

A-Engrossed
Senate Bill 322

Ordered by the Senate March 7
Including Senate Amendments dated March 7

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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.

Revises laws governing judgments.

A BILL FOR AN ACT

1
2 Relating to judgments; creating new provisions; amending ORS 18.165, 18.235, 18.860, 18.868, 18.878,
3 18.884, 18.886, 18.888, 18.892, 18.896, 18.936, 18.950, 86.770 and 88.070; and repealing ORS 88.075.

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

5
6 **JUDGMENT LIEN PRIORITY**

7
8 **SECTION 1.** ORS 18.165 is amended to read:

9 18.165. (1) If a judgment with lien effect under ORS 18.150, 18.152 or 18.158 is entered or re-
10 corded in a county before a conveyance, or a memorandum of a conveyance, of real property of the
11 debtor is recorded in that county, the conveyance of the judgment debtor's interest is void as
12 against the lien of the judgment unless:

13 (a) The grantee under the conveyance is a purchaser in good faith for a valuable
14 consideration, **the conveyance is delivered and accepted before the judgment is entered or**
15 **recorded in the county where the property is located** and the conveyance or memorandum of the
16 conveyance is recorded within 20 days after delivery and acceptance of the conveyance, excluding
17 Saturdays and legal holidays under ORS 187.010 and 187.020;

18 (b) The judgment creditor has actual notice, record notice or inquiry notice of a conveyance
19 **of the debtor's interest** to a grantee when the judgment is entered or recorded in the county;

20 (c) The conveyance **by the debtor** is a fulfillment deed entitled to priority over the judgment
21 under ORS 93.645; or

22 (d) The conveyance is a mortgage, trust deed or other security instrument given **by the debtor**
23 to secure financing for the purchase **by the debtor** of the real property described in the conveyance.

24 (2) For the purpose of subsection (1)(a) of this section, a memorandum of conveyance must con-
25 tain the date of the instrument being memorialized, the names of the parties, a legal description of
26 the real property involved and a description of the nature of the interest created. The memorandum
27 must be signed by the person from whom the interest is intended to pass, and be acknowledged or
28 proved in the manner provided for the acknowledgment or proof of deeds.

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 (3) As used in this section:

2 (a) "Conveyance" means a deed, a land sale contract, an assignment of all or any portion of a
3 seller's or purchaser's interest in a land sale contract or any other agreement affecting the title of
4 real property within this state, including a trust deed, a mortgage, an assignment for security pur-
5 poses or an assignment solely of proceeds, given by a purchaser or seller under a land sale contract
6 or given by a person with title to the real property.

7 (b) "Grantee" means:

8 (A) The person deemed to be the mortgagee under a trust deed pursuant to ORS 86.715; and

9 (B) Any other person to whom the interest that is the subject of a conveyance is intended to
10 pass.

11
12 **MULTIPLE JUDGMENTS**

13
14 **SECTION 2.** ORS 18.860 is amended to read:

15 18.860. (1) A writ of execution may direct a sheriff to:

16 (a) Levy on and sell real property of the judgment debtor and deliver the proceeds to the court
17 for application against **amounts owing on** a money award.

18 (b) Levy on and sell personal property of the judgment debtor in the possession of the judgment
19 debtor, and deliver the proceeds to the court for application against **amounts owing on** a money
20 award.

21 (c) Levy on and deliver possession of specific real or personal property pursuant to the terms
22 of the judgment.

23 (d) Levy on and sell specific real or personal property pursuant to the terms of the judgment.

24 (e) Levy on currency that is in the possession of the judgment debtor and deliver the currency
25 to the court for application against **amounts owing on** a money award.

26 (2) A single writ of execution may be issued for two or more of the purposes specified in this
27 section.

