period of redemption expires and that every right or interest of any person in the property will be forfeited forever to the county;
- A legal description of the property and tax account number; and
- The name of the owner as it appears on the latest tax roll.

The notice must be sent by both regular first class mail and by certified mail. Note that once the certified letter has been sent, the redemption fee changes from \$50 to the **greater** of \$50 or the actual cost to the county for a title search and other expenses related to obtaining the title search (ORS 312.120(5)). These notices must be sent to the best address that the tax collector can find.

Document 8: Example of Notice to Record Owner Regarding Expiration of Redemption Period (page 24)

The term "records of the county" is defined in ORS 312.125 (7). These records include the records of interests in real property required to be kept by the county clerk. Some examples are:

- Grantor-grantee indexes.
- Deeds and mortgages.
- Plats, contracts, powers of attorney.
- Records of federal tax liens.
- Records of statutory tax liens.
- Assignments, certificates of sale, death certificates.
- County Clerk Lien Record.

Also included in records of the county for purposes of owner/lienholder notification are records of the circuit, district and county courts and probate and juvenile court records.

Oregon statutes do not require that a lienholder title search be done on properties during the redemption period. Some counties contract with various title companies to provide a title search on those parcels of

property remaining on the foreclosure list before deeding to ensure that the requirements of ORS 312.125 have been met. These costs can now be recovered if the property is redeemed after the mailing of the certified letter under this subsection.

Published Notice of Expiration— ORS 312.190

The county must publish a general notice that tells when the redemption period expires. This notice must be published in two weekly issues of a designated newspaper. It cannot be published more than 30 days nor less than 10 days before the redemption period expires. The notice must include:

- The date of judgment and decree;
- The date the redemption period expires; and
- A warning that all the properties ordered sold under the judgment and decree, unless sooner redeemed, will be deeded to the county immediately

when the redemption period expires and that every right or interest of any person in the properties will be forfeited forever to the county.

It is **not** necessary to include a description of the properties or the names of the respective owners.

Proof of publication must be attached to and made a part of the deed issued to the county.

Document 9: Example of the Public Notice of Expiration of Redemption Period (page 25)

Deed—ORS 312.200

The properties not redeemed in the two-year redemption period must be deeded to the county by the tax collector. The deed conveys the title on the properties to the county. Once title to the properties is granted to the county all rights of redemption are terminated.

(DOCUMENT 7: REDEMPTION CERTIFICATE)

CERTIFICATE OF REDEMPTION FROM JUDGMENT AND DECREE OF TAX FORECLOSURE

Case Number A9300-7928

STATE OF OREGON)
County of Sample)^{ss.}

Deed holder: I. M. Taxpayer
Legal description: 15 4W 16 AA 11500
Property address: 567 Day Street
Account no: 327904
Received from: I. M. Taxpayer
Date paid: October 10, 2000

The sum of One thousand thirty-nine and 63/100 DOLLARS

in full redemption of the real property herein described, sold to Sample County under judgment and decree foreclosing liens for unpaid and delinquent taxes thereon for 1999 and prior three (3) years; said judgment and decree having been rendered on the 2nd day of October, 2000 and entered of record on the 2nd day of October, 2000.

The above sum includes the full amount applicable to the above real property under said judgment and decree, with interest thereon as provided by law.

YEAR	PRINCIPAL TAX	INTEREST	TOTAL AMOUNT
1999-2000	160.35	17.11	177.46
1998-99	186.60	49.76	236.36
1997-98	180.26	76.91	257.17
1996-97	170.00	99.74	269.74
Sub Total			940.73
Penalty (5% of Sub-total)			47.04
Judgment and Decree Interest from 10/2/2000 to 10/10/2000 at 9% per annum			1.86
Redemption Fee			50.00
GRAND TOTAL			1,039.63

(Signature)
Tax Collector

NOTE:

DOCUMENT ORIGINATED BY: Tax Collector

DOCUMENT SENT TO: Redeemer of property

APPROXIMATE DATE: As needed after judgment and decree

AUTHORITY: ORS 312.120

NOTE: See following page for a detailed example of the calculation.

FORECLOSURE INTEREST CALCULATION

ELEMENTS:

- 1) 2000 Foreclosure
- 2) Publication Date, 8/16/2000
- 3) Judgment and Decree Date, 10/2/2000
- 4) Payment Date, 10/10/2000

Tax Year	Tax Amount	PLUS Interest to 9/15/00	EQUALS Published Amount	PLUS Additional Interest to J&D	EQUALS J&D Amount	PLUS 9% Daily Interest	EQUALS Total Redemption Tax & Interest
1999-2000	160.35	14.97	175.32	2.14	177.46		
1998-1999	186.60	47.27	233.87	2.49	236.36		
1997-1998	180.26	74.51	254.77	2.40	257.17		
1996-1997	170.00	97.47	267.47	2.27	269.74		
TOTALS	697.21	234.22	931.43	9.30	940.73	1.86	942.59
					Plus Penalty		47.04
					Plus Redemption Fee		<u>50.00</u>
					Total		1,039.63

9% Interest Calculation Example		Penalty Calculation	
10/2/2000 (J & D date) to 10/10/2000 payment date =	8 days	J & D Amount	940.73
9% divided by 365 days =	0.0002466	Times 5% Penalty	0.05
0.0002466 times 8 days =	0.0019728		<u>47.04</u>
Multiply daily interest times total J&D amount	<u>940.73</u>		
Amount of Daily Interest Total	1.86		

*In this example daily interest is carried to 7 decimal places, rounded, and applied to total judgment amount.

(DOCUMENT 8: NOTICE TO RECORD OWNER REGARDING EXPIRATION OF EXEMPTION PERIOD)

NOTICE TO OWNER OR LIENHOLDER: END OF REDEMPTION PERIOD

The law (ORS 312.125) requires that you be notified by certified mail that the redemption period of the below-described property will expire on October 2, 2002.

Unless redeemed before the above date, this property will deed to Sample County, after the expiration of the redemption period which is two (2) years after the judgment and decree given on October 2, 2000. Thereafter, every right and interest of any person in that property will be forfeited to the county.

