

**A-Engrossed**  
**House Bill 3119**

Ordered by the House April 19  
Including House Amendments dated April 19

Sponsored by Representative THATCHER (at the request of Oregon Association of County Clerks)

**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.

**Requires county clerks to record and make available for public inspection all instruments that are required or permitted by law to be recorded, regardless of whether instrument contains information in addition to required information. Provides immunity to county clerks for recording instruments containing information in addition to required information.**

Prohibits county clerks from removing instrument or redacting extraneous information in instrument properly filed and recorded. [*Provides county clerks with immunity from liability for refusing to remove instrument or redact extraneous information.*]

**A BILL FOR AN ACT**

1  
2 Relating to county clerks; creating new provisions; and amending ORS 203.148, 205.125, 205.130,  
3 205.244, 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 (a) **Record or cause to be recorded in a legible and permanent manner, and shall make**  
8 **available for public inspection in the office of the county clerk, all instruments that are re-**  
9 **quired or permitted by law to be recorded, without regard to whether the instrument con-**  
10 **tains information in addition to the required information.**

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

14 [(2)] (c) Record[,] or cause to be recorded[,] in a legible and permanent manner, and [*keep*] **shall**  
15 **make available for public inspection** in the office of the county clerk, all:

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

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

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

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

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

6        [(3)] (d) Keep and maintain:

7        [(a)] (A) Deed and mortgage records;

8        [(b)] (B) Statutory lien records;

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

10       [(A)] (i) The warrants and orders of officers and agencies that are required or permitted by law  
11 to be recorded; and

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

15       [(d)] (D) Releases, satisfactions, assignments, amendments and modifications of recorded instru-  
16 ments; and

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

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

24       [(5)] (2) [*Incur no*] **The county clerk does not incur** civil or criminal liability, either personally  
25 or in an official capacity, for recording an instrument that:

26       (a) **Contains information in addition to the information required in order to be recorded.**

27       (b) Does not comply with the provisions of law that require or allow the recording of the in-  
28 strument.

29       **SECTION 2.** ORS 205.244 is amended to read:

30       205.244. (1) **When an instrument has been properly filed and recorded, the county clerk**  
31 **may not remove the instrument from the records or redact extraneous information from the**  
32 **instrument.**

33       [(1)] (2) Any instrument that has been previously recorded may be rerecorded to make cor-  
34 rections in the original instrument.

35       [(2)] (3) The county clerk shall record any instrument presented for rerecording as provided in  
36 subsection [(1)] (2) of this section. The corrected instrument need not be acknowledged again. The  
37 person presenting the instrument for rerecording shall cause a rerecording certificate to be affixed  
38 to the first page of the instrument or added as a new first page to the instrument. The rerecording  
39 certificate shall contain the words "RERECORDED TO CORRECT \_\_\_\_\_. PREVIOUSLY RE-  
40 CORDED IN BOOK \_\_\_\_\_ AND PAGE \_\_\_\_\_, OR AS FEE NUMBER \_\_\_\_\_."

41       [(3)] (4) A county clerk [*shall*] **does** not incur civil or criminal liability, either personally or in  
42 an official capacity, for recording a corrected instrument under this section.

43       **SECTION 3.** ORS 203.148 is amended to read:

44       203.148. (1) The county governing body may establish by ordinance a fund to be known as the  
45 Public Land Corner Preservation Fund. Moneys in the Public Land Corner Preservation Fund shall

1 be used only to pay expenses incurred and authorized by the county surveyor in the establishment,  
2 reestablishment and maintenance of corners of government surveys under ORS 209.070 (5) and (6).

3 (2) After providing public notice of its intended action and holding a public hearing at which the  
4 residents of the county may appear and be heard on the issue of establishing or changing the fee,  
5 the county governing body may establish by resolution or order a fee not to exceed \$10 for recording  
6 all instruments under ORS 205.130 [(2)] (1)(c) in addition to any other fee charged by the county  
7 clerk. All moneys collected under this subsection shall be deposited with the county treasurer at  
8 least once a month to be credited to the Public Land Corner Preservation Fund.

