



Deschutes County Administrative Policy No. 26

Effective Date: _____, 2024

Tax Foreclosed and Tax Deeded Property: Management and Disposition Policy

I. PURPOSE

The purpose of this policy is to establish procedures for managing and conveying parcels of tax foreclosed and tax deeded property to the general public, or to Local Municipalities, Governmental Bodies, or Qualifying Nonprofits as applicable, in a fair and equitable manner for the benefit of the taxing districts, the County, and the public good.

II. DEFINITIONS

As used in this policy, the following definitions apply:

“Application” is the Deschutes County Real Property Surplus Funds Claim Application (Attachment 1)

“Board” is the Deschutes County Board of Commissioners.

“Claim Period” is the ninety (90) day period by which a prior property owner has to submit an Application for Surplus Proceeds starting at either 1) the date the County decided to not sell the Tax Deeded Property, or 2) the date of the public auction at which the Tax Deeded Property was sold. Failure to submit an Application within this period shall be deemed a waiver of any right to Surplus Proceeds.

“County” means Deschutes County.

“County Counsel” means the Deschutes County Counsel, or his/her duly appointed representative.

“Deeded Property” means the land, and all buildings, structures, improvements, machinery, equipment or fixtures erected on, above, or under the land, to which the County has obtained title after the exhaustion of the redemption period pursuant to ORS 312.200.

“Governmental Body” means the State of Oregon, a political subdivision thereof, the United States of America, or an agency thereof.

“Foreclosed Property” means real property located in Deschutes County that is subject to a foreclosure judgment under ORS Chp. 312, but has yet to be deeded to the County pursuant to ORS 312.200.

“Personal Property” means tangible goods or items left upon Real Property, including, but not limited to, furniture, personal effects, movable tools and equipment, and manufactured dwellings that are considered separate from the Real Property under the County’s tax assessment roll. Personal Property does not include “motor vehicle” as set forth in ORS 801.590.

“Property Costs and Fees” means any/all taxes, interest, penalties, fees; taxes and interest that would have incurred on the property had it not been deeded to the County; a property management fee; other actual property maintenance and supervision expenses incurred by County, pursuant to ORS 275.275(1)(a)-(c); other costs incurred by the County to sell the property; any municipal corporation local improvement lien, plus interest and penalties as of the Sale Date, pursuant to ORS 275.275(3)(a)(A); and any administrative fees paid by purchaser pursuant to a land sale contract.

“Property Management” means the department and/or individual designated by the County Administrator as the manager of foreclosed and - deeded real property.

“Real Property” means a parcel of land and everything permanently attached to the land, plus the rights inherent in ownership of the real estate.

“Record Owner” means the person, corporation, or entity who held legal title to Real Property on the date it was conveyed to the County by Tax Deed as a result of tax foreclosure proceedings.

“Redemption Period” means the period that Real Property shall be held by the County for the period of 2-years from and after the date of foreclosure judgment pursuant to ORS 312.200, unless sooner redeemed.

“Sheriff” means the Deschutes County Sheriff, or his/her duly appointed representative.

“Surplus Proceeds” means net proceeds, if any, after deducting Property Costs and Fees.

“Tax Deed” means a legal document that is recorded on the real property title that transfers ownership of the property to the County only after property taxes, penalties and interest remain unpaid after the expiration of the redemption period as provided by ORS 312.

“Tax Roll” means the official record of Real Property subject to property tax within Deschutes County.

III. MANAGING TAX-FORECLOSED PROPERTIES

a. Redemption Period; Deeding Foreclosed Property to the County.

- A. Pursuant to ORS 312.120, all Foreclosed Property shall be held by the County for the redemption period after the date of the judgment of foreclosure, unless sooner redeemed.
- B. During the redemption period, the County Tax Office shall mail redemption notices pursuant to the time periods outlined in ORS 312.125 and 312.190. That notice shall include information regarding the possibility of Surplus Proceeds if the property is not redeemed and eventually conveyed to the County by Tax Deed , where to access a notification form regarding any future Surplus Proceeds , the time period for submitting an Application after the sale of the Deeded Property or the decision by the County to not sell the Deeded Property, and the waiver of one’s rights to Surplus Proceeds if an Application is not submitted within the requisite time period.