Account and property description 350 989 10 3W 22 AA 404

Name of owner as shown on most recent tax roll Tobias Blue

September 3, 2001

Tax Collector

County

NOTE:

DOCUMENT ORIGINATED BY: Tax Collector

DOCUMENT SENT TO: Owner or lienholder of property shown on latest tax roll—any person or entity entitled to redeem property whose interest appears in the county records as of the date foreclosure proceedings were instituted Sent both by regular first class mail and certified mail.

APPROXIMATE DATE: Not less than one (1) year before expiration of redemption period

AUTHORITY: ORS 312.125

(DOCUMENT 9: PUBLIC NOTICE OF EXPIRATION OF REDEMPTION PERIOD)

PUBLIC NOTICE

PUBLIC NOTICE hereby is given that the two-year period for the redemption of real properties included in the 2000 delinquent tax lien foreclosure proceedings instituted by Sample County, Oregon, on August 15, 2000, in the circuit court of the State of Oregon for Sample County, suit No. A 9300-7298, and included in the judgment and decree entered therein on October 2, 2000 will expire on October 2, 2002.

All properties ordered sold under the judgment and decree, unless redeemed on or before October 2, 2000, will be deeded to Sample County, Oregon, immediately on expiration of the period of redemption, and every right and interest of any person in such properties will be forfeited to Sample County, Oregon.

Tax Collector

Sample County

NOTE:

DOCUMENT ORIGINATED BY: Tax Collector

DOCUMENT SENT TO: Designated newspaper to be published in two (2) weekly issues within a 20-day period of not more than 30 days nor less than 10 days prior to the end of the redemption period

APPROXIMATE DATE: Within 20-day time frame noted above

AUTHORITY: ORS 312.190

Chapter 4:

Post Redemption

Title to Property—ORS 312.270

The county takes title to those properties not redeemed by the end of the redemption period free and clear of all liens and encumbrances except assessments levied by a municipal corporation for local improvements to the property.

Those municipalities with liens and encumbrances are granted some exclusive remedies for purchasing the property.

Special steps may need to be taken in the event the property is subject to a federal Internal Revenue Service lien. In that situation, consult with your county legal counsel before taking deed.

NOTE: When the county takes title to a property on which there is a senior citizen deferral program lien, the county is responsible for clearing that lien (ORS 311.694). The senior deferral program is administered by the Oregon Department of Revenue. The county will need to contact the department to learn the amount of the lien.

County Sale of Tax-Foreclosed Property—ORS Chapter 275

Once the county has taken title to the foreclosed property, the property may be sold or divided, or have

rights-of-way set aside or mineral rights reserved. The county governing body may decide to sell the property at public auction or sell it back to the former owner for not less than the accrued taxes, interest, and charges.

The county governing body may order any or all properties sold. The sheriff, or other designated official in a home rule county, conducts the sale. The county governing body sets a minimum price for each parcel or interest to be sold and any conditions or terms of sale.

Notice of the sale is published in a general circulation newspaper in the county for four consecutive weeks prior to the sale date. The notice includes the time and place of the sale, property description, property value as shown on the tax roll, the minimum price set by the county, and the date of the order directing the sale.

At the time the property is sold at public auction, the purchaser receives a certificate of sale.

The county general fund is reimbursed for expenditures related to the sale process. The treasurer disburses the balance of the sale proceeds first to any municipal corporation that has filed a notice relating to a local improvement lien against the property in the amount of principal of the lien plus interest. Second, if any amount remains, the balance is disbursed to all governmental units using the tax distribution formula (ORS 311.390 and 311.395).

Appendix A: Checklist

FORECLOSURE PROCEEDINGS

Year: _____

For Tax Year: _____ Case Number: _____

Approx. Date	Action	Date Completed	Initial	Statute Ref.
May 16	Run delinquent tax roll list	_____	_____	311.545
	Send delinquent tax notices	_____	_____	
July 15	Prepare foreclosure list	_____	_____	312.030
July 16	Send foreclosure letter by regular mail	_____	_____	312.040
August 1	Send foreclosure letter by certified mail	_____	_____	312.040
Before August 16	Designate newspaper (order signed by court)	_____	_____	312.040
August 16	Application for Judgment and Decree	_____	_____	312.060
	Foreclosure list attached	_____	_____	
	Affidavit attached	_____	_____	
	List to designated newspaper	_____	_____	
	Foreclosure list published	_____	_____	312.040
	Notice of Foreclosure to Interested Persons (as requested)	_____	_____	312.040
	Proof of mailing newspaper notice to incorporated cities	_____	_____	
September 30	Obtain Judgment and Decree	_____	_____	312.090
	Motion to Modify Judgment, Remove Property from Process	_____	_____	
	Order to Modify Judgment Judgment and Decree	_____	_____	
Subsequent August	Determination of lienholders in records of county	_____	_____	
Subsequent September 15	Notify owners of record and lienholders by regular and certified mail of expiration of redemption period	_____	_____	312.125
Subsequent September 6, 13	Publish notice in paper of expiration of redemption period	_____	_____	312.190
September 30	Take deed: Date: _____	_____	_____	312.200
	Record all applicable documents in Office of Clerk of the Court	_____	_____	

Appendix B:

Foreclosure Overview (with Statutory and Document References)

