

**A-Engrossed**  
**House Bill 3004**

Ordered by the House April 30  
Including House Amendments dated April 30

Sponsored by Representative CLEM (at the request of Jane Cummins)

**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.

Provides that sale by trustee of foreclosed property or sale of residential property after judicial foreclosure precludes further action against mortgagor or grantor for deficiencies in amount secured by mortgage or trust deed. **Creates exceptions.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to sales of foreclosed property; creating new provisions; amending ORS 86.770 and 88.070;  
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 86.770 is amended to read:

6 86.770. [(1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate all  
7 interest in the property covered by the trust deed of all persons to whom notice is given under ORS  
8 86.740 and 86.750 and of any other person claiming by, through or under such persons, and such per-  
9 sons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to  
10 give notice to any of these persons shall not affect the validity of the sale as to persons so notified.]

11 [(2) Except as provided in subsection (4) of this section, no other or further action shall be brought,  
12 nor judgment entered for any deficiency, against the grantor, or the grantor's successor in interest, if  
13 any, on the note, bond, or other obligation secured by the trust deed or against any other person obli-  
14 gated on such note, bond or other obligation after a sale is made:]

15 [(a) By a trustee under ORS 86.705 to 86.795; or]

16 [(b) Under a judicial foreclosure of a residential trust deed.]

17 [(3) Notwithstanding ORS 88.070, when there is a judicial foreclosure of a trust deed that is not  
18 a residential trust deed, the judgment shall provide that if the sale proceeds are insufficient to satisfy  
19 the judgment, execution may issue for any amount by which the unpaid balance of the obligation se-  
20 cured by the trust deed exceeds the net sale proceeds payable to the beneficiary.]

21 [(4) Nothing in this section shall preclude an action judicially or nonjudicially foreclosing the same  
22 trust deed as to any other property covered thereby, or any other trust deeds, mortgages, security  
23 agreements, or other consensual or nonconsensual security interest or liens covering any other real or  
24 personal property security for the note, bond or other obligation secured by the trust deed under which  
25 a sale has been made or an action against a guarantor to the extent of any remaining deficiency fol-  
26 lowing judicial foreclosure. A guarantor of an obligation secured by a residential trust deed shall not  
27 have the right to recover any deficiency from the grantor or any successor in interest of the grantor.]

**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 (1) If, under ORS 86.705 to 86.795, a trustee sells property covered by a trust deed, the  
2 trustee's sale forecloses and terminates the interest in the property that belongs to a person  
3 entitled to notice of the sale under ORS 86.740 and 86.750 or to a person that claims an in-  
4 terest by, through or under the person entitled to notice. A person whose interest the trust-  
5 tee's sale foreclosed and terminated may not redeem the property from the purchaser at the  
6 trustee's sale. A failure to give notice to a person entitled to notice does not affect the va-  
7 lidity of the sale as to persons that were notified.

8 (2) Except as provided in subsection (4) of this section, after a trustee's sale under ORS  
9 86.705 to 86.795 or after a judicial foreclosure of a residential trust deed, an action may not  
10 be brought or a judgment entered for a deficiency against the grantor, the grantor's suc-  
11 cessor in interest or another person obligated on the note, bond or other obligation secured  
12 by the residential trust deed.

13 (3) Notwithstanding ORS 88.070, in a judicial foreclosure of a trust deed that is not a  
14 residential trust deed the judgment must provide that if the sale proceeds are insufficient  
15 to satisfy the judgment, execution may issue for the amount by which the unpaid balance  
16 of the obligation secured by the trust deed exceeds the net sale proceeds payable to the  
17 beneficiary.

18 (4) This section does not preclude:

19 (a) An action that forecloses, judicially or nonjudicially:

20 (A) Other property covered by the trust deed that is the subject of the foreclosure; or

21 (B) Another trust deed, mortgage, security agreement, consensual or nonconsensual se-  
22 curity interest or lien that covers other real or personal property that is also used as secu-  
23 rity for the note, bond or other obligation that is secured by the trust deed for the property  
24 that was sold.

25 (b) An action against a guarantor for a deficiency that remains after a judicial foreclo-  
26 sure.

27 (c) An action for a deficiency that remains after a trustee's sale or a judicial foreclosure  
28 of a residential trust deed, if the person that brings the action or an affiliate of the person  
29 that brings the action:

30 (A) Does not foreclose on the residential trust deed, judicially or nonjudicially;

31 (B) Does not receive proceeds from the trustee's sale; and

32 (C) Is not the trustee or beneficiary in the residential trust deed that is the subject of  
33 the foreclosure.

34 (5) A guarantor of an obligation secured by a residential trust deed may not recover a  
35 deficiency from the grantor or a successor in interest of the grantor.

36 (6) As used in subsection (4) of this section, "affiliate" means a person that controls, is  
37 controlled by or is under common control with the person that brings an action under sub-  
38 section (4)(c) of this section.

39 **SECTION 2.** ORS 88.070 is amended to read:

40 88.070. When real property is sold pursuant to a judgment foreclosing a mortgage **that was**  
41 **given to secure an unpaid portion of the purchase price of the real property** and the proceeds  
42 of the sale are not adequate to satisfy the amounts secured by the mortgage, all judgment remedies  
43 for collection of the unsatisfied amounts expire when the sale is made. [if:]

44 [(1) *The mortgage was given to a seller to secure the unpaid balance of the purchase price of real*  
45 *property; or]*

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

4        **SECTION 3. The amendments to ORS 86.770 and 88.070 by sections 1 and 2 of this 2009**  
5        **Act apply to mortgages given or trust deeds executed on or after the effective date of this**  
6        **2009 Act.**

7        **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**  
8        **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
9        **on its passage.**

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