- C. Any person having a lawful interest in a Foreclosed Property shall be given the opportunity, as required by ORS 312.125, to redeem the Foreclosed Property up until the date it is officially conveyed to the County by Tax Deed.
- D. Pursuant to ORS 312.200 upon expiration of redemption period, Property Management shall prepare, and upon approval by County Counsel, record a Tax Deed transferring ownership to the County for any Foreclosed Property not otherwise redeemed. Property Management shall suspend transferring ownership to the County for any Foreclosed Property that was not redeemed within the redemption period, if the Legislature suspends said operation.
- E. The County's Tax Deed shall include a legal description of the Foreclosed Property. The legal description may be taken from prior deeds, title reports, or as prepared by a licensed surveyor if otherwise unavailable.

b. Real Property Initial Evaluation; Insurance

- A. At the time the Real Property is conveyed to the County by Tax Deed, or as soon thereafter as time and resources allow, Property Management shall evaluate the Deeded Property for signs of occupancy, debris, security issues, hazardous conditions, or other abatement needs and inform the County Counsel of its findings.
- B. Property Management shall notify Risk Management of acquired Deeded Property. Risk Management will evaluate the property and add to the County's property insurance policy, if appropriate.
- C. Property Management shall determine within 180 days of recording the Tax Deed whether the Deeded Property should be sold at the next County public auction. It is the County's general policy that all Deeded Property, with limited exception, should be sold at public auction. Property Management in its discretion may determine whether Deeded Property should be sold at auction. Factors that may be considered by Property Management may include:
 - 1. whether the Deeded Property is a "buildable lot"
 - 2. whether the sale of the Deeded Property may cause neighbor disputes
 - 3. whether the Deeded Property should be conveyed to another agency as indicated on the recorded plat
 - 4. whether the Deeded Property should be considered to be conveyed to another agency that demonstrates the need to acquire said Deeded Property to further public interest
 - 5. whether the Deeded property should be conveyed to a home owners association or property owners association as indicated on the plat
 - 6. other reasons as identified

Property Management should weigh the potential costs of not selling the Deeded Property at public auction pursuant to the above-listed factors with the money that

may be owed by the County to compensate the prior property owners for Surplus Proceeds.

- D. Deeded Property that Property Management has determined will not be sold at public auction shall be appraised as of the date the deed is taken by the County. After receipt of the appraisal, Property Management shall determine whether Surplus Proceeds exist, and if so, Surplus Proceeds shall be distributed pursuant to Section V below.

IV. DISPOSITION OF TAX-FORECLOSED PROPERTIES

a. General Policy; Order of Priority for the Use, Donation, or Sale of Excess Real Property; Deeds and Purchase Sale Agreements.

- A. The County's primary goal for Deeded Property is to have it reinstated to the Tax Roll or into public use.
- B. The County shall convey Deeded Property by Bargain and Sale deed and shall make no representation about the value, zoning, suitability for any purpose, building feasibility, environmental condition, wetland designation, forest zones, easements, city ordinances and regulations or any other matter. All Deeded Property shall be conveyed "AS IS".
- C. The Board has established the following preferred order of priority for the use, donation, or sale of Deeded Property:
 - 1. Sale to the prior Recorded Owner if requested and qualified;
 - 2. Sale at public auction;
 - 3. Retention by the County as determined by Property Management pursuant to III(D).
- D. County Counsel shall review all deeds, purchase and sale agreements, and other transactional documents required for transferring ownership (or other rights) of Deeded Property. All such transactional documents must be approved by the Board or the Property Manager, if designated by the Board.

b. Sale to Former Owner. If the former Recorded Owner indicates an interest to reacquire Deeded Property, Property Management and County Counsel shall follow procedures in accordance with ORS Chapter 275.180 and as otherwise set forth in these procedures.

c. Sale at Public Auction.

