

House Bill 2219

Sponsored by Representative BUCKLEY; Representatives BARKER, DOHERTY, GELSER (Presession filed.)

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 beneficiary under trust deed to offer grantor under trust deed opportunity to remain in possession of residential unit during period in which trustee's sale for residential unit is pending if sale does not occur on date scheduled for trustee's sale or if trustee postpones trustee's sale. Requires grantor to pay rent to beneficiary at market rate for residential unit and agree to vacate residential unit not later than 10 days after receiving notice that residential unit has sold.

Provides that agreement to permit grantor to remain in possession does not create tenancy or require beneficiary to assume duties of landlord. Provides that grantor must maintain residential unit in habitable condition and pay for utilities and services supplied to residential unit.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to occupancy of residential premises subject to foreclosure; creating new provisions;
3 amending ORS 90.110 and 105.115; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 86.705 to 86.795.**

6 **SECTION 2. (1) If a trustee does not sell a residential unit that is subject to foreclosure**
7 **under ORS 86.735 at the time specified for the trustee's sale or if the trustee postpones**
8 **selling the residential unit in accordance with ORS 86.755 (2), the beneficiary under the trust**
9 **deed shall offer the grantor in writing the opportunity to remain in possession of the resi-**
10 **dential unit while the sale is pending and until the sale occurs. During any period in which**
11 **the grantor retains possession of the residential unit in accordance with this subsection, the**
12 **grantor must pay rent to the beneficiary or an agent of the beneficiary at the market rate**
13 **for the residential unit. The grantor must also agree to vacate the residential unit not more**
14 **than 10 calendar days after the beneficiary or the trustee notifies the grantor that the resi-**
15 **dential unit has sold.**

16 **(2) An agreement between the beneficiary and the grantor under subsection (1) of this**
17 **section does not create a tenancy, and the beneficiary does not have the duties of a landlord**
18 **under ORS chapter 90. The grantor is responsible for maintaining the residential unit in a**
19 **habitable condition, as described in ORS 90.320, and for paying for utilities and services sup-**
20 **plied to the residential unit during the time in which the grantor remains in possession.**

21 **(3) The beneficiary or the purchaser at a trustee's sale may recover possession of the**
22 **residential unit under ORS 105.105 to 105.168 if the grantor fails or refuses to deliver pos-**
23 **session of the residential unit after the beneficiary notifies the grantor that the residential**
24 **unit has sold.**

25 **SECTION 3. ORS 90.110 is amended to read:**

26 90.110. Unless created to avoid the application of this chapter, the following arrangements are
27 not governed by this chapter:

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) Residence at an institution, public or private, if incidental to detention or the provision of
 2 medical, geriatric, educational, counseling, religious or similar service, but not including residence
 3 in off-campus nondormitory housing.

4 (2) Occupancy of a dwelling unit for no more than 90 days by a purchaser prior to the scheduled
 5 closing of a real estate sale or by a seller following the closing of a sale, in either case as permitted
 6 under the terms of an agreement for sale of a dwelling unit or the property of which it is a part.
 7 The occupancy by a purchaser or seller described in this subsection may be terminated only pursu-
 8 ant to ORS 91.130. A tenant who holds but has not exