

# House Bill 2959

Sponsored by Representative ESQUIVEL (at the request of Alan Brickley)

## 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**.

Prohibits county clerk from refusing to record instrument required or permitted by law to be recorded because of title or presence in instrument of extraneous information.

Creates form for correction of errors in recorded trust deed.

## A BILL FOR AN ACT

1  
2 Relating to recordation of instruments in county records; creating new provisions; and amending  
3 ORS 203.148, 205.125, 205.130, 205.236, 205.246, 205.320 and 312.125.

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

5 **SECTION 1.** ORS 205.130 is amended to read:

6 205.130. (1) The county clerk shall:

7 [(1)] (a) Have the custody of, [*and safely*] keep and preserve all files and records of deeds and  
8 mortgages of real property[,] and a record of all maps, plats, contracts, powers of attorney and other  
9 interests affecting the title to real property required or permitted by law to be recorded.

10 [(2)] (b) Record, or cause to be recorded, in a legible and permanent manner, and keep in the  
11 office of the county clerk[,] all:

12 [(a)] (A) Deeds and mortgages of real property, powers of attorney and contracts affecting the  
13 title to real property[,] authorized by law to be recorded, assignments thereof and of any interest  
14 therein when properly acknowledged or proved and other interests affecting the title to real prop-  
15 erty required or permitted by law to be recorded[;].

16 [(b)] (B) Certificates of sale of real property under execution or order of court, or assignments  
17 thereof or of any interest therein when properly acknowledged or proved[;].

18 [(c)] (C) Certified copies of death certificates of any person appearing in the county records as  
19 owning or having a claim or interest in land in the county. A death certificate recorded in the deed  
20 records of a county under this [*subsection*] **paragraph** is a public record and is not subject to the  
21 disclosure limitations under ORS 432.121[;].

22 [(d)] (D) Instruments presented for recording by the United States or the State of Oregon, or a  
23 political subdivision of either, that affect title to or an interest in real property or that lawfully  
24 concern real property[; *and*].

25 [(e)] (E) Instruments recognized under state law or rule or federal law or regulation as affecting  
26 title to or an interest in real property if the instrument is properly acknowledged or proved.

27 [(3)] (c) Keep and maintain:

28 [(a)] (A) Deed and mortgage records[;].

29 [(b)] (B) Statutory lien records[;].

30 [(c)] (C) A record called the County Clerk Lien Record in which the following shall be recorded:

31 [(A)] (i) The warrants and orders of officers and agencies that are required or permitted by law

**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 to be recorded; and

2 [(B)] (ii) All instruments presented for recordation when required or permitted by law to be re-  
 3 corded that affect the title to or an interest in real property, other than instruments recorded in the  
 4 deed and mortgage records or the statutory lien records[;].

5 [(d)] (D) Releases, satisfactions, assignments, amendments and modifications of recorded  
 6 instruments[; and].

7 [(e)] (E) Other instruments required or permitted by law to be recorded not affecting interests  
 8 in real property.

9 [(4)] (d) Perform all the duties in regard to the recording and indexing of deeds and mortgages  
 10 of real property, contracts, abstracts of judgments, notices of pendency, powers of attorney and  
 11 other interests when required or permitted by law to be recorded that affect the title of real prop-  
 12 erty, and in regard to the entry of satisfaction and discharge of the same, together with other docu-  
 13 ments required or permitted by law to be recorded.

14 (2) **A county clerk may not refuse to record an instrument that is required or permitted**  
 15 **by law to be recorded because of the title of the instrument or the presence in the instru-**  
 16 **ment of extraneous information.**

17 [(5)] (3) **A county clerk does not** incur [no] civil or criminal liability, either personally or in  
 18 an official capacity, for recording an instrument that does not comply with the provisions of law that  
 19 require or allow the recording of the instrument.

20 **SECTION 2.** ORS 205.236 is amended to read:

21 205.236. (1) **A person who presents** an instrument required or permitted by law to be recorded  
 22 shall [be] **ensure that the instrument is** clearly labeled in sufficient detail to enable the clerk to  
 23 record the instrument in the appropriate record.

24 (2) **A county clerk shall record one** [an] instrument describing two or more transactions re-  
 25 quired or permitted by law to be recorded **and usually recorded** as separate instruments [may be  
 26 recorded when] **if** the instrument **presented for recordation** is labeled in sufficient detail to enable  
 27 the clerk to record the transactions in the appropriate records and:

- 28 (a) The transactions described in the instrument involve the same properties;
- 29 (b) The transactions are assignments, releases or satisfactions of any recorded instrument;
- 30 (c) The transactions are liens recorded under ORS 311.675;
- 31 (d) The transactions are municipal assessment liens being recorded under ORS 93.643;
- 32 (e) The instrument is recorded under ORS 371.650; or
- 33 (f) The instrument is a cooperative contract recorded under ORS 62.360.

