

House Bill 2695

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.

A BILL FOR AN ACT

1
2 Relating to recordation of instruments in county records; amending ORS 203.148, 205.125, 205.130,
3 205.236, 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;

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; and

27 [(f)] (F) Orders from a county forestland-urban interface classification committee filed under
28 ORS 477.052.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) A county clerk [shall] **does** not incur civil or criminal liability, either personally or in an
 2 official capacity, for recording an instrument under this section when the instrument is not labeled
 3 in sufficient detail to allow the clerk to record the transactions in all appropriate records.

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

5 203.148. (1) The county governing body may establish by ordinance a fund to be known as the
 6 Public Land Corner Preservation Fund. Moneys in the Public Land Corner Preservation Fund shall
 7 be used only to pay expenses incurred and authorized by the county surveyor in the establishment,
 8 reestablishment and maintenance of corners of government surveys under ORS 209.070 (5) and (6).

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

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

16 205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the fol-
 17 lowing information for each order or warrant recorded:

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

19 (b) The name of the officer and the agency that issued the order or warrant or the name of the
 20 complainant or claimant in whose favor an order of the Construction Contractors Board or State
 21 Landscape Contractors Board has been given. The name of the agency or board that issued the or-
 22 der or warrant must be clearly printed on the order or warrant.

23 (c) The amount of any monetary obligation imposed by the order or warrant, and the names of
 24 all persons against whom the obligation is imposed.

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

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

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

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

30 (2) From the date that an order or warrant is recorded in the County Clerk Lien Record, the
 31 order or warrant shall have the attributes and effect of a judgment that has been entered in the
 32 register of the circuit court for that county, including but not limited to the creation of a judgment
 33 lien for any monetary obligation in favor of the officer or agency issuing the order or warrant or
 34 in favor of the complainant or claimant in the proceedings before the Construction Contractors
 35 Board or State Landscape Contractors Board, renewal and enforcement by supplementary pro-
 36 ceedings, writs of execution, notices of garnishment and writs of garnishment.

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

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

43 **SECTION 5.** ORS 205.320, as amended by section 14, chapter 99, Oregon Laws 2007, is amended
 44 to read:

45 205.320. In every county there shall be charged and collected in advance by the county clerk,

1 for the benefit of the county, the following fees, and no more, for the following purposes and ser-
 2 vices:

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

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

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

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

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

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

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

15 (5) For taking an affidavit for and making and issuing a marriage license and registering the
 16 return of the license, or for taking an affidavit for and registering a Declaration of Domestic Part-
 17 nership, \$25.

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

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

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

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

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

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

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

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

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

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

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

44 (17) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
 45 each additional name listed on a cooperative contract under ORS 62.360 (2) or for recording the

1 termination of a cooperative contract under ORS 62.360 (4), \$5.

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

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

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

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

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

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

13 312.125. (1) Not less than one year prior to the expiration of the period of redemption of any real
 14 property ordered sold to the county under a judgment under ORS 312.100, the tax collector shall
 15 provide notice of the expiration of the period of redemption to any person or entity entitled to re-
 16 deem the property under ORS 312.120 (2) whose interest appears in the records of the county as of
 17 the date foreclosure proceedings were instituted. Any person or entity whose interest has terminated
 18 by any means other than a judgment of foreclosure under ORS 312.120 shall not be entitled to such
 19 notice.

20 (2) The notice shall contain:

21 (a) The date of the judgment;

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

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

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

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

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

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

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

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

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

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

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

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

16 (A) The grantor-grantee indexes.

17 (B) Other records of deeds, mortgages, powers of attorney, contracts and other instruments,
 18 documents or memorandum of conveyance or otherwise of real property that are described in ORS
 19 205.130 (1)(a) **and (b)** [and (2)].

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

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

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

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

29 (b) For purposes of this section only, “records of the county” includes:

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

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

37