28 **(3) A single writ of execution may be issued for two or more judgments as long as the**
29 **judgments are against the same judgment debtor or debtors and are entered in the same**
30 **case.**

31
32 **SATISFACTION OF JUDGMENTS**

33
34 **SECTION 3.** ORS 18.235 is amended to read:

35 18.235. (1) A judgment debtor, or a person with an interest in real property against which a
36 judgment lien exists, may move the court for an order declaring that a money award has been sat-
37 isfied or for a determination of the amount necessary to satisfy the money award, when the person
38 **making the motion** cannot otherwise obtain a satisfaction document from a judgment creditor.

39 (2) Motions under this section shall be filed in the action in which the judgment was entered.
40 All proceedings on the motion shall be conducted as part of the action in which the judgment was
41 entered. An appearance fee may not be charged for filing a motion under this section.

42 (3) A motion under this section must include the following information, to the extent known to
43 the person making the motion:

44 (a) The date of entry and principal amount of the money award.

45 (b) The rate of interest and the date the interest commenced to accrue.

1 (c) The date or dates and amounts of any payments on the money award.

2 (d) Any amount that the person believes remains to be paid on the money award, including any
3 supporting mathematical calculations.

4 (e) Any other information necessary or helpful to the court in making its determination.

5 (4) A person making a motion under this section must serve the motion on the judgment credi-
6 tor. If the person making the motion is not the judgment debtor, the person also must serve the
7 motion and supporting affidavit on the judgment debtor. If an assignment of judgment document has
8 been filed with the court under ORS 18.205, the motion must be served on the person named as the
9 assignee of the judgment. Service on the judgment creditor and judgment debtor under this sub-
10 section may be made as provided in ORCP 9 if the motion is filed within one year after entry of the
11 judgment. If the motion is filed more than one year after entry of the judgment, or service is to be
12 made on an assignee of the judgment, the motion may either be personally served as provided in
13 ORCP 7, or be served by certified mail, return receipt requested with signed receipt. The court may
14 waive service on any person under this subsection if the person making the motion files an affidavit
15 with the court stating that the person cannot be found after diligent effort by the person making the
16 motion. The *[party]* **person** making the motion shall file proof of service with the court.

17 (5) A person served with a motion under this section must file a response within 21 days after
18 service is made, or within such time as may be allowed by the court. The response must specifically
19 identify those assertions in the motion that the person contests. The response must contain any in-
20 formation or mathematical calculations necessary to support the contentions of the responding
21 party.

22 (6) The court shall hear the motion not less than seven days after notice of hearing is given to
23 the person *[filing]* **making** the motion and to the parties served with the motion. The court shall
24 hear and determine the issues in a summary fashion without a jury. The court shall give the parties
25 a reasonable opportunity to present evidence relevant to any factual issues.

26 (7) If the court determines that the person making the motion is entitled to relief, the court shall
27 issue an order providing that the money award has been satisfied in full or, if the money award has
28 not been satisfied in full, the specific amount that will satisfy the judgment on a specific date or
29 within a period of time specified in the order.

30 (8) If the court finds that the judgment creditor willfully failed to provide a satisfaction docu-
31 ment under ORS 18.225, the court may render a supplemental judgment awarding reasonable attor-
32 ney fees to the person making the motion. The supplemental judgment may provide that the
33 *[demanding party]* **person making the motion** may satisfy the judgment by paying such amounts
34 the court determines to be necessary to satisfy the judgment less that sum of money the court
35 awards as attorney fees.

36 (9) If the court finds that the money award has been satisfied, or if the amount specified by the
37 court is paid to the court administrator within the time specified by the court, the court adminis-
38 trator shall note in the register and in the separate record maintained under ORS 18.075 that the
39 money award has been satisfied in full. The court administrator shall deliver any money paid to the
40 court administrator to the party or parties specified in the court's order.

41 (10) Upon request of the *[judgment debtor or]* person making the motion, the court administrator
42 shall issue a certificate indicating that the money award has been satisfied. The certificate may be
43 recorded in any County Clerk Lien Record in which the judgment was recorded under ORS 18.152.
44 Recording of the certificate eliminates any judgment lien that was created by the recording of the
45 judgment.