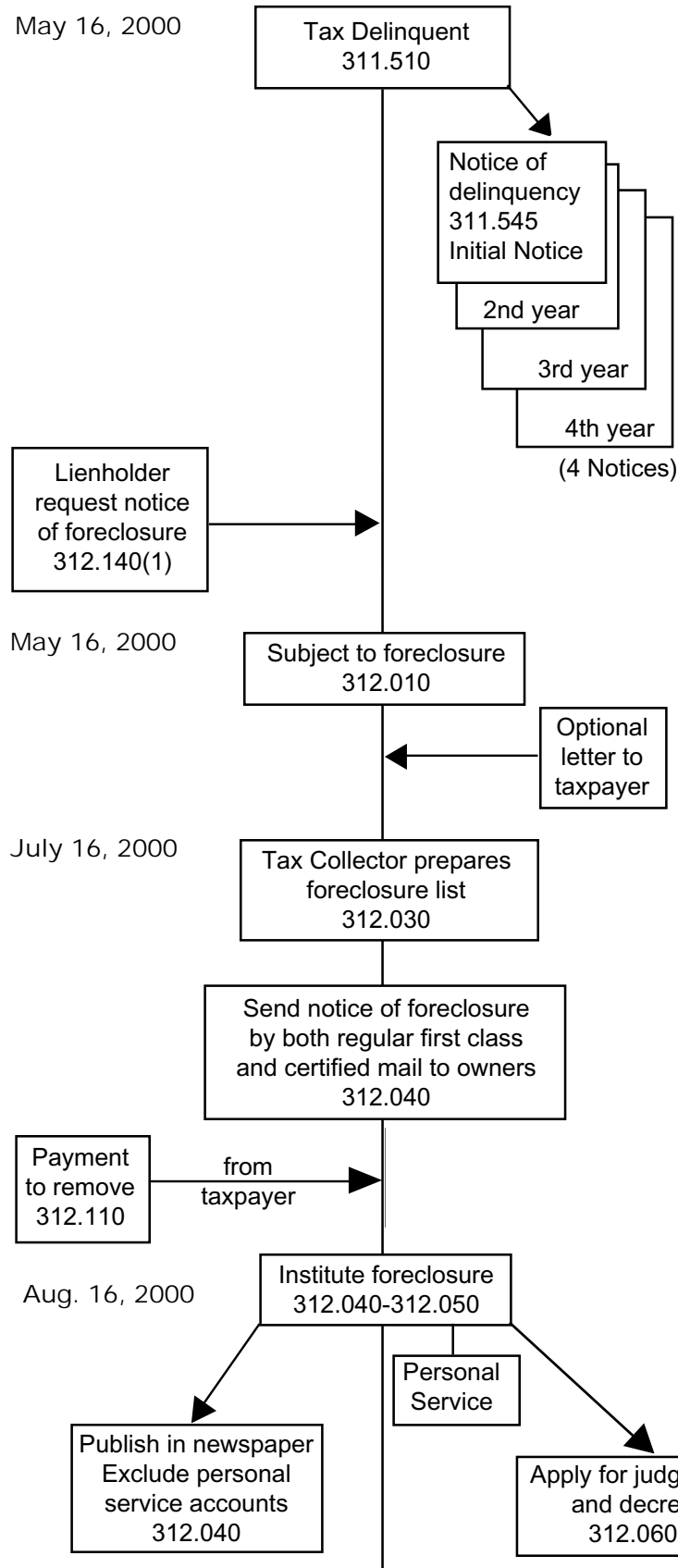
Approximate Date	Action	Document	Page Number	Reference
May 16	Delinquent date, send fourth delinquency notice	1	5	311.545
June 10	Optional letter to taxpayer	2	6	
Begin Foreclosure Process to Collect Taxes				
July 16	Develop foreclosure list	3	12	312.030
	County governing board designates newspaper			312.040 (193.010, 193.020)
Prior to August 16	Notice to taxpayers by both regular and certified mail of foreclosure proceedings or personal service	4	13, 14, 15	312.040
August 16	Publish foreclosure list (notice)	5	16–17	312.040
	Petition circuit court for judgment and decree			312.060
	1) Attach undated list, application document and affidavit			
	2) Future adjustments only under authority of circuit court			
	Motion and order appointing attorney for service personnel			USCode, Title 50
	Notification to Cities	6	18	312.040
Prior to Issuing of Judgment & Decree	Remove property from foreclosure list:			312.110
	1) Remove by payment:			
	Taxes for year(s) causing foreclosure, accrued interest, plus 5% penalty			
	2) Remove by Answer and Defense objection			312.070
	Answer on behalf of service personnel			USCode, Title 50
September 30	Obtain Judgment and Decree with Updated Foreclosure List:			312.090
	1) Issued by circuit court			
	2) Property “sold” to county subject to redemption			312.100

Approximate Date	Action	Page Document	Number	Reference
Two-year period of redemption				
	Removal of property from foreclosure/ redemption proceedings accomplished only by order of the court.			312.110
	If notice of foreclosure was not given to mortgage or other lienholders who requested notification, the lienholder has 30 days after such notice is mailed to redeem property.			312.140 312.150
	Segregation of property possible only upon request by holder of legally recorded interest in property at time of Judgment and Decree and upon payment of proportionate share of amount due.			312.120(4)
	Property is redeemed:			
	1) Person with legally recorded interest pays amount due—Judgment and Decree amount, plus 5% penalty, plus daily interest based on 9% annual interest rate on judgments from date judgment issued, plus \$50 redemption fee.			312.120
	2) Certificate of redemption provided to redemptioner for filing with clerk of the court.	7	22	312.130
Not less than one year	Send notification of expiration of redemption period by regular and certified mail to all persons or entities whose interest appears in records of county. Redemption fee becomes the greater of \$50 or the actual cost of a title search once the certified notice is mailed.	8	24	312.125 312.120(5)
30 days prior to expiration	Publish notice of expiration of redemption period.	9	25	312.190
Not less than two years	Deed unredeemed properties to county.			312.200
	1) Cancel property taxes			275.260
	2) Clear title considerations:			
	a) subject to rights of municipal corporations for improvement liens			312.270
	b) subject to easements			AG Letter of Advice, 8/1/74

County Sells Property—see ORS Chapter 275

Appendix C:

Sequence of Events—Foreclosure and Sale Process



Notes on the Process

Send notice each year a delinquency occurs:

- Description of property.
- Total taxes due.
- Rate of interest and penalties applicable.
- Date foreclosure commences.

Lienholder's request includes:

- Name and address of requester.
- Description of property.
- Name of owner.
- Expiration date of mortgage.

Subject to foreclosure three years from earliest date of delinquency.

Inform taxpayer of foreclosure.

