

Senate Bill 241

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Debtor/Creditor Section)

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**.

Requires purchaser seeking possession of property after trustee's sale to provide certain notices to person holding possession of property by reason of interest created voluntarily by grantor of deed of trust. Provides that person in possession need not surrender possession until 30 days after effective date of notice.

Applies fees and procedures set forth for actions under residential landlord and tenant laws to actions to recover possession of premises in certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to actions for possession of property; creating new provisions; amending ORS 86.755,
3 105.115 and 105.130; and declaring an emergency.

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

5 **SECTION 1.** ORS 86.755 is amended to read:

6 86.755. (1) The sale shall be held on the date and at the time and place designated in the notice
7 of sale. The trustee may sell the property in one parcel or in separate parcels and shall sell the
8 parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary
9 under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the
10 trustee, or any agent designated by the trustee or the attorney, may conduct the sale and act in the
11 sale as the auctioneer of the trustee.

12 (2) The trustee or the attorney for the trustee, or any agent designated by the trustee or the
13 attorney conducting the sale, may postpone the sale for one or more periods totaling not more than
14 180 days from the original sale date, giving notice of each adjournment by public proclamation made
15 at the time and place set for sale. The proclamation may be made by the trustee, the attorney, or
16 any agent designated by the trustee or the attorney.

17 (3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following
18 payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

19 (4) The trustee's deed shall convey to the purchaser the interest in the property [*which*] **that**
20 the grantor had, or had the power to convey, at the time of the execution by the grantor of the trust
21 deed, together with any interest the grantor or the grantor's successors in interest acquire after the
22 execution of the trust deed.

23 [(5) *The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th*
24 *day following the sale, and any persons remaining in possession after that day under any interest, ex-*
25 *cept one prior to the trust deed or created voluntarily by the grantor or a successor of the grantor, shall*
26 *be deemed to be tenants at sufferance. All persons not holding under an interest prior to the trust deed*
27 *may be removed from possession by following the procedures set out in ORS 105.105 to 105.168 or other*

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 *applicable judicial procedure, provided that a person holding under an interest created voluntarily by*
 2 *the grantor or a successor of the grantor must first receive 30 days' written notice of the intent to re-*
 3 *move that person served no earlier than 30 days before the date first set for the sale.]*

4 **(5)(a) The purchaser at the trustee's sale shall be entitled to possession of the property**
 5 **on the 10th day after the sale, and any persons remaining in possession after the 10th day**
 6 **under any interest, except one prior to the trust deed or created voluntarily by the grantor**
 7 **or a successor of the grantor, shall be deemed to be tenants at sufferance. The purchaser**
 8 **may recover possession from tenants at sufferance remaining in possession after the 10th**
 9 **day by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial**
 10 **procedure.**

11 **(b) The purchaser may recover possession of the property purchased at the trustee's sale**
 12 **from a person holding possession of the property under an interest created voluntarily by the**
 13 **grantor or a successor of the grantor at any time after the trustee's sale by following the**
 14 **procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure. A pur-**
 15 **chaser that seeks to recover possession of the property from a person holding possession of**
 16 **the property under an interest created voluntarily by the grantor or a successor of the**
 17 **grantor, before initiating a proceeding under ORS 105.105 to 105.168, shall give the person not**
 18 **less than 30 days' written notice of the intent to remove the person and shall ensure that**
 19 **the notice is served no earlier than 30 days before the date first set for the sale.**

20 **(c) A judgment in favor of the purchaser for possession of the property may not require**
 21 **a person holding possession of the property under an interest created voluntarily by the**
 22 **grantor or a successor of the grantor to surrender possession until 30 days after the effec-**
 23 **tive date of the notice given under this subsection.**

24 **(d) Notices under this subsection [shall] must be served by first class mail and are effective**
 25 **when mailed.** "First class mail" for purposes of this section does not include certified or registered
 26 mail, or any other form of mail [which] that may delay or hinder actual delivery of mail to the ad-
 27 dressee.