- A. In accordance with ORS 275.110, Property Management shall prepare an order and the Board shall enter said order directing the Sheriff to sell at public auction any Deeded Property not otherwise held or sold as permitted in this policy. The order shall:
 - 1. List all properties to be sold;
 - 2. Establish the terms and conditions of the sale; and

3. Fix the minimum price for which each parcel may be sold.
- B. Properties are normally sold with the minimum bid set to recover the unpaid property taxes, interest, and penalties on the Deeded Property, including the taxes and interest that would have been charged had the County not taken ownership of the property, and any costs and expenses incurred by the County in the maintenance, supervision, and sale of the Deeded Property.
 - C. Upon approval of the order, Property Management shall publish notice of the sale of the Real Property pursuant to ORS 275.120. In addition, a description of the Real Property to be auctioned shall be made available to the public on the Deschutes County website.
 - D. With the assistance of Property Management, Real Property shall be auctioned by the Sheriff at a designated location and time in accordance with ORS 275.140.
 - E. All public auctions shall adhere to the following requirements:
 1. Registration.
 - i. Individuals intending to bid or purchase Real Property must first register with the County.
 - a. Pre-registration opens up to the public approximately four (4) weeks prior to the auction and closes one (1) day prior to the auction.
 - b. On the day of auction, registration shall be opened to the public at least one (1) hour prior to the auction start time.
 - ii. Bidders must be present at the auction. Property Management shall not allow absentee bidding.
 2. Bidding.
 - i. The County shall only accept oral bids during the auction. Any sealed bids received by the County shall be rejected.
 - ii. Bids for less than the advertised minimum bid shall not be accepted.
 - iii. Bidding shall start in increments of \$100.00, and may increase by \$500, \$1,000 or more based on bidder response.
 3. Payment & Fees.
 - i. Successful bidders are allowed to leave the auction site to obtain funds to pay the County an amount equal to or greater than 20% of the purchase price for the Real Property purchased (the "Deposit "). Buyers are required to return to the auction site by 2:00 p.m. Pacific Time.
 - ii. Once Deposits are paid to the County by the winning bidder, Deposits will be deemed nonrefundable.

- iii. Full payment shall be made by the winning bidder within thirty (30) calendar days following the auction. The County shall not carry contracts or purchase agreements for publicly auctioned Real Property.
- iv. Payment shall be made in cash, money order, or by cashiers' check, made payable to "Deschutes County".

4. Certificate of Sale and Receipt; Deed.

- i. The County shall issue a "Certificate of Sale and Receipt" to the winning bidder at the time payment is made in full. The "Certificate of Sale and Receipt" shall be signed by the successful bidder and shall include the amount of the sale and the name that is to be recorded on the deed.
- ii. Buyers are required to record the "Certificate of Sale and Receipt" on the property title. As a courtesy, the staff from the Deschutes County Clerk's Office may be available at the auction to record the document. If buyer pays in full at a later date and once the buyer receives the "Certificate of Sale and Receipt", the buyer will need to record the document by visiting the Deschutes County Clerk's Office. Recording the document is at the sole cost and expense of the buyer.
- iii. The County shall deed the Real Property to the winning bidder no later than thirty (30) days following payment in full.
 - a. Buyers may be required to sign additional agreements for specific properties. Specific requirements and other details may be found on the Deschutes County website approximately four (4) weeks prior and up to the date of auction.

- F. Real Properties offered but not sold at a public auction may be sold on a first-come-first-serve basis after the auction via private sale, sale pursuant to ORS 271.330, or maintained in County's inventory. Properties sold at private sale should initially be listed with a minimum bid price of 85% of the auction minimum bid, with the price being lowered until the property sells or the price reaches 15% of the auction minimum bid. Notwithstanding the foregoing, the minimum bid price of certain Real Properties may be lowered immediately to 15% of the auction minimum bid amount if it is determined to be in the best interests of the County (e.g., Real Properties with significant expenses or risk). The County shall not carry contracts or purchase agreements for Real Property sold post auction or other private sales, unless otherwise directed by the Board.