Foreclosure list (submit to DA):

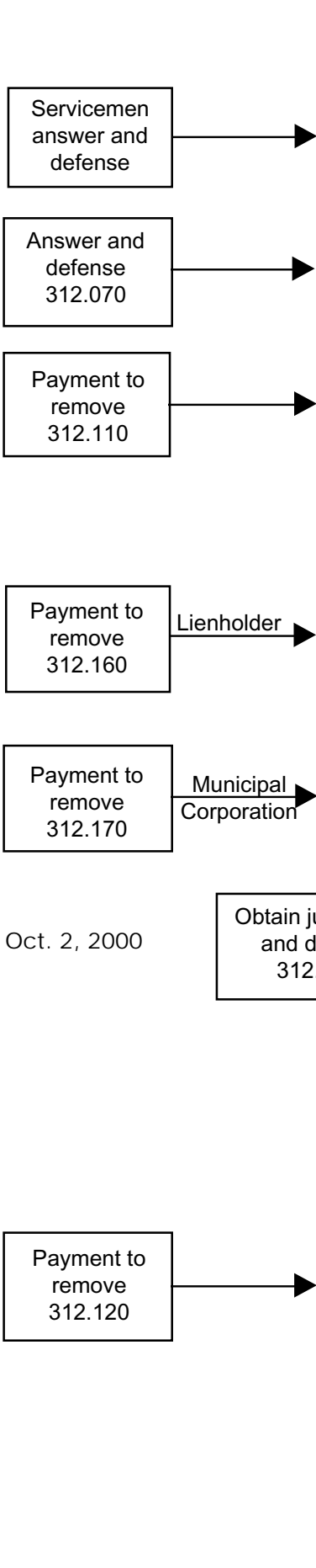
- Names of owners.
- Description of property.
- Delinquent tax by year.
- Interest to publication date - August 16, 2000.

Payment required before publication to remove from foreclosure:

- Taxes that caused foreclosure.
- Any interest or penalty accrued.

Institute foreclosure:

- County governing body designate newspaper.
- File application for judgment and decree (J & D) and a certified copy of foreclosure list with the clerk of the circuit court on the day of publication.



Appoint attorney to represent servicemen (Federal Soldiers and Sailors Relief Act, 1940, U.S. Code, Title 50).

Answer and defense must be filed within 30 days of publication.

Payment required after publication and certified mailing and before judgment and decree to remove from foreclosure:

- Taxes that caused foreclosure.
- Accrued interest.
- 5 percent penalty on total tax and interest.

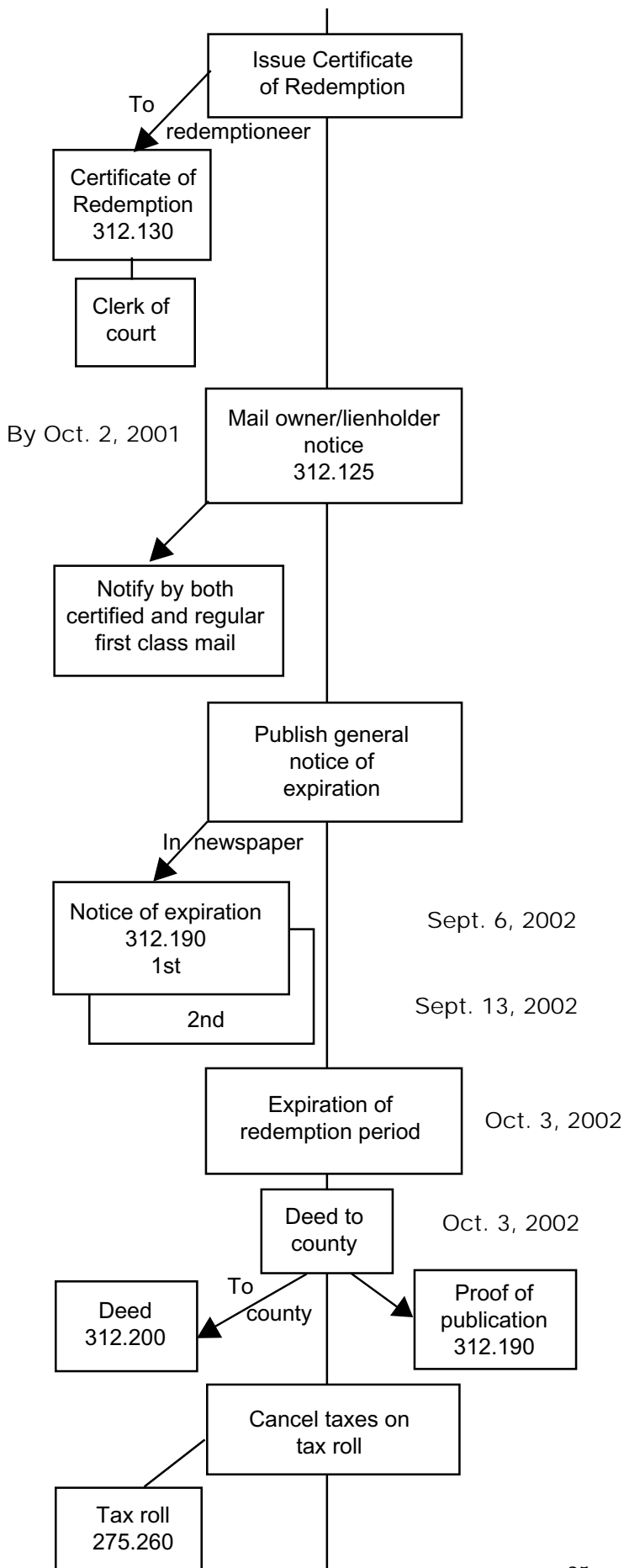
Payment by lienholder constitutes additional lien on property.

Payment by municipal corporation may be added to its lien docket.

Circuit court gives a judgment and decree for delinquent tax. Interest is charged on the total amount of tax and interest at the statutory rate. ORS 82.010 provides for 9 percent interest on judgments. The county holds the property for **two years** from the date of J & D, unless redeemed sooner.

Payment required after judgment and decree in order to remove from foreclosure during the two year redemption period:

- Taxes and interest under the judgment and decree.
- 5 percent penalty on the judgment amount.
- Interest at 9 percent on the judgment amount.
- Fee of \$50 prior to mailing of certified letter under 312.125. Then fee is the greater of \$50 or actual cost of title search.



Certificate of redemption issued by tax collector and filed by redeemer with the clerk of the court.