9 **SECTION 4.** ORS 205.125 is amended to read:

10 205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the fol-  
11 lowing information for each order or warrant recorded:

12 (a) The name of any person subject to the order or warrant.

13 (b) The name of the officer and the agency that issued the order or warrant or the name of the  
14 claimant in whose favor an order of the Construction Contractors Board or State Landscape Con-  
15 tractors Board has been given. The name of the agency or board that issued the order or warrant  
16 must be clearly printed on the order or warrant.

17 (c) The amount of any monetary obligation imposed by the order or warrant, and the name of  
18 all persons against whom the obligation is imposed.

19 (d) The date on which the order or warrant was received and recorded.

20 (e) Full or partial satisfaction, if any, of any lien claim created by the order or warrant.

21 (f) County Clerk Lien Record instruments filed under ORS 205.130 [(3)(c)(A)] (1)(d)(C)(i) shall  
22 be on official letterhead and include the seals, if any, of the officers and agencies.

23 (g) Such other information as may be considered necessary by the county clerk.

24 (2) From the date that an order or warrant is recorded in the County Clerk Lien Record, the  
25 order or warrant shall have the attributes and effect of a judgment that has been entered in the  
26 register of the circuit court for that county, including but not limited to the creation of a judgment  
27 lien for any monetary obligation in favor of the officer or agency issuing the order or warrant or  
28 in favor of the claimant in the proceedings before the Construction Contractors Board or State  
29 Landscape Contractors Board, renewal and enforcement by supplementary proceedings, writs of ex-  
30 ecution, notices of garnishment and writs of garnishment.

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

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

37 **SECTION 5.** ORS 205.320 is amended to read:

38 205.320. In every county there shall be charged and collected in advance by the county clerk,  
39 for the benefit of the county, the following fees, and no more, for the following purposes and ser-  
40 vices:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (14) In addition to and not in lieu of the fees charged under subsection (4) of this section, for  
31 each additional lien recorded under ORS 311.675, \$5.

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

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

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

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

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

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

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

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

4 **SECTION 6.** ORS 312.125 is amended to read:

5 312.125. (1) Not less than one year prior to the expiration of the period of redemption of any real  
6 property ordered sold to the county under a judgment under ORS 312.100, the tax collector shall  
7 provide notice of the expiration of the period of redemption to any person or entity entitled to re-  
8 deem the property under ORS 312.120 (2) whose interest appears in the records of the county as of  
9 the date foreclosure proceedings were instituted. Any person or entity whose interest has terminated  
10 by any means other than a judgment of foreclosure under ORS 312.120 shall not be entitled to such  
11 notice.

12 (2) The notice shall contain:

13 (a) The date of the judgment;

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

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

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

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

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

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

28 (b) If the person or entity to whom the notice is required under subsection (1) of this section to  
29 be given is a lienholder, or person or entity other than the owner, having or appearing to have a  
30 lien or other interest in the property, the notice shall be addressed to the lienholder, person or en-  
31 tity at the address which the tax collector knows or after reasonable inquiry, has reason to believe  
32 to be the address at which the lienholder, person or entity will most likely receive actual notice.  
33 For the convenience of the county, any lien, instrument or other document, memorandum or writing,  
34 filed on or after September 27, 1987, that creates an interest with respect to which notice is required  
35 to be given under this paragraph, shall contain:

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

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

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

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

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

8 (A) The grantor-grantee indexes.

9 (B) Other records of deeds, mortgages, powers of attorney, contracts and other instruments,  
10 documents or memorandum of conveyance or otherwise of real property that are described in ORS  
11 205.130 [(1) and (2)] (1)(b) and (c).

12 (C) The County Clerk Lien Record described in ORS 205.130 [(3)] (1)(d).

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

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

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

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

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

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

29 **SECTION 7. The amendments to ORS 203.148, 205.125, 205.130, 205.244, 205.320 and 312.125**  
30 **by sections 1 to 6 of this 2007 Act apply to instruments filed or recorded before, on or after**  
31 **the effective date of this 2007 Act.**

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