1 (11) At least five days before filing a motion under this section, the person must serve by per-
2 sonal delivery or first class mail a copy of the motion on the Administrator of the Division of Child
3 Support of the Department of Justice, or on the branch office of the Department of Justice providing
4 support services to the county in which the motion will be made, if:

5 (a) The motion relates to satisfaction of a support award; and

6 (b) Child support rights, as defined in ORS 25.010, for the judgment creditor have been assigned
7 to the state.

8 (12) This section does not apply to justice courts, municipal courts or county courts performing
9 judicial functions.

10
11 **MONEY AWARDS**
12

13 **SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS chapter 18.**

14 **SECTION 5. After entry of a judgment, the amount owing on the money award portion**
15 **of a judgment shall be decreased by all payments made by or on behalf of the judgment**
16 **debtor against the money award and shall be increased by interest accruing on the money**
17 **award. In addition, the judgment creditor is entitled to recover the expenses specified in ORS**
18 **18.999 that are incurred by the judgment creditor in collecting on the judgment, in the**
19 **manner provided by ORS 18.999. This section does not impose any duty on a court adminis-**
20 **trator to calculate the amount owing on the money award portion of a judgment.**

21 **SECTION 6. ORS 18.868 is amended to read:**

22 18.868. (1) If a writ of execution directs a sheriff to sell real property or tangible personal
23 property of a judgment debtor and deliver the proceeds to the court for application against **amounts**
24 **owing on** a money award, the writ may be issued to the sheriff of any county in this state where
25 property of the judgment debtor to be levied on is located.

26 (2) If the writ of execution directs the sheriff to sell or deliver possession of specific real or
27 tangible personal property, the writ must be issued to the sheriff of the county where the property
28 is located.

29 (3) If the writ of execution directs the sheriff to sell intangible personal property and deliver the
30 proceeds to the court for application against **amounts owing on** a money award, the court admin-
31 istrator shall issue the writ to the sheriff for the county in which the court sits.

32 (4) More than one writ of execution may be issued at the same time to different sheriffs for the
33 enforcement of a single judgment. If the writ or the instructions to the sheriff direct the sale of a
34 single, contiguous parcel of real property that is located in more than one county, and the judgment
35 creditor has recorded copies of the writ or abstracts of the writ under ORS 18.870 in each county
36 that contains part of the property, the sheriff for any county in which part of the property is located
37 may levy on and sell the entire property. If the sheriff levies on property under this subsection, the
38 sheriff must record a copy of the notice of levy in the County Clerk Lien Record for any county not
39 served by the sheriff.

40 **SECTION 7. ORS 18.936 is amended to read:**

41 18.936. (1) A judgment creditor may make oral bids for property to be sold at an execution sale.
42 If the oral bid of the judgment creditor is the highest bid, the judgment creditor need not make any
43 payment to the sheriff other than for:

44 (a) Any unpaid sheriff's fees for the execution sale;

45 (b) The amount of an exemption claimed by the debtor that the judgment creditor agrees to or

1 that a court has determined applies to the property; and

2 (c) Any amount bid by the judgment creditor that exceeds the full amount [of] **owing on** the
3 money award, calculated as of the date that the sale is to be conducted, plus the costs of the sale
4 as described in ORS 18.950 (2) that have been paid by the judgment creditor.

5 (2) A judgment creditor may submit a written bid for property to be sold in an execution sale
6 before the sale is conducted. A bid under this subsection may not be for more than the full amount
7 [of] **owing on** the money award, calculated as of the date that the sale is to be conducted, plus the
8 costs of the sale that are recoverable by the judgment creditor as described in ORS 18.950 (2). A
9 bid under this subsection must be received by the sheriff not less than 48 hours before the sale is
10 conducted. The sheriff may rely on the judgment creditor's calculation of the amount due under the
11 money award and for the costs of sale, and is not required to make a separate calculation. If the
12 written bid of the judgment creditor is the highest bid, the judgment creditor need not make any
13 payment to the sheriff other than for:

14 (a) Any unpaid sheriff's fees for the execution sale; and

15 (b) The amount of an exemption claimed by the debtor that the judgment creditor agrees to or
16 that a court has determined applies to the property.