- Description of the property.
- Total amount of taxes, interest, penalties paid.
- Date of entry of J & D.

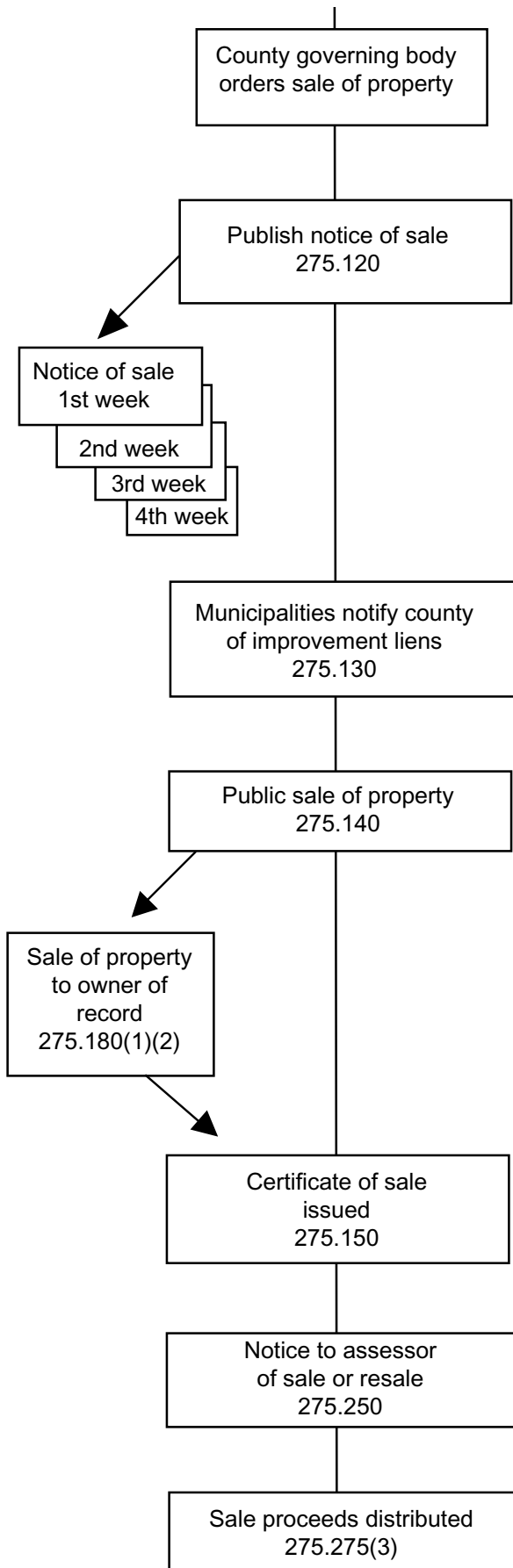
Mail notice to owner/lienholders of expiration of period of redemption. The notice must be given by both certified and regular first-class mail, **not less than one year prior to the expiration of the redemption period**. Once certified notice is sent, redemption fee is the greater of \$50 or the cost of title search.

Publish notice in two weekly issues not more than 30 days nor less than 10 days before expiration.

- Date of J & D.
- Expiration date of redemption period.
- Warning that every right and interest of any person will be forfeited to the county.

Deed property to county at end of two-year redemption period. Attach to deed the proof of the publication of notice of redemption. Appeal rights: 312.210.

Cancel all taxes on tax roll when property is deeded to county.



Order shall contain:

- Minimum price for each interest, parcel, or group of parcels to be sold.
- Any specific conditions or terms of sale.

Published notice must be in a newspaper of general circulation in county where land is located.

Publish once each week, four consecutive weeks prior to the sale. It must state time and place of sale, description of property or interest to be sold, and the market value.

County notifies assessor of sale or resale (ORS 275.200) of property as provided in ORS 275.110 to 275.220.

County orders treasurer to distribute proceeds.

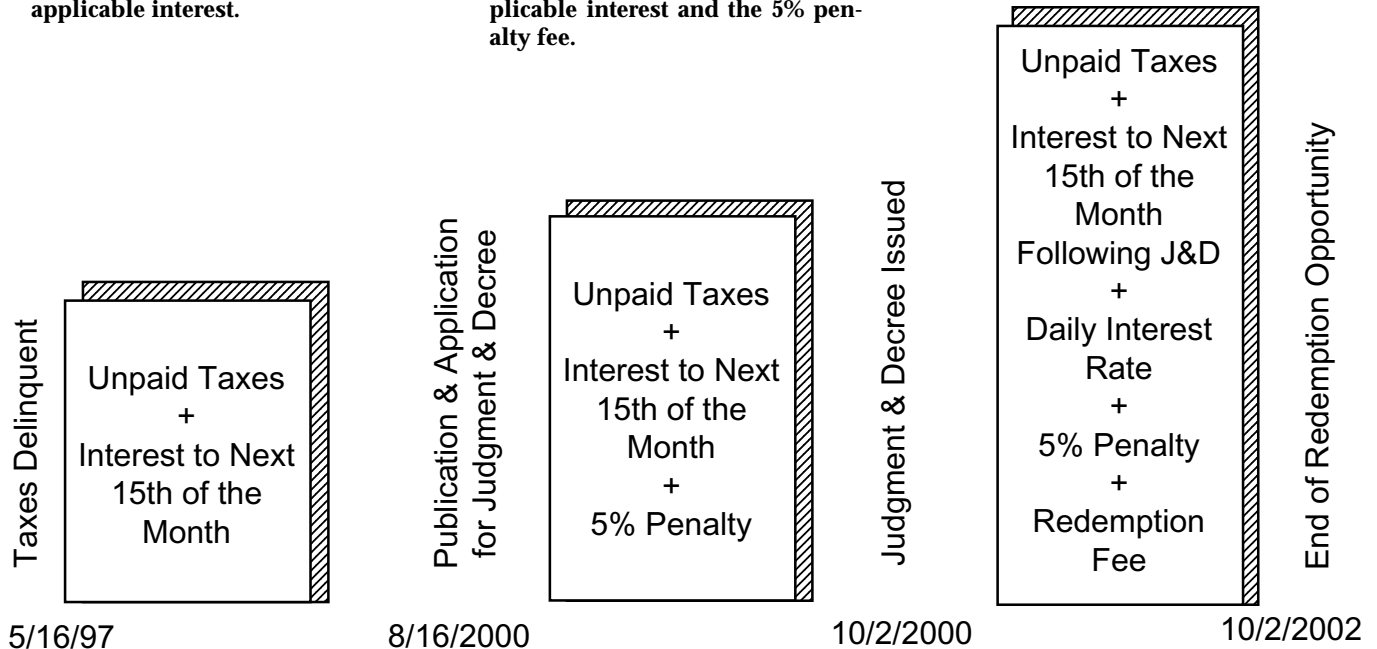
Appendix D:

Foreclosure Interest Calculation

Taxpayer may remove property from foreclosure process by paying only the **taxes from the tax year** that caused foreclosure **plus applicable interest**.

