

19. ACCELERATION OF REDEMPTION AND IMPOSITION OF FINES FOR PROPERTIES THAT ARE SUBJECT TO WASTE AND ABANDONEMENT

19.1 PURPOSE

19.1.1 The Clatsop County Board of Commissioners (“Board”) has determined that the county is in need of a remedy to prevent the hazards, detrimental effects, and devaluation of property sold to Clatsop County in tax foreclosure actions that is subjected to waste and abandonment. This chapter is enacted under the authority of ORS 312.122 to provide such a remedy, through acceleration of the tax foreclosure redemption process and imposition of fines for waste of such properties.

19.2 DEFINITIONS

- A. ABANDONMENT occurs when property is not occupied by the owner or any person or entity that appears in the records of the county to have a lien or other interest in the property for a period of six consecutive months, and the property has suffered a substantial depreciation in value or will suffer a substantial depreciation in value if not occupied.
- B. BOARD means the Clatsop County Board of Commissioners.
- C. FORMER OWNER means the person or entity who appears in the records of the county and who, by a judgment and decree issued by a Circuit Court pursuant to the foreclosure process foreclosing delinquent taxes under ORS Chapter 312, sold property to the County for the amount of the delinquent taxes stated in the judgment and decree. Former owner includes any person or entity rightful in possession of the property, and any person or entity acting under the permission or control of such former owner.
- D. OWNER means Clatsop County for all properties shown in a judgment and decree executed by the Clatsop County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.
- E. PARTIES when used in the context of the public hearing provided for in this Ordinance, means Clatsop County and any person or entity entitled to notice of that public hearing.
- F. PROPERTY means the property of the former owner listed in a judgment and decree executed by the Clatsop County Circuit Court in a proceeding to foreclose delinquent taxes under ORS Chapter 312.
- G. A RECORD OF THE COUNTY has that meaning given in ORS 312.125(7).
- H. TAX COLLECTOR means the Clatsop County Tax Collector.
- I. WASTE means any act with the potential to adversely affect the property’s condition or value, whether caused by the former owner or by

anyone acting under the former owner's permission or general control. Waste includes, but is not limited to, deterioration, destruction or material alteration of land or improvements, removal of agricultural or mineral assets, the creation of any nuisance as defined in Chapter 36 of Clatsop County's Code of regulations or violation of any rule appearing in a state or local building code.

19.3 FORFEITURE FOR WASTE; PENALTY

19.3.1 Any waste of property, as defined in this Chapter, shall forfeit to the County the former owner's right to possession of the property during the redemption period, and in addition, the former owner shall be punished as provide in this Chapter.

19.4 ACCELERATION OF REDEMPTION PERIOD AUTHORIZED

19.4.1 If the County determines, after the hearing provided for by this chapter, that either the property is subject to waste resulting in a forfeiture to the County of the former owner's right to possession of the property during the redemption period, or the property is subject to abandonment, the Board shall:

1. Provide that any rights of possession the former owner may have in the property are forfeited to the County;
2. Direct that the redemption period on the property will end 30 days after the date of the Board's decision; and
3. Direct that after the expiration of the accelerated redemption period, the property shall be deeded to the County by the tax collector if the former owner or anyone else having a right to redeem under ORS Chapter 312 has not redeemed it.

19.4.2 All rights of redemption held by any person or entity who appears in the records of the County to have a lien or other interest in the property shall terminate on the execution of the deed to the County.

19.5 HEARING REQUIRED

19.5.1 Whenever the Board determines that real property sold to the County under ORS 312.100 may be subject to waste resulting in a forfeiture to the County of the former owner's right to possession of the property during the redemption period, or may be subject to abandonment, the Board shall set a date, time and place within the County for a hearing to determine whether the property should be deeded to the County.

19.5.2 The former owner and any person or entity that appears in the records of the County to have a lien or other interest in the property shall be given an opportunity to be heard at the hearing.

19.6 NOTICE OF HEARING

19.6.1 Not less than thirty (30) days prior to the hearing, the County shall direct notice of the hearing to the former owner, the current occupants, and any

person or entity appearing in the records of the County to have a lien or other interest in the property. The Notice of Hearing shall contain the following information:

1. The date, time and place of the hearing;
2. The date of the Judgment and Decree issued pursuant to ORS 312.100;
3. The normal date of expiration of the period of redemption under ORS 312.120;
4. The legal description and tax account number of the property;
5. The name of the former owner as it appears on the latest tax roll;
6. A warning that if the County determines that the property is subject to waste or abandonment, the redemption period associated with the tax foreclosure will be shortened to thirty (30) days from the date of the County's decision, and if the property is not redeemed before the end of this accelerated redemption period, the property shall be deeded to the County by the tax collector and every right or interest of any person in the property will be forfeited forever to the County;
7. A warning that if the County determines that the former owner or persons acting under the former owner's permission or control have committed waste on the property, the former owner will be subjected to a fine of not less than twice the value so wasted; and
8. A warning that any persons or entities remaining on the property after the property is deed to the County may be subject to civil or criminal prosecution for trespass or to other lawful action that would remove the persons or entities from the property.

