

House Bill 2389

Sponsored by Representative ESQUIVEL (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires lender and seller imposing prepayment penalty in terms and conditions of real estate loan agreement or land sale contract to ensure that instrument identifying terms and conditions of penalty is recorded in deed or mortgage records in county in which real property is located. Specifies instruments that may satisfy requirement.

A BILL FOR AN ACT

1
2 Relating to real estate transactions; creating new provisions; and amending ORS 205.246.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) In a transaction relating to real property, a lender and seller shall ensure**
5 **that an instrument identifying the terms and conditions of a prepayment penalty provision,**
6 **if any, is recorded in the deed or mortgage records of the county when:**

7 (a) **The terms and conditions of a loan secured by a mortgage or trust deed on real**
8 **property located in this state include provisions authorizing the lender or seller to impose a**
9 **prepayment penalty.**

10 (b) **The terms and conditions of a land sale contract include provisions authorizing the**
11 **lender or seller to impose a prepayment penalty.**

12 (2) **The lender and seller may satisfy the requirements of subsection (1) of this section**
13 **by causing the county clerk to record one of the following instruments that contains a**
14 **complete and accurate representation of the terms and conditions of the prepayment penalty**
15 **provisions applicable to the loan or sale:**

16 (a) **The promissory note;**

17 (b) **A prepayment rider;**

18 (c) **A mortgage or a trust deed;**

19 (d) **A land sale contract; or**

20 (e) **Another instrument prepared specifically for recording.**

21 (3) **In order to be recorded by a county clerk, an instrument described in subsection (2)**
22 **of this section must either:**

23 (a) **Satisfy the legal requirements for instruments to be recorded; or**

24 (b) **Be attached to an instrument that satisfies the legal requirements for instruments**
25 **to be recorded.**

26 **SECTION 2. ORS 205.246 is amended to read:**

27 205.246. (1) The county clerk shall record the following instruments required or permitted by law
28 to be recorded and entered in the office of the county clerk:

29 (a) Financing statements recorded in the office of the county clerk under ORS 79.0501 (1)(a);

30 (b) Hospital and physician liens recorded under ORS 87.565;

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS
- 2 87.806;
- 3 (d) Cooperative contracts recorded under ORS 62.360;
- 4 (e) Special district assessments attaching to real property;
- 5 (f) Lien foreclosure statements recorded under ORS 87.202;
- 6 (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title
- 7 to real property;
- 8 (h) Building code exemptions required under ORS 455.320 and 455.345;
- 9 (i) Construction liens recorded under ORS 87.050;
- 10 (j) Liens upon chattels recorded under ORS 87.246;
- 11 (k) Liens on real property recorded under ORS 87.372;
- 12 (L) Employee benefit plan liens recorded under ORS 87.860;
- 13 (m) Attorney liens recorded under ORS 87.455 and 87.460;
- 14 (n) Long term care liens recorded under ORS 87.517;
- 15 (o) Ambulance services liens recorded under ORS 87.623;
- 16 (p) Community property records recorded under ORS 108.530;
- 17 (q) Sheriff transfer of records recorded under ORS 206.100;
- 18 (r) Corrected instruments required under ORS 205.244;
- 19 (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210,
- 20 517.220, 517.280, 517.310 and 517.320;
- 21 (t) Copies of records certified by a county clerk or court clerk;
- 22 (u) Subdivision and partition plats recorded under ORS 92.140;
- 23 (v) Condominiums recorded under ORS chapter 100;
- 24 (w) Requests for notice of transfer or encumbrance or terminations of requests for notice of
- 25 transfer or encumbrance presented for recordation under ORS 411.694;
- 26 (x) Bankruptcy documents presented for recordation under ORS 93.770; *[and]*
- 27 (y) A written warranty agreement under ORS 701.605; **and**
- 28 **(z) An instrument containing the terms and conditions of a prepayment penalty pro-**
- 29 **vision, if any, applicable to a loan agreement or a land sale contract as provided in section**
- 30 **1 of this 2007 Act.**

31 (2) The county clerk shall charge and collect fees specified in ORS 205.320, 205.327 and 205.350
32 for recording an instrument required to be recorded under subsection (1) of this section.

33 (3) Indexes may be maintained for instruments recorded under subsection (1) of this section in
34 the same manner as provided in ORS 205.160.

35 **SECTION 3. Section 1 of this 2007 Act and the amendments to ORS 205.246 by section 2**
36 **of this 2007 Act apply to real estate loan agreements and land sale contracts entered into**
37 **on or after the effective date of this 2007 Act.**