Taxpayer may remove property from foreclosure process by paying only the **taxes from the tax year** that caused the foreclosure **plus applicable interest and the 5% penalty fee**.

To redeem, all taxes, interest, penalties, and fees resulting from the years published must be paid.



Unpaid Taxes:	Foreclosure begins when the earliest tax year becomes three (3) years delinquent.	ORS 312.010
Interest:	Interest accrues on a monthly basis on the tax only and is calculated through the next 15th of the month. The rate is one and one-third percent (1-1/3%), a rate of 16 percent (16%) annually.	ORS 311.500
5% Penalty:	The total unpaid taxes plus the total interest calculated to the next 15th of the month is multiplied by 5 percent (5%) to determine the penalty. At judgment and decree, the taxes and interest are calculated and become a fixed amount. This fixed amount is then multiplied by 5 percent (5%) for the penalty amount.	OAR 150-312.110
Redemption Fee:	This fee, used to defray costs, is charged after judgment and decree is issued. The redemption fee is a fixed \$50 until the mailing of the certified notice under 312.125. Then it is the greater of \$50 or the cost of a title search.	ORS 312.120
Daily Interest Rate:	The daily interest is 9 percent (9%) divided by the number of days in the year, multiplied by the number of days after the judgment and decree. The amount of taxes and interest fixed at the time of judgment and decree is multiplied by the daily rate. Daily interest is not calculated on the 5 percent (5%) penalty or the redemption fee.	ORS 82.010

Appendix E:

Questions and Answers

Annual Foreclosure List

Q: If the district attorney does not institute proceedings each year, should the tax collector prepare the foreclosure list each year?

A: Yes. ORS 312.030 states that within two months after the date of delinquency of taxes the tax collector shall prepare the foreclosure list. Delay of the proceedings will not invalidate the process but it should occur as soon as reasonably possible. If the district attorney will not institute proceedings, the state attorney general may take the necessary action and bill the county (Attorney General letter of advice, December 13, 1965 and September 3, 1985).

Bankruptcy

Q: How does bankruptcy affect the county's right to foreclosure?

A: A bankruptcy petition stops foreclosure proceedings. County tax collectors need to consult with their county legal counsels to determine the necessary action against properties involved in a bankruptcy case.

Note: For more information refer to the most recent Manual on Bankruptcy from the Attorney General's office.

Cancellation of Taxes, Interest, and/or Penalties

Q: How and at what stage of the foreclosure process are taxes, interest and/or penalties abated or cancelled?

A: The foreclosure process does not in and by itself generate the cancellation of taxes, interest, and/or penalties. The cancellation occurs after the properties are deeded to the county and become exempt (ORS 275.260).

Cash Payments vs. Check

Q: Can the tax collector require cash payment to avoid insufficient funds checks?

A: Yes. The tax collector may exercise discretion to require cash during this period. ORS 311.260 says payment of taxes shall be in lawful money. The definition of lawful money is coins and notes designated by Congress as legal tender. Thus,

checks are accepted only at the discretion of the tax collector.

Definition of Records

Q: What are "records of the county?"

A: The term "records of the county" is used in ORS 312.125 to define the documents in which names of persons or entities with an interest in the property under judgment and decree appear. Notification of the expiration of the redemption period must be provided to anyone with an interest shown in the records of the county.

Records include the records of interests in real property required to be kept by the county clerk. Examples are:

- Grantor-grantee indexes.
- Deeds, mortgages, plats, contracts, powers of attorney, assignments, certificates of sale, death certificates and other interests affecting title to real property (ORS 205.130 (1) and (2)).
- Records of federal tax liens (ORS 205.245).
- Records of statutory tax liens (ORS 87.372).
- County Clerk Lien Record (ORS 205.130 (3)).
- Circuit, district, probate, juvenile and county court records (ORS 7.010, 7.230, 7.240).

Exempt Ownership

Q: Can the county foreclose on property held by an exempt entity?

A: The county cannot foreclose on property held by an exempt entity if the taxes causing the foreclosure occurred before the tax-exempt municipality acquired the property (*Chizek v. Newport*, 252 Or 570 (1970)). The taxes are liens and continue on the roll until such time as the property passes into the hands of a taxable owner.

Q: If no foreclosure is made, how are interest and penalties handled?

A: Interest and penalties accrue and continue on the roll in addition to the taxes, until such time as the property passes into the hands of a taxable owner, or until the legislature enacts a statute allowing the taxes to be canceled (Attorney General letter of advice, July 21, 1972).

Q: If a charitable organization leased property in an otherwise taxable building and the taxes become

delinquent on the property, could the county foreclose on the entire property?

- A:** Yes, the county could foreclose on the entire property including the non-taxable portion of the building. A letter of advice from the Attorney General dated August 28, 1987, "recognizes the . . . practical problems . . . in any attempt to foreclose upon part of a building . . . and... conclude[s] that where a single building is under single ownership the failure to pay taxes on the nonexempt portion of the building renders the entire building subject to foreclosure proceedings."

Federal Leaseholds

Q: Can the county foreclose on a federal leasehold?

- A:** Yes, where the lease is made to a taxable party. ORS 307.060 allows the taxing of a lease for use of federal property at its full real market value. The leasehold interest in federal lands is subject to foreclosure (Attorney General letter of advice, March 22, 1972).