19.6.2 The required notice shall be given in any manner reasonably calculated, under all the circumstances, to apprise the former owner and other interested persons of the existence and pendency of the action and to afford them a reasonable opportunity to appear and be heard. This shall always include mailing of the notice to the interested persons' last known address by both certified mail and by regular first class mail. The required notice shall be directed to interested parties using the following guidelines:

1. *Notice to former Owners:* Notice sent to a former owner shall be addressed to the former owner or former owners, as reflected in the County records of deeds, at the true and correct address of the former owner(s) appearing on the instrument of conveyance under ORS 93.260 or as furnished under ORS 311.555, or as otherwise ascertained by the Clatsop County Tax Collector pursuant to ROS 311.560, and;
2. *Notice to Other Financially Interested Persons:* Notice sent to persons or entities other than the former owner who have a recognized interest in the property shall be addressed to that person or entity at the address which the County knows or after reasonable inquiry, has reason to believe, is the address at which such person or entity will most likely receive actual notice.
3. *Notice to Corporations or Limited Partnerships:* If a person or entity with a right to notice is a corporation or limited partnership, the notice shall be mailed to the registered agent or last registered office of the

corporation or limited partnership, if any, as shown by the records on file in the office of the Oregon Corporation Commissioner. If the corporation or limited partnership is not authorized to transact business in Oregon, then notice shall be mailed to the principle office or place of business of such corporation or limited partnership, if known.

4. *Notice to Occupants.* Notice to the occupant(s) of the property shall be addressed to "Occupants" at the property address, and if reasonably possible, shall also be posted on the property.

19.7 CONDUCT OF HEARING

19.7.1 Statement of Rights

1. The Board shall open the public hearing by informing the parties about the following matters:

- a. A general description of the hearing procedure, including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made, and an explanation of the burdens of proof or burdens of production of evidence;

- b. That a record shall be made of the proceedings and the manner of making the record and its availability to the parties;

- c. The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal of the Board's decision;

- d. That the parties have a right to be represented by an attorney at their own expense; and

- e. That the Board's decision may be appealed pursuant to ORS Chapter 34, and that the appellant shall pay all costs on appeal, including costs for preparation of a transcript.

2. The failure to give notice of any item specified in Subsection 1 of this Section shall not invalidate any decision of the Board unless on review a court finds that the failure affects the substantive rights of one of the parties. In the event of such a finding, the court shall remand the matter to the Board for a reopening of the hearing and shall direct the Board as to what steps shall be taken to remedy any prejudice to the rights of any party.

19.7.2 Witness and Testimony

1. After the Board opens the public hearing, the Tax Collector or the Tax Collector's designee shall be placed under oath, and shall

present evidence or testimony relevant to explain the County's position on the following:

a. What information indicates that the property is subject to waste or abandonment and should therefore be deeded to the County; and

b. If the property is subject to waste, how the value so wasted should be quantified, including, when appropriate, the approximate anticipated cost the County will incur in cleaning up the property;

2. Adverse parties shall have the right to cross-examine the Tax Collector or the Tax Collector's designee.

3. If there are additional witnesses present to testify in support of the County's position, they shall be placed under oath, one at a time, and shall present evidence or testimony relevant to the questions listed in Subsection 1(a) and 1(b) above. Adverse parties shall have the right to cross-examine these witnesses.

4. Following testimony by the Tax Collector or the Tax Collector's designee and all other witnesses testifying in support of the County's position in the matter, the Board shall allow any person or entity entitled to notice to be placed under oath in order to present or challenge evidence or testimony. Evidence presented must be relevant to one of the following two questions:

a. Has the property been subject to waste or abandonment? and

b. If the property is subject to waste, how can the Board quantify the value so wasted?

5. The Tax Collector or the Tax Collector's designee shall have the right to cross-examine the other parties who testify.

6. the parties may present rebuttal evidence, if any.

7. the Board shall have the right to question any witness at any time.

8. The Board may set reasonable time limits for oral presentation and testimony and shall exclude or limit cumulative, repetitious or immaterial evidence.

9. After all parties have been given the opportunity to present evidence, and to respond and reply to one another's evidence, the Board shall close the hearing and return the matter to the table for deliberation and decision.

19.7.3 Procedure in Hearings

1. In hearings held under this chapter, the County must prove the allegations by a preponderance of the admissible evidence.

2. If the only party who appears at the hearing is the County, a default order may only be issued upon a prima facie case made on the record before the Board.