28 (6) Notwithstanding subsection (2) of this section, except when a beneficiary has participated in
 29 obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings in
 30 bankruptcy or for any other lawful reason shall, after release from the stay, continue as if uninter-
 31 rupted, if within 30 days after release the trustee gives amended notice of sale by registered or
 32 certified mail to the last-known address of those persons listed in ORS 86.740 and 86.750 (1) and to
 33 the address provided by each person who was present at the time and place set for the sale which
 34 was stayed. The amended notice of sale shall:

35 (a) Be given at least 20 days prior to the amended date of sale;

36 (b) Set an amended date of sale which may be the same as the original sale date, or date to
 37 which the sale was postponed, provided the requirements of ORS 86.740, 86.750 and this subsection
 38 are satisfied;

39 (c) Specify the time and place for sale;

40 (d) Conform to the requirements of ORS 86.745; and

41 (e) State that the original sale proceedings were stayed and the date the stay terminated.

42 (7) If the publication of the notice of sale was not completed prior to the date the foreclosure
 43 proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful
 44 reason, after release from the stay, in addition to complying with the provisions of subsection (6)
 45 of this section, the trustee shall complete the publication by publishing an amended notice of sale

1 *[which]* **that** states that the notice has been amended following release from the stay, and *[which]*
 2 **that** contains the amended date of sale. The amended notice shall be published in a newspaper of
 3 general circulation in each of the counties in which the property is situated once a week for four
 4 successive weeks, except that the required number of publications shall be reduced by the number
 5 of publications that were completed prior to the effective date of the stay. The last publication shall
 6 be made more than 20 days prior to the date the trustee conducts the sale.

7 **SECTION 2.** ORS 105.115 is amended to read:

8 105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes
 9 of unlawful holding by force within the meaning of ORS 105.110, 105.123 and 105.126:

10 (a) When the tenant or person in possession of any premises fails or refuses to pay rent within
 11 10 days after the rent is due under the lease or agreement under which the tenant or person in
 12 possession holds, or to deliver possession of the premises after being in default on payment of rent
 13 for 10 days.

14 (b) When the lease by its terms has expired and has not been renewed, or when the tenant or
 15 person in possession is holding from month to month, or year to year, and remains in possession
 16 after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant
 17 of the lease or is holding possession without any written lease or agreement.

18 (c) When the owner or possessor of a recreational vehicle that was placed or driven onto prop-
 19 erty without the prior consent of the property owner, operator or tenant fails to remove the recre-
 20 ational vehicle. The property owner or operator is not required to serve a notice to quit the
 21 property before commencing an action under ORS 105.126 against a recreational vehicle owner or
 22 possessor holding property by force as described in this paragraph.

23 **(d) When the person in possession of a premises remains in possession after the time**
 24 **when a purchaser of the premises is entitled to possession in accordance with the provisions**
 25 **of ORS 18.946 or 86.755.**

26 **(e) When the person in possession of a premises remains in possession after the time**
 27 **when a deed given in lieu of foreclosure entitles the transferee named in the deed to pos-**
 28 **session of the premises.**

29 **(f) When the person in possession of a premises remains in possession after the time**
 30 **when a seller is entitled to possession in accordance with the provisions of ORS 93.930 (2)(c)**
 31 **or pursuant to a judgment of strict foreclosure of a recorded contract for transfer or**
 32 **conveyance of an interest in real property.**

33 (2) In the case of a dwelling unit to which ORS chapter 90 applies:

34 (a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and
 35 105.123:

36 (A) When the tenant or person in possession of any premises fails or refuses to pay rent within
 37 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.394.

38 (B) When a rental agreement by its terms has expired and has not been renewed, or when the
 39 tenant or person in possession remains in possession after a valid notice terminating the tenancy
 40 pursuant to ORS chapter 90, or is holding contrary to any valid condition or covenant of the rental
 41 agreement or ORS chapter 90.