Any lien for delinquent taxes on the lease of federal property shall attach to the leasehold, interest or estate in real or personal property of the lessee. Further, ORS 311.650 indicates, "All taxes levied in any year against real property held under contract of sale, lease or other interest less than fee . . . shall be a debt due and owing from the person, corporation or association holding the property." That party is the leaseholder. The lien may not attach to the federal property.

Five Percent Penalty

Q: What tax years are included in the foreclosure proceedings and on what amount is the 5 percent penalty calculated?

- A:** Preparation of the foreclosure list begins when three years have elapsed from the earliest date of delinquency of taxes levied. Unpaid delinquent taxes from any and all tax years from and after that delinquency date are included in the foreclosure proceeding.

The 5 percent penalty is based on the **total** amount of taxes and interest charged against the property.

Leased Property

Q: Taxpayer A owns real property and leases land to an individual, Taxpayer B, who builds and maintains a cabin on the property. Taxpayer B is assessed and taxed on the cabin value. If Taxpayer B does not pay the taxes, can the county foreclose on the delinquent taxes?

- A:** Yes, the county should foreclose on Taxpayer B's account. The delinquent taxes are not and do not become a lien on the real property of Taxpayer A.

Q: The scenario is the same as in the preceding question except that cabin has been destroyed. How does the county foreclosure on the delinquent taxes?

- A:** The county would foreclose on the tax account even though there is no physical property on which to foreclose, according to an attorney general letter of advice, dated March 29, 1974. The foreclosure process is the only mechanism by which the taxes can be removed from the roll. The lien would be a liability against the owner of the improvements (ORS 311.165).

If the tax collector learned that the cabin was about to be removed or destroyed, the collector could use the personal property collection methods authorized by ORS 311.165 to collect the delinquent taxes.

Lienholder Rights

Q: What rights do lienholders have in a foreclosure proceeding?

- A:** Lienholders have the right to be notified about the foreclosure proceedings at several stages of the process.

If the lienholder has requested notification under ORS 312.140, the lienholder must be notified by certified mail of the impending action. The lienholder may redeem the property and record an additional lien against the property. If the lienholder does not receive appropriate timely notification, the lienholder's right to redeem the property is extended to 30 days after the mailing of the notice (ORS 312.150).

A lienholder whose interest in the property is shown in the records of the county must be notified by the tax collector of the expiration of the period of redemption not less than one year prior to the expiration date (ORS 312.125). This notification is by both regular first class and certified mail.

A lienholder with a mortgage or lien at the time of judgment and decree on a portion of property in redemption has the right to redeem that portion. The lienholder must pay the delinquent taxes, interest and applicable penalties assigned to the part of the property covered by the mortgage or lien.

Q: Does the foreclosure proceeding extinguish existing easements?

- A:** No, the foreclosure proceeding and subsequent sale of real property does not extinguish any ex-

isting easements. The Oregon Supreme Court in *Crawford et al v. Senosky et al*, 128 Or 229, (1929) said: “. . . the foreclosure of a tax lien does not cut off easements that have been carved out of one property for the benefit of another . . .”

Military Personnel

Q: Do members of the armed forces whose property is subject to foreclosure have special or additional rights in a foreclosure proceeding?

A: Yes, the Soldiers and Sailors Civil Relief Act of 1940 protects the rights of persons serving in the armed forces of the United States. The act provides procedures to regulate legal action against service personnel. It also attempts to prevent judgments being rendered against service personnel in circumstances where their military responsibilities might prevent them from appearing and defending themselves.

Manufactured Structures

Q: If a manufactured structure is assessed as real property on a separate manufactured structure roll, can the county foreclose against the manufactured structure for its delinquent taxes? For delinquent taxes on the land on which the structure is located?

A: Yes, the county can foreclose against the manufactured structure for its delinquent taxes and/or the delinquent taxes of the property on which the structure is located. The assessment of the manufactured structure as real property denotes that the land and the manufactured structure have the same owner. If the manufactured structure and the land are on separate accounts, appropriate cross references should be shown on both accounts. Delinquent taxes causing foreclosure on either the manufactured structure or the land would cause **both** accounts to be included in the foreclosure process.

Taxes on manufactured structures assessed as real property are also a debt of the owner of the manufactured structure and are collectible using personal property collection statutes (ORS 311.512).

Q: If a manufactured structure has been assessed as real property and has been moved out of state with three years delinquent taxes, can the county foreclose against the manufactured structure?

A: Yes, the county can foreclose against the manufactured structure. In this situation too, the assessment of the manufactured structure as real property denotes that the land and the manufactured structure have the same owner. Regardless of whether the land and the manufactured structure

are on the same account or on two separate accounts, both the land and the manufactured structure would be included in the foreclosure process.

Municipal Rights

Q: What rights do municipalities have during county foreclosure proceedings?

A: A municipality as a lienholder has the right to be notified about the foreclosure proceedings at several stages of the process.

Cities receive copies of the published foreclosure list (ORS 312.040). The municipality as the holder of a recorded lien may request the tax collector for notification of foreclosure proceedings under ORS 312.140. The municipality may use its funds to redeem property and add that amount to its lien docket (ORS 312.170).

If the municipality's interest appears in the records of the county, the municipality receives notice of the expiration of the redemption period not less than one year prior to the expiration date (ORS 312.125).

The municipality must advise the county of its interest in any of the particular properties deeded to the county at the end of the redemption period. A municipal corporation that has filed a lien claim on a property has the right to purchase that property after the property is deeded to the county. If the municipality does not exercise its purchase option within the time period, a private party purchasing the property takes title free of the municipality's lien (ORS 312.270).

Q: What happens to unpaid taxes on an account foreclosed by SBA (Small Business Administration) or HUD (Housing and Urban Development)? Can SBA or HUD pay the taxes but not the interest and penalties?

A: There appears to be no authority to remove the tax lien from the roll in these circumstances. The taxes remain a lien against the property, accruing interest and collectible only in the unlikely event that the entity should convey the property to a taxable owner.