34 (3) When **the county clerk accepts** an instrument described in subsection (2) of this section  
 35 [is accepted] for recording[ by a county clerk], the county clerk shall enter the instrument into the  
 36 appropriate records.

37 (4) **The county clerk shall charge** recording fees [shall be charged] for recording each addi-  
 38 tional transaction described in subsection (2) of this section and the fee shall be the fee provided for  
 39 in ORS 205.320.

40 (5) [Nothing in] This section [is intended to] **does not** abolish the requirements for collection of  
 41 the fees required under ORS 205.323.

42 (6) Recording an instrument under this section when the instrument is not clearly labeled does  
 43 not affect the validity of the recordation.

44 (7) A county clerk [shall] **does** not incur civil or criminal liability, either personally or in an  
 45 official capacity, for recording an instrument under this section when the instrument is not labeled

1 in sufficient detail to allow the clerk to record the transactions in all appropriate records.

2 **SECTION 3.** ORS 205.246 is amended to read:

3 205.246. (1) The county clerk shall record the following instruments required or permitted by law  
4 to be recorded and entered in the office of the county clerk:

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

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

7 (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS  
8 87.806;

9 (d) Cooperative contracts recorded under ORS 62.360;

10 (e) Special district assessments attaching to real property;

11 (f) Lien foreclosure statements recorded under ORS 87.202;

12 (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title  
13 to real property;

14 (h) Building code exemptions required under ORS 455.320 and 455.345;

15 (i) Construction liens recorded under ORS 87.050;

16 (j) Liens upon chattels recorded under ORS 87.246;

17 (k) Liens on real property recorded under ORS 87.372;

18 (L) Employee benefit plan liens recorded under ORS 87.860;

19 (m) Attorney liens recorded under ORS 87.455 and 87.460;

20 (n) Long term care liens recorded under ORS 87.517;

21 (o) Ambulance services liens recorded under ORS 87.623;

22 (p) Community property records recorded under ORS 108.530;

23 (q) Sheriff transfer of records recorded under ORS 206.100;

24 (r) Corrected instruments required under ORS 205.244;

25 (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210,  
26 517.220, 517.280, 517.310 and 517.320;

27 (t) Copies of records certified by a county clerk or court clerk;

28 (u) Subdivision and partition plats recorded under ORS 92.140;

29 (v) Condominiums recorded under ORS chapter 100;

30 (w) Requests for notice of transfer or encumbrance or terminations of requests for notice of  
31 transfer or encumbrance presented for recordation under ORS 411.694;

32 (x) Bankruptcy documents presented for recordation under ORS 93.770; *[and]*

33 (y) A written warranty agreement under ORS 701.605; **and**

34 **(z) An instrument, as described in section 5 of this 2007 Act, to correct errors in a re-**  
35 **corded trust deed.**

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

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

40 **SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS 86.705 to 86.795.**

41 **SECTION 5. (1) To correct an error in a recorded trust deed, a person may present an**  
42 **instrument to the county clerk for recording in the deed and mortgage records of the county,**  
43 **and the county clerk shall record the instrument if it otherwise meets the requirements for**  
44 **an instrument to be recorded under ORS chapter 205 and is in substantially the following**  
45 **form:**

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**CORRECTION OF ERROR(S)  
IN THE DEED AND MORTGAGE RECORDS  
RELATING TO A TRUST DEED  
(ORS 86.705 to 86.795)**

**This instrument is recorded to provide notice of an error relating to:**

**Original Deed of Trust**

- County clerk instrument record #:**
- Grantor (name):**
- Trustee (name):**
- Beneficiary (name):**
- Assignee(s), if any (name(s)):**

**The error to be corrected is (check one):**

- Erroneous reconveyance of trust deed**  
**Date of recording:**  
**County clerk instrument record #:**
- Erroneous recording of Trustee's Deed**  
**Date of recording:**  
**County clerk instrument record #:**

**The result of this error correction is (check one):**

- The original trust deed is hereby reinstated; or**
- The Trustee's Deed is hereby set aside as though the erroneous instrument had not been recorded.**

Date \_\_\_\_\_  
Name (printed) \_\_\_\_\_  
Signature \_\_\_\_\_  
(Beneficiary of original deed of trust)

**STATE OF OREGON     )**  
**) ss.**  
**County of \_\_\_\_\_ )**

**The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,**  
**2\_\_\_\_, by \_\_\_\_\_.**

\_\_\_\_\_  
**Notary Public for Oregon**  
**My commission expires: \_\_\_\_\_**

**STATE OF OREGON     )**  
**) ss.**  
**County of \_\_\_\_\_ )**



1 (3) From the date that an order or warrant imposing a monetary obligation is recorded in the  
 2 County Clerk Lien Record, the order or warrant becomes a lien upon the title to and interest in  
 3 property of the person against whom it is issued in the same manner as a judgment that creates a  
 4 judgment lien under ORS chapter 18.