42 (b) A landlord may not file an action for the return of possession of a dwelling unit based upon
 43 a cause of unlawful holding by force as described in paragraph (a) of this subsection until after the
 44 expiration of a rental agreement for a fixed term tenancy or after the expiration of the time period
 45 provided in a notice terminating the tenancy.

1 (3) In an action under subsection (2) of this section, ORS chapter 90 shall be applied to deter-
2 mine the rights of the parties, including:

3 (a) Whether and in what amount rent is due;

4 (b) Whether a tenancy or rental agreement has been validly terminated; and

5 (c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as pro-
6 vided by ORS 90.385 and 90.765.

7 **(4) A person that brings an action to recover possession of a premises under ORS 105.110**
8 **based on circumstances described in subsection (1)(d), (e) or (f) of this section shall give**
9 **notice in accordance with ORS 86.755 (5) to a person in possession of the premises if the**
10 **person in possession entered into possession pursuant to a rental agreement subject to ORS**
11 **chapter 90.**

12 **SECTION 3.** ORS 105.130 is amended to read:

13 105.130. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.161,
14 an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of
15 this state.

16 (2) Upon filing a complaint in the case of a dwelling unit to which ORS chapter 90 applies, the
17 clerk shall:

18 (a) Collect a filing fee of \$13;

19 (b) Collect any other fee authorized by law or ordinance; and

20 (c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable
21 summons and provide to the plaintiff or an agent of the plaintiff sufficient copies of the summons
22 and complaint for service.

23 (3) After a complaint is filed under subsection (2) of this section, if the defendant demands a
24 trial, the plaintiff shall pay an additional filing fee of \$29 and the defendant shall pay a filing fee
25 of \$42.

26 (4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to
27 possession as plaintiff. The plaintiff may appear in person or through an attorney. In an action to
28 which ORS chapter 90 applies, the plaintiff may also appear through a nonattorney who is an agent
29 or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

30 (5) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, a state agency may appear in an
31 action brought pursuant to ORS 105.110 through an officer or employee of the agency if:

32 (a) The Attorney General consents to the representation of the agency by an officer or employee
33 in the particular action or in the class of actions that includes the particular action; and

34 (b) The agency, by rule, authorizes an officer or employee to appear on its behalf in the partic-
35 ular type of action being conducted.

36 (6) In addition to the fees charged under subsection (2) of this section, the clerk shall collect a
37 surcharge from the plaintiff at the time a complaint is filed that is subject to the filing fees estab-
38 lished by subsection (2) of this section and from a defendant at the time a defendant demands a trial
39 in the action. The surcharge shall be deposited by the State Court Administrator into the State
40 Treasury to the credit of the Housing and Community Services Department Low Income Rental
41 Housing Fund established by ORS 458.350. The amount of the surcharge shall be \$10.

42 (7) A document or pleading shall be filed by the clerk only if the fees and surcharges required
43 under this section are paid by the person filing the document or pleading or if an application for a
44 waiver or deferral of fees and court costs is granted by the court under ORS 21.680 to 21.698. Fees
45 and surcharges provided for in this section may not be refunded.

1 **(8) An action brought under ORS 105.110 by a person entitled to possession of premises**
2 **on the basis of circumstances described in ORS 105.115 (1)(d), (e) or (f) is subject to the filing**
3 **fees and other court or sheriff fees applicable to an action concerning a dwelling unit that**
4 **is subject to ORS chapter 90. The procedure under ORS 105.105 to 105.168 that is applicable**
5 **to an action concerning a dwelling unit subject to ORS chapter 90 shall also apply to an**
6 **action brought under ORS 105.115 (1)(d), (e) or (f), except that the complaint must be in the**
7 **form prescribed in ORS 105.126.**

8 **SECTION 4.** **The amendments to ORS 86.755, 105.115 and 105.130 by sections 1 to 3 of this**
9 **2009 Act apply to trustees' sales, proceedings under ORS 105.105 to 105.168 or actions under**
10 **ORS 105.110 that begin on or after the effective date of this 2009 Act.**

11 **SECTION 5.** **This 2009 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
13 **on its passage.**

14 _____