

House Bill 3004

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 **as introduced**.

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.

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*]
7 **forecloses and terminates** all interest in the property covered by the trust deed of [*all*] persons
8 to whom notice is given under ORS 86.740 and 86.750 and of [*any*] other [*person*] **persons** claiming
9 by, through or under such persons, and such persons [*shall*] have no right to redeem the property
10 from the purchaser at the trustee's sale. The failure to give notice to any of these persons [*shall*]
11 **does** not affect the validity of the sale as to persons so notified.

12 (2) Except as provided in subsection (4) of this section, [*no other or further action shall*] **an**
13 **action may not** be brought[, *nor*] **or a** judgment entered for [*any*] a deficiency[,] against the grantor,
14 [*or*] the grantor's successor in interest, if any, **or another person obligated** on the note, bond, or
15 other obligation secured by [*the*] a trust deed **granted as security for a portion of the unpaid**
16 **purchase price of the property** [*or against any other person obligated on such note, bond or other*
17 *obligation*] after a sale is made:

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

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

20 (3) Notwithstanding ORS 88.070, when there is a judicial foreclosure of a trust deed that is not
21 a residential trust deed, the judgment shall provide that if the sale proceeds are insufficient to sat-
22 isfy the judgment, execution may issue for [*any*] **the** amount by which the unpaid balance of the
23 obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary.

24 (4) [*Nothing in*] This section [*shall*] **does not** preclude:

25 (a) An action judicially or nonjudicially foreclosing:

26 (A) The same trust deed as to [*any*] other property covered [*thereby*] **by the trust deed; or**

27 (B) **Another trust deed, mortgage, security agreement, consensual or nonconsensual se-**
28 **curity interest or lien that covers other real or personal property also used as security for**
29 **the note, bond or other obligation that is secured by the trust deed for the property that**
30 **was sold; or**

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 **(b) An action against a guarantor for a deficiency that remains following judicial fore-**
2 **closure.** [*or any other trust deeds, mortgages, security agreements, or other consensual or*
3 *nonconsensual security interest or liens covering any other real or personal property security for the*
4 *note, bond or other obligation secured by the trust deed under which a sale has been made or an action*
5 *against a guarantor to the extent of any remaining deficiency following judicial foreclosure.*]

6 (5) A guarantor of an obligation secured by a residential trust deed [*shall not have the right*
7 *to*] **may not** recover [*any*] a deficiency from the grantor or [*any*] a successor in interest of the
8 grantor.

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

10 88.070. When real property is sold pursuant to a judgment foreclosing a mortgage **that was**
11 **given to secure an unpaid portion of the purchase price of the real property** and the proceeds
12 of the sale are not adequate to satisfy the amounts secured by the mortgage, all judgment remedies
13 for collection of the unsatisfied amounts expire when the sale is made. [*if:*]

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

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

19 **SECTION 3.** **The amendments to ORS 86.770 and 88.070 by sections 1 and 2 of this 2009**
20 **Act apply to mortgages given or trust deeds executed on or after the effective date of this**
21 **2009 Act.**

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