17 (3) A judgment creditor may instruct the sheriff to accept any bid that matches the amount of
18 the bid made by the judgment creditor under subsection (2) of this section.

19 (4) A written bid under subsection (2) of this section is irrevocable, but the judgment creditor
20 who submits the written bid may make an oral bid at the time of the sale that is higher than the
21 written bid.

22 (5) A judgment creditor must notify the sheriff of any amounts included in a bid made by the
23 judgment creditor that are attributable to costs of sale under ORS 18.950 (2).

24 **SECTION 8.** ORS 18.892 is amended to read:

25 18.892. (1) Except as provided in subsection (2) of this section, a judgment debtor may use a
26 challenge to execution form only:

27 (a) To claim such exemptions under a writ of execution as are permitted by law; **and**

28 (b) **To assert that the amount specified in the writ of execution as being subject to exe-**
29 **cuttion is greater than the amount owed by the judgment debtor under the money award.**

30 (2) A judgment debtor may not use a challenge to execution form to challenge execution on
31 residential property of the debtor as defined by ORS 18.901 if the judgment creditor has obtained
32 an order under ORS 18.904 authorizing the sale or if the judgment directs the sale or delivery of
33 specific property.

34 (3) Any person other than a judgment debtor who has an interest in any property levied on by
35 a sheriff may assert that interest by delivering a challenge to execution in the manner provided by
36 subsection (4) of this section.

37 (4) A person may make a challenge to a writ of execution by completing the challenge to exe-
38 cution form provided in ORS 18.896, or a substantially similar form, and by delivering, in person or
39 by first class mail, the original of the completed form to the court administrator for the court
40 identified in the writ of execution and a copy of the challenge to the judgment creditor. Upon re-
41 ceiving a copy of the challenge, the judgment creditor shall promptly notify the sheriff of the chal-
42 lenge.

43 (5) A challenge to execution must be delivered in the manner provided by subsection (4) of this
44 section within 30 days after the property is levied on as described in ORS 18.878 or before the
45 property is sold on execution, whichever occurs first.

SECTION 9. ORS 18.896 is amended to read:

18.896. (1) The challenge to execution form described in this section does not expand or restrict the law relating to exempt property. A determination as to whether property is exempt from attachment or execution must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

(2) A challenge to execution form must be in substantially the following form:

_____ COURT
COUNTY OF _____

_____) CHALLENGE TO
Plaintiff,) EXECUTION
)
vs.) Case No. _____
)
_____)
Defendant.)

THIS FORM MAY BE USED BY THE DEBTOR ONLY [TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.] FOR THE FOLLOWING PURPOSES:

- (1) To claim such exemptions from execution as are permitted by law.
- (2) To assert that the amount specified in the writ of execution as being subject to execution is greater than the total amount owed.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

1 _____
2
3 _____
4
5
6 Name _____ Name _____
7 Signature _____ Signature _____
8 Address _____ Address _____
9 _____
10 Telephone Telephone
11 Number _____ Number _____
12 (Required) (Required)

13
14 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

15 You may seek to reclaim your exempt property by doing the following:

- 16 (1) Fill out the Challenge to Execution form that you received with this notice.
- 17 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
18 shown on the writ of execution.
- 19 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the
20 address shown on the writ of execution.

21 You should be prepared to explain your exemption in court. If you have any questions about the
22 execution or the debt, you should see an attorney.

23
24 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY [TO CLAIM SUCH EX-
25 EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.] **FOR THE FOLLOWING**
26 **PURPOSES:**

- 27 (1) **To claim such exemptions from execution as are permitted by law.**
- 28 (2) **To assert that the amount specified in the writ of execution as being subject to exe-**
29 **cution is greater than the total amount owed.**

30
31 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
32 VALIDITY OF THE DEBT.

33
34 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
35 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
36 to are listed in ORS 18.899.

37
38 **NOTICE OF EXEMPT PROPERTY**

39
40 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
41 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
42 are enclosed.

43 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
44 FULLY.