V. DISPOSITION OF SURPLUS PROCEEDS

a. Notice of Right to Claim Surplus Proceeds

General notice of the right to submit an Application for Surplus Proceeds upon a determination of the County that the Deeded Property will not be sold at public auction or when the Deeded Property is sold at public auction shall be provided as follows:

- A. As part of any notice to any person or entity entitled to redeem the Deeded Property pursuant to ORS 312.125. (e.g. Notification contained in 1-year redemption letters)
 - B. As part of the general notice of expiration of Redemption Period pursuant to ORS 312.190.
 - C. Included in the Sheriff's notice of sale pursuant to ORS 275.120, if the Deeded Property is determined to be sold at the public auction.
 - D. After a determination that the Deeded Property will not be sold at the public auction or after the public auction, notice shall be provided to the prior Record Owner regarding the possibility of Surplus Proceeds. The Notice shall also clearly state that the failure to submit an Application to the County within ninety (90) days ("the Claim Period") of the determination to not sell or the sale of the Deeded Property at public auction shall constitute a waiver of any right to the possible Surplus Proceeds.
- b. Surplus Proceeds from Sale of Deeded Property
- A. If the sale amount for any Deeded Property sold exceeds the amounts owed, as outlined in Section IV(c)(B), the Surplus Proceeds from the sale shall be distributed, following reimbursement of all amounts owed, in the following order:
 - 1. To County in the amount of Property Costs and Fees.
 - 2. To prior Record Owner who have submitted to Property Management a completed Application and W-9 within the Claim Period. Where there is a dispute among prior Record Owners, a court order or arbitration shall be required to define apportionment.
 - i. The burden of demonstrating entitlement to Surplus Proceeds shall be on the prior Record Owner.
 - ii. Where there is more than one prior Record Owner, an Application is required from each prior Record Owner.
 - iii. Upon distribution of proceeds to one or more prior Record Owners, any future claim for Surplus Proceeds shall be barred.
 - iv. Prior Record Owners who purchased the Deed Property from County shall not be entitled to Surplus Proceeds.
 - v. Applications shall be retained for seven (7) years from the date of receipt.
 - 3. Any remaining Surplus Proceeds shall be distributed pursuant to ORS 275.275.
 - B. Surplus Proceeds shall be held in an interest-bearing account until the amount and the distribution of the Surplus Proceeds have been determined.

- C. Applications for Surplus Proceeds shall be in a form substantially similar to Attachment 1, attached hereto.
 - D. Assignments of interests, deeds, or other documents executed or recorded after Real Property is conveyed to the County by Tax Deed, shall not affect the payment of Surplus Proceeds to the Record Owner as described herein.
 - E. In the event that no claim for the Surplus Proceeds is received by the County within ninety (90) days after the date of the sale, any claim shall be deemed waived at the expiration of the 90-day period. The County shall hold unclaimed funds in an interest-bearing account for an additional two (2) years and shall distribute the unclaimed funds pursuant to ORS 275.275 at the expiration of the two years.
 - F. In the event of a dispute between two or more claimants regarding Surplus Proceeds, or in other situations where Property Management deems it necessary, the County may interplead the Surplus Proceeds to Deschutes County Circuit Court in Oregon. Any additional costs incurred by the County for interpleading the funds shall be requested to be reimbursed by the Circuit Court from the Surplus Proceeds. See Oregon Rules of Civil Procedure 31.
- c. Surplus Proceeds Procedure when Deeded Property is Retained by the County
- A. If the County retains Deeded Property as permitted under Section III(b)(C), the County shall provide notice to the Record Owner of its intent to retain the Deeded Property.
 - B. The County shall send written notice to the Record Owner, if known, by either registered or certified mail to provide notice of the County's intent to retain or transfer the Deeded Property. The notice shall, at minimum, include the following information:
 - 1. A statement that the County intends to retain the Deeded Property.
 - 2. An accounting of:
 - i. The total amount of back-taxes owed, plus interest and penalties, including taxes and interest that would have been incurred had the property not been transferred to the County, for the Deeded Property;
 - ii. The total amount of expenses incurred by the County in the maintenance and supervision of the Deeded Property; and
 - iii. Any other fees that are lawfully owed on the Deeded Property.
 - 3. The market value of the Deeded Property per the appraisal obtained by Property Management; and,

4. The possibility of Surplus Proceeds and the requirement to submit an Application within the 90-day Claim Period to claim any Surplus Proceeds. Failure to submit an Application within the 90-day Claim Period shall constitute a waiver of any right to the possible Surplus Proceeds.

Approved by the Deschutes County Board of Commissioners July XX, 2024.

Nick Lelack
County Administrator