In a letter of advice dated June 22, 1971, the Attorney General noted that under federal law (15 U.S.C. § 646) real property taxes are prior liens over an SBA mortgage but an SBA mortgage is prior to interest and penalties on the taxes. The result is that SBA can pay the taxes to redeem the properties without paying the accrued interest and penalties. Once the SBA forecloses on the property it becomes exempt from taxation. (Attorney General letter of advice, December 3, 1970)

Name Changes

- Q:** May the county change the name on an account after judgment and decree?
- A:** No. Judgment and decree sells the property to the county (ORS 312.100). The owner has only the rights to redeem the property by payment of the full amount applicable under the judgment (ORS 312.120) and to possess the property during the redemption years (ORS 312.180). The owner cannot sell the county's interest in the property. There is no statutory provision for the owner to sell the right of redemption or possession after judgment and decree. Only persons holding an interest in the property at the date of the judgment and decree may redeem the whole or a portion of the property (ORS 312.120(2) and (4)).

Omitted Property

- Q:** What impact does the addition of omitted property value and tax have on the foreclosure/redemption proceeding?
- A:** The tax resulting from the addition of omitted property value is added to the taxes for the tax year following the tax year in which the omitted property is discovered and corrected. For purposes of collection and enforcement, the additional taxes are considered delinquent as of the date the other taxes for the year in which the additional taxes are added to the roll become delinquent.

Partial Payments

- Q:** May partial payments be accepted on foreclosed property accounts during the redemption period?
- A:** No. There is no statutory provision to accept partial payment on accounts under foreclosure judgment and decree. Property may be redeemed by any person having an interest in the property at the time of judgment and decree by payment of the full amount of taxes in the judgment plus accrued interest and penalties (Attorney General letter of advice, August 12, 1964).

Personal Property Lien

- Q:** May a county foreclose on property subjected to a personal property tax lien noted on the roll according to ORS 311.645?
- A:** State Tax Commission memorandum dated June 3, 1955, states that such taxes after proper entry upon the assessment roll shall be enforced in the same manner as other tax liens on real property. If there are no other delinquent taxes on the

account, foreclosure proceedings cannot begin until three years have elapsed from the date the personal property lien is charged against the real property account, according to a State Tax Commission letter dated April 26, 1956. The county needs to recognize that any prior existing liens or mortgages will supercede the personal property tax lien.

Redemption Amounts

- Q:** What amount must be paid to redeem property prior to publication? After the publication but before judgment and decree? After judgment and decree? Who can redeem the property?
- A:** Payment amounts needed to remove property from foreclosure proceedings are:

Before publication. The tax that would have prevented the inclusion of the property in the foreclosure list plus any additional interest or penalty.

After publication and before judgment and decree. The tax that would have prevented the inclusion of the property in the foreclosure list plus any additional accrued interest and a penalty of 5 percent on the **total** amount of taxes and interest charges against the property.

After judgment and decree. The **full tax amount applicable** to the property under the judgment and decree with interest, plus a penalty of 5 percent of the total amount applicable to the property under the judgment and decree, plus interest at 9 percent per year computed daily on the amount of judgment and decree from the decree date to the redemption date. See Appendix D, page 37 for additional information on redemption calculations.

- Q:** Who can redeem the property?
- A:** Any person having an interest in the property at the date of judgment and decree of foreclosure, or any heir or any person holding a lien of record on the property, or any municipal corporation having a lien on the property may redeem the property.

Segregation

- Q:** Can property be segregated while it is in foreclosure? Who can seek a segregation?
- A:** Yes, property may be segregated during the foreclosure process. Entitled to request a segregation are persons with the right of redemption, that is those with an interest in the property as of the date of the judgment and decree. That includes persons who have a mortgage or lien of record covering all or a portion of the property. (Attorney General letter of advice, February 26, 1968)

Prior to judgment and decree, segregation may occur only when all delinquent taxes have been paid (ORS 311.280(3) and ORS 308.210(3)). During the redemption period, a person with a mortgage or lien of record on a portion of the property can redeem that portion by paying in full the proportionate share of the taxes, interest and penalties after which the segregation could occur (ORS 312.120(4)).

Senior Citizen's Deferral

Q: What are the county's rights to foreclose property in the senior citizen's deferral program?

A: The county may foreclose on property included in the senior citizen's deferral program under certain specific conditions.

A senior citizen may apply and be accepted into the Department of Revenue deferral program. A senior citizen who has been approved for the deferral program may apply to the county assessor to delay foreclosure proceedings. The delay applies to those delinquent taxes that were on the tax roll before the taxpayer's acceptance into the deferral program.

If the applicant is not approved for the delay program or chooses not to participate, the county must include the property with the applicable years of delinquent taxes in the next foreclosure proceeding. If the property is not redeemed and is deeded to the county, the county is responsible for clearing the Department of Revenue deferral lien.

Severable Interest

Q: Can the county foreclose a severable interest?

A: Yes. ORS 308.115 allows any mineral, coal, oil, gas or other severable interest in real property which is owned separately to be assessed and taxed as real property. Consequently, the

severable interest which has delinquent taxes may be foreclosed.

Split Code

Q: Can the county foreclose on a single parcel lying in more than one code area if taxes have been paid on only that portion of the property in one code area?

A: Yes. An Attorney General letter of advice dated May 24, 1988, states that "where a parcel of land is bisected by a code line and lies partially within the boundaries of two taxing districts . . . [resulting] in a 'code split' . . . [with a] separate code area and account number . . . assigned to each portion of the parcel . . . any unpaid taxes are a lien against the entire parcel."

The letter advises that "those counties that have issued separate tax statements for each account number within a split code parcel may foreclose upon the entire parcel even though the tax has been paid with respect to one account number . . . the tax lien is imposed upon the entire parcel regardless of how many account numbers it may contain."

Undivided Interest

Q: Can the county foreclose on an undivided interest?

A: Yes. Real property may be assessed as a single parcel but owned by a number of joint owners each of which has an undivided interest in the property. ORS 308.125 allows the assessment and collection of taxes from the individual parties who hold an undivided interest in the real property. Because individual assessment and collection is permissible, one party may pay the taxes and another may not. When those taxes which have become delinquent are eligible for foreclosure, the county should proceed with the foreclosure on that portion of the undivided interest for which the taxes are delinquent.

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