45 State and federal law specify that certain property may not be taken. Some of the property that

1 you may be able to get back is listed below.

2 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
3 amounts is greater:

4 (a) 75 percent of your take-home wages; or

5 (b) \$170 per workweek.

6 (2) Social Security benefits.

7 (3) Supplemental Security Income (SSI).

8 (4) Public assistance (welfare).

9 (5) Unemployment benefits.

10 (6) Disability benefits (other than SSI benefits).

11 (7) Workers' compensation benefits.

12 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
13 disability benefits when placed in a checking or savings account (up to \$7,500).

14 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
15 for your support or the support of any of your dependents.

16 (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your
17 spouse, parent or child. The value of the homestead is exempt up to the following amounts:

18 (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you
19 jointly own the mobile home or houseboat with another person who is also liable on the debt,
20 \$27,000.

21 (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly
22 own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

23 (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who
24 is also liable on the debt, \$39,600.

25 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
26 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
27 another homestead.

28 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
29 to exceed \$3,000.

30 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

31 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
32 occupation, with a combined value not to exceed \$3,000.

33 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

34 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
35 \$1,800.

36 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
37 and their food for 60 days.

38 (18) Provisions and fuel for your family for 60 days.

39 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
40 may not exceed \$1,000.

41 (20) Public or private pensions.

42 (21) Veterans' benefits and loans.

43 (22) Medical assistance benefits.

44 (23) Health insurance proceeds and disability proceeds of life insurance policies.

45 (24) Cash surrender value of life insurance policies not payable to your estate.

1 (25) Federal annuities.

2 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
3 emption as wages).

4 (27) Professionally prescribed health aids for you or any of your dependents.

5 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.

6 *(29) Your right to receive, or property traceable to:

7 *(a) An award under any crime victim reparation law.

8 *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
9 jury suffered by you or an individual of whom you are a dependent.

10 *(c) A payment in compensation of loss of future earnings of you or an individual of whom you
11 are or were a dependent, to the extent reasonably necessary for your support and the support of
12 any of your dependents.

13 (30) Amounts paid to you as an earned income tax credit under federal tax law.

14 (31) Interest in personal property to the value of \$400, but this cannot be used to increase the
15 amount of any other exemption.

16 (32) Equitable interests in property.

17 Note: If two or more people in your household owe the claim or judgment, each of them may
18 claim the exemptions marked by an asterisk (*).

20
21 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
22 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
23 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
24 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
25 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
26 obligation.

29 30 COURT ORDER FOR ENTRY OF PREMISES

31
32 **SECTION 10.** Section 11 of this 2007 Act is added to and made a part of ORS 18.860 to
33 18.993.

34 **SECTION 11.** (1) A sheriff may forcibly enter a structure or other enclosure for the
35 purpose of levying on personal property only pursuant to an order issued by the court under
36 this section.

37 (2) A judgment creditor may at any time file an ex parte motion requesting a court order
38 directed to a sheriff that authorizes the sheriff to use force to enter a structure or other
39 enclosure for the purpose of levying on personal property pursuant to a writ of execution.
40 Except as provided in ORS 18.255, the motion must be filed with the court in which the
41 judgment was entered. The motion must identify the specific structure or other enclosure
42 to be entered and must contain a declaration under penalty of perjury made in the manner
43 described by ORCP 1 E that reflects facts supporting the judgment creditor's good faith belief
44 that personal property subject to a writ of execution is located within the structure or other
45 enclosure.

- 1 (a) A copy of the notice of levy or a statement of the date and time of the levy; and
- 2 (b) A challenge to execution form as provided by ORS 18.896.

3
4 **LEVYING ON INTANGIBLE PROPERTY**

5
6 **SECTION 14.** ORS 18.884 is amended to read:

7 18.884. (1) A sheriff shall file a notice of levy on intangible property with the court upon re-
8 ceiving the instructions directing the sale of intangible personal property unless the sheriff is pro-
9 vided with an order entered under subsection [(2)] (3) of this section. The notice shall identify the
10 nature of the property to be sold.