5 (4) In addition to any other remedy provided by law, orders and warrants recorded in the County  
 6 Clerk Lien Record may be enforced as provided in ORS 205.126.

7 **SECTION 8.** ORS 205.320 is amended to read:

8 205.320. In every county there shall be charged and collected in advance by the county clerk,  
 9 for the benefit of the county, the following fees, and no more, for the following purposes and ser-  
 10 vices:

11 (1) For filing and making entry when required by law of any instrument required or permitted  
 12 by law to be filed, when it is not recorded, \$5 for each page.

13 (2) For filing and making entry of the assignment or satisfaction of any filed, but not recorded,  
 14 instrument, \$5 for each page.

15 (3) For each official certificate, \$3.75.

16 (4)(a) For purposes of this subsection, “page” means one side of a sheet 14 inches, or less, long  
 17 and 8-1/2 inches, or less, wide.

18 (b) For recording any instrument required or permitted by law to be recorded, \$5 for each page,  
 19 but the minimum fee shall not be less than \$5.

20 (c) For supplying to private parties copies of records or files, not more than \$3.75 for locating  
 21 a record requested by the party and 25 cents for each page.

22 (d) For each official certificate, \$3.75.

23 (5) For taking affidavit for and making and issuing marriage license and registering the return  
 24 thereof, \$25.

25 (6) For solemnizing a marriage under ORS 106.120, \$25. This subsection does not require that  
 26 the county clerk charge a fee for solemnizing a marriage after normal working hours or on Satur-  
 27 days or legal holidays. This subsection does not prohibit a county clerk from charging and accepting  
 28 a personal payment for solemnizing a marriage if otherwise authorized by ORS 106.120.

29 (7) For taking and certifying acknowledgment or proof of execution of any instrument, the fee  
 30 established in the schedule adopted by the Secretary of State under ORS 194.164.

31 (8) For issuing any license required by law, other than a marriage or liquor license, and for  
 32 which no fee is otherwise provided by law, \$5.

33 (9) For any service the clerk may be required or authorized to perform and for which no fee is  
 34 provided by law, such fees as may favorably compare with those established by this section for  
 35 similar services and as may be established by order or rule of the county court or board of county  
 36 commissioners.

37 (10) For recording any instrument under ORS 205.130 [(2)] (1)(b), as required by ordinance pur-  
 38 suant to ORS 203.148.

39 (11) In addition to and not in lieu of the fees charged under subsection (4) of this section, for  
 40 each additional municipal assessment lien recorded under ORS 93.643, \$5.

41 (12) In addition to and not in lieu of the fees charged under subsection (4) of this section, for  
 42 each additional assignment, release or satisfaction of any recorded instrument, \$5.

43 (13) In addition to and not in lieu of the fees charged under subsection (4) of this section, for  
 44 each additional transaction described under ORS 205.236, \$5.

45 (14) In addition to and not in lieu of the fees charged under subsection (4) of this section, for

1 each additional lien recorded under ORS 311.675, \$5.

2 (15) For preparing and recording the certificate under ORS 517.280, \$20 or such other fee that  
 3 is established by the county governing body.

4 (16) In addition to and not in lieu of the fees charged under subsection (4) of this section, for  
 5 each additional claim listed on an affidavit of annual compliance under ORS 517.210, \$5.

6 (17) In addition to and not in lieu of the fees charged under subsection (4) of this section, for  
 7 each additional name listed on a cooperative contract under ORS 62.360 (2) or for recording the  
 8 termination of a cooperative contract under ORS 62.360 (4), \$5.

9 (18) Notwithstanding any other law, five percent of any fee or tax that is not collected for the  
 10 benefit of the county clerk shall be deducted from the fee or tax. The moneys deducted shall be  
 11 expended for acquiring storage and retrieval systems, payment of expenses incurred in collecting the  
 12 fee or tax and maintaining and restoring records as authorized by the county clerk. Moneys col-  
 13 lected under this subsection shall be deposited in a county clerk records fund established by the  
 14 county governing body. No moneys shall be deducted under this subsection from:

15 (a) Fees collected for the Domestic Violence Fund under ORS 106.045.

16 (b) Fees collected for conciliation services under ORS 107.615.

17 (c) Real estate transfer taxes enacted prior to January 1, 1998.

18 (d) Fees collected under ORS 205.323 for the Oregon Land Information System Fund.

19 **SECTION 9.** ORS 312.125 is amended to read:

20 312.125. (1) Not less than one year prior to the expiration of the period of redemption of any real  
 21 property ordered sold to the county under a judgment under ORS 312.100, the tax collector shall  
 22 provide notice of the expiration of the period of redemption to any person or entity entitled to re-  
 23 deem the property under ORS 312.120 (2) whose interest appears in the records of the county as of  
 24 the date foreclosure proceedings were instituted. Any person or entity whose interest has terminated  
 25 by any means other than a judgment of foreclosure under ORS 312.120 shall not be entitled to such  
 26 notice.