3. Testimony shall be taken upon oath or affirmation of the witnesses. Any member of the Board may administer oaths or affirmations to witnesses.

4. The Board members presiding over the hearing shall place on the record a statement of the substance of any written or oral ex parte communications made on a fact in issue during the pendency of the proceedings. The Board members shall notify the parties of the communications and of their right to rebut such communications.

5. The record of the hearing shall include, if applicable:

a. Proof that notice was appropriately given under this Chapter;

b. Motions and intermediate rulings;

c. Evidence received;

d. Stipulations;

e. Questions and offers of proof objections and rulings thereon;

f. A statement of any ex parte communications on a fact in issue made to a member of the Board during the pendency of the proceedings;

g. A Board Order in accordance with the provisions of this Chapter.

6. A verbatim, written or mechanical record shall be made on all motions, rulings, and testimony. The record need not be transcribed unless requested for purposes of court review. The Board shall charge the party requesting transcription the cost of a transcript, and shall require that party to pay a deposit in advance to cover the approximate cost in advance. Failure to pay the advance deposit or transcription fees shall constitute a separate ground for denial of review of the decision of the Board.

19.7.4 Rules of Evidence

1. All evidence, including hearsay evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs, will be admissible.

2. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the Board, and objections to such evidence may be sustained. Erroneous rulings on evidence shall not preclude

action by the Board unless shown on the record to have substantially prejudiced the rights of a party.

3. The Board shall give effect to the rules of privilege recognized by law.

4. All evidence offered but not objected to, will be received, subject to the Board's power to exclude irrelevant or unduly repetitious evidence.

5. Evidence objected to may be admitted at the discretion of the Board. Rulings on the admissibility or exclusion of evidence will be made at hearing or at the time the order is issued.

6. The Board may take notice of judicially recognizable facts, and the Board may take official notice of general, technical, or scientific facts within the specialized knowledge of County employees. Parties shall be notified at any time during the proceeding but in any event prior to the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

19.7.5 Recording the Proceedings

19.7.5.1 The proceedings shall be electronically recorded. The recording shall be retained for two years after the date of the Board's order.

19.8 BOARD ORDER; FINDINGS AND CONCLUSIONS

19.8.1 The Board's Order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Board's order. If the Board concludes that the property is subject to waste or abandonment and should be deeded to the County, the Board shall adopt an order so finding. The order shall state:

1. That any rights of possession the former owner may have in the property are forfeited to the County;
2. That the former owner, or any person or entity that then appears in the records of the County to have a lien or other interest in the property, may redeem the property; and
3. That if the property is not redeemed before the expiration of thirty (30) days from the date of the Order:
 - a. The Tax Collector shall deed the property to the County; and
 - b. All rights of redemption shall terminate upon reexecution of that deed to the County.

19.8.2 If the Board concludes that the former owner, or those under the former owner's permission or control, have committed waste on the property as

described in ORS 312.180, the Board shall adopt an order so finding. The order shall state:

1. That a fine of not less than twice the value so wasted must be imposed under ORS 312.990 and Section 2.02.120;
2. That the fine is intended, in part, to reimburse the County for the expenses associated with notice and hearing under this ordinance
3. What method is being used to quantify the value so wasted, and what evidence was presented to support the value relied upon by the Board;
4. that a fine is imposed in the amount of twice the value so wasted; and,
5. That, if the property is redeemed before the expiration of the accelerated redemption period, a lien in the amount of the fine shall attach to the property, unless and until the fine is paid; and
6. that, if the former owner owns any other real property, a lien in the amount of the fine shall also attach to those other parcels, unless and until the fine is paid.

19.8.3 The Board shall notify the parties of the final order by delivering or mailing a copy of the Order and any accompanying findings and conclusions to the parties or, if applicable, the parties' attorneys. A final order shall be issued by the Board within 14 days of the conclusion of the hearing. A final order shall become effective when signed by the Chair of the Board.

19.9 JUDICIAL REVIEW

19.9.1 Review of the Board's decision shall be by writ of review, pursuant to ORS chapter 34.

19.10 TAX COLLECTOR'S DEED

19.10.1 Upon failure of any party having the right of redemption to redeem the subject property within 30 days after adoption of the Board Order, the Tax Collector shall issue a deed to the County, which shall terminate all redemption rights and cancel all taxes and special assessments.

19.11 REMOVAL OF OCCUPANTS

19.11.1 After issuance of a deed pursuant to this chapter, the County may remove in any manner provided by law any persons still in possession of the property.

19.12 FINES

19.12.1 The commission of waste by the former owner, or anyone under the permission or control of the former owner, on property sold to the County pursuant to ORS Chapter 312 is punishable, upon conviction, by a fine of not less than twice the value so wasted.