11 **(2) A judgment creditor may seek an ex parte order from the court for the purpose of**
12 **determining whether property to be levied on is tangible or intangible.**

13 [(2)] (3) A judgment creditor may seek an ex parte order from the court directing the manner
14 in which intangible personal property may be secured by the sheriff. The court shall approve the
15 order if the proposed manner of securing the property is reasonable under the circumstances. The
16 judgment creditor must attach a copy of the order to instructions provided to the sheriff under ORS
17 18.875. The sheriff shall file a notice of levy with the court upon securing the property in the man-
18 ner directed by the order.

19
20 **DEFICIENCY JUDGMENT UPON FORECLOSURE OF MORTGAGE**

21
22 **SECTION 15.** ORS 88.070 is amended to read:

23 88.070. [*When a judgment is given for the foreclosure of any mortgage given to secure payment of*
24 *the balance of the purchase price of real property, the judgment shall provide for the sale of the real*
25 *property covered by such mortgage for the satisfaction of the judgment given therein, but the mortgagee*
26 *shall not be entitled to a deficiency judgment on account of the mortgage or note or obligation secured*
27 *by the same.] **When real property is sold pursuant to a judgment foreclosing a mortgage and***

28 **the proceeds of the sale are not adequate to satisfy the amounts secured by the mortgage,**
29 **all judgment remedies for collection of the unsatisfied amounts expire when the sale is made**
30 **if:**

31 **(1) The mortgage was given to a seller to secure the unpaid balance of the purchase price**
32 **of real property; or**

33 **(2) The mortgage was given after September 13, 1975, to a person other than a seller to**
34 **secure not more than \$50,000 of the unpaid balance of the purchase price of real property**
35 **used by the purchaser as the primary or secondary single family residence of the purchaser.**

36 **SECTION 16.** ORS 86.770 is amended to read:

37 86.770. (1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate
38 all interest in the property covered by the trust deed of all persons to whom notice is given under
39 ORS 86.740 and 86.750 and of any other person claiming by, through or under such persons, and such
40 persons shall have no right to redeem the property from the purchaser at the trustee's sale. The
41 failure to give notice to any of these persons shall not affect the validity of the sale as to persons
42 so notified.

43 (2) Except as provided in subsection (4) of this section, no other or further action shall be
44 brought, nor judgment entered for any deficiency, against the grantor, or the grantor's successor in
45 interest, if any, on the note, bond, or other obligation secured by the trust deed or against any other

1 person obligated on such note, bond or other obligation after a sale is made:

2 (a) By a trustee under ORS 86.705 to 86.795; or

3 (b) Under a judicial foreclosure of a residential trust deed.

4 (3) *[Under] Notwithstanding ORS 88.070, when there is* a judicial foreclosure of a trust deed
5 that is not a residential trust deed, *[notwithstanding the purchase money mortgage provisions of ORS*
6 *88.070 and 88.075,]* the judgment shall provide that if the sale proceeds are insufficient to satisfy the
7 judgment, execution may issue[,] for any amount by which the unpaid balance of the obligation se-
8 cured by the trust deed exceeds the net sale proceeds payable to the beneficiary.

9 (4) Nothing in this section shall preclude an action judicially or nonjudicially foreclosing the
10 same trust deed as to any other property covered thereby, or any other trust deeds, mortgages, se-
11 curity agreements, or other consensual or nonconsensual security interest or liens covering any
12 other real or personal property security for the note, bond or other obligation secured by the trust
13 deed under which a sale has been made or an action against a guarantor to the extent of any re-
14 maining deficiency following judicial foreclosure. A guarantor of an obligation secured by a resi-
15 dential trust deed shall not have the right to recover any deficiency from the grantor or any
16 successor in interest of the grantor.