27 (2) The notice shall contain:

28 (a) The date of the judgment;

29 (b) The date of expiration of the period of redemption;

30 (c) Warning to the effect that the property ordered sold under the judgment, unless sooner re-  
 31 deemed, will be deeded to the county immediately on expiration of the period of redemption and that  
 32 every right or interest of any person in the property will be forfeited forever to the county;

33 (d) A legal description of the property and a tax account number; and

34 (e) The name of the owner as it appears on the latest tax roll.

35 (3) The notice required to be given under subsections (1) and (2) of this section shall be given  
 36 by both certified mail and by regular first class mail and subsections (4) and (5) of this section shall  
 37 apply to both mailings.

38 (4)(a) If the notice required under subsections (1) and (2) of this section is to be given to an  
 39 owner, the notice shall be addressed to the owner or owners, as reflected in the county records of  
 40 deeds, at the true and correct address of the owner as appearing on the instrument of conveyance  
 41 under ORS 93.260 or as furnished under ORS 311.555 or as otherwise ascertained by the tax collec-  
 42 tor pursuant to ORS 311.560.

43 (b) If the person or entity to whom the notice is required under subsection (1) of this section to  
 44 be given is a lienholder, or person or entity other than the owner, having or appearing to have a  
 45 lien or other interest in the property, the notice shall be addressed to the lienholder, person or en-

1 tity at the address which the tax collector knows or after reasonable inquiry, has reason to believe  
 2 to be the address at which the lienholder, person or entity will most likely receive actual notice.  
 3 For the convenience of the county, any lien, instrument or other document, memorandum or writing,  
 4 filed on or after September 27, 1987, that creates an interest with respect to which notice is required  
 5 to be given under this paragraph, shall contain:

6 (A) The address of the person or entity holding lien or other interest created by the instrument  
 7 or other document, memorandum or writing; and

8 (B) The tax account number, if any, and if known, of the property subject to the lien or in which  
 9 the interest is created.

10 (5) Failure of a lien, instrument or other document, memorandum or other writing to contain the  
 11 address and tax account number information required under subsection (4)(b) of this section does  
 12 not invalidate the lien, instrument or other document, memorandum or writing, nor shall the failure  
 13 of the writing to contain the information relieve the tax collector of the duty to obtain and mail the  
 14 notice required under subsection (4)(b) of this section to the address that the tax collector believes  
 15 to be the address at which the lienholder, person or entity is most likely to receive actual notice.

16 (6) For purposes of subsection (4)(b) of this section, if the lienholder is a corporation or a limited  
 17 partnership, the tax collector shall be considered to have made reasonable inquiry if the notice is  
 18 mailed to the registered agent or last registered office of the corporation or limited partnership, if  
 19 any, as shown by the records on file in the office of the Corporation Commissioner, or if the cor-  
 20 poration or limited partnership is not authorized to transact business in this state, to the principal  
 21 office or place of business of the corporation or limited partnership.

22 (7)(a) As used in this section, "records of the county" means the following:

23 (A) The grantor-grantee indexes.

24 (B) Other records of deeds, mortgages, powers of attorney, contracts and other instruments,  
 25 documents or memorandum of conveyance or otherwise of real property that are described in ORS  
 26 205.130 [(1) and (2)] **(1)(a) and (b)**.

27 (C) The County Clerk Lien Record described in ORS 205.130 [(3)] **(1)(c)**.

28 (D) Records of federal tax liens and other liens, instruments or other documents or writings  
 29 reflecting an interest in real property described in ORS 205.246, if those records are kept separately  
 30 from the records described in paragraph (b) of this subsection.

31 (E) Records of statutory liens on real property described in ORS 87.372.

32 (F) Any other records of interests in real property required to be kept by the county clerk, if  
 33 the records contain a legal description of the property and an address specifically designated as  
 34 indicated on the instrument, document or other memorandum or writing for purposes of mailing the  
 35 notice required by this section.

36 (b) For purposes of this section only, "records of the county" includes:

37 (A) The appropriate records of the courts described in ORS 7.010 in the custody of the clerk of  
 38 the appropriate court or court administrator under ORS 7.110; and

39 (B) Probate records in the custody of the clerk of the appropriate court or court administrator  
 40 under ORS 7.230 and 7.240. Notwithstanding any provision to the contrary in ORS chapter 7 or other  
 41 law, the clerk of the appropriate court or the court administrator shall make available to and assist  
 42 the tax collector in the examination of the records described in this paragraph for purposes of car-  
 43 rying out the obligations of the tax collector under this section without charge.