17 **SECTION 17. ORS 88.075 is repealed.**

18
19 **CREDITOR BOND**

20
21 **SECTION 18.** ORS 18.886 is amended to read:

22 18.886. *[(1) As a condition of levying on personal property under a writ of execution, a sheriff may*
23 *require that the judgment creditor file with the sheriff a good and sufficient bond or irrevocable letter*
24 *of credit indemnifying the sheriff against any loss to the sheriff by reason of levying on or selling the*
25 *property if:]*

26 *[(a) The sheriff has actual notice of any third-party claim to the property;]*

27 *[(b) The sheriff has doubt as to the ownership of the property or as to any encumbrances on the*
28 *property; or]*

29 *[(c) The property is perishable.]*

30 *[(2) A bond or irrevocable letter of credit under this section must be in double the amount of the*
31 *value of the property to be levied on, as estimated by the sheriff.]*

32 *[(3) The sheriff may not require a bond or irrevocable letter of credit under this section if the writ*
33 *of execution directs the sale or delivery of specific personal property pursuant to the terms of the*
34 *judgment.]*

35 **(1) Before levying on personal property a sheriff may require that the judgment creditor**
36 **file with the sheriff a good and sufficient bond or irrevocable letter of credit indemnifying**
37 **the sheriff against any loss to the sheriff by reason of levying on or selling the property if:**

38 **(a) The sheriff has identified a specific person other than the judgment debtor who claims**
39 **an interest in the property to be levied on; or**

40 **(b) The property is perishable.**

41 **(2) If a sheriff has reasonable doubt as to the ownership of personal property, or if any**
42 **encumbrances are asserted against the property, the sheriff may require a bond or irrev-**
43 **ocable letter of credit as described in subsection (1) of this section before levying on the**
44 **property unless:**

45 **(a) The judgment creditor delivers to the sheriff a copy of a title document or report for**

1 **the property issued by a state or federal agency that shows that the judgment debtor is the**
2 **sole owner of the property; or**

3 **(b) If there is no title document for the property to be levied on, the judgment creditor**
4 **delivers to the sheriff a record, prepared under ORS 79.0523 (4) by a filing office described in**
5 **ORS 79.0501, showing that no financing statement or lien, or certificate or notice affecting**
6 **a lien, is in effect for the property to be levied on.**

7 **(3) The sheriff may not require a bond or irrevocable letter of credit under this section**
8 **if the writ of execution directs the sale or delivery of specific personal property pursuant to**
9 **the terms of the judgment.**

10 **(4) A bond or irrevocable letter of credit under this section must be for double the**
11 **amount of the value of the property to be levied on, as estimated by the sheriff.**

12 **SECTION 19.** ORS 18.950 is amended to read:

13 18.950. (1) After the deduction of all sheriff's fees and costs allowed by law that have not been
14 paid by the judgment creditor, and deduction of all other amounts required by law, the sheriff shall
15 deliver all net proceeds from an execution sale to the court administrator with the sheriff's return
16 on the writ. The court shall enter an order of distribution for the proceeds. An order directing dis-
17 tribution to the judgment creditor may be entered ex parte.

18 (2) A judgment creditor is entitled to recover from the proceeds of the sale all of the following
19 costs of sale paid by the judgment creditor:

20 (a) Sheriff's fees;

21 (b) The cost of any title report required to determine persons entitled to notice under ORS
22 18.918 (2);

23 (c) The cost of any indemnity bond **or letter of credit** required by ORS 18.886;

24 (d) Amounts that may be recovered by the judgment creditor under ORS 18.999;

25 (e) Services fees that may be recovered as costs under ORS 18.912; and

26 (f) Recording fees incurred pursuant to ORS 18.870.

27 (3) The court shall order that the costs specified in subsection (2) of this section be paid before
28 application of the remaining proceeds to satisfaction of the judgment.

29 (4) If any proceeds from an execution sale remain after the payment of costs under subsection
30 (3) of this section and satisfaction of the judgment, the court administrator shall pay the remaining
31 proceeds as directed by the court in the order of distribution.

32
33 **MISCELLANEOUS**

34
35 **SECTION 20.** **The unit captions used in this 2007 Act are provided only for the conven-**
36 **ience of the reader and do not become part of the statutory law of this state or express any**
37 **legislative intent in the enactment of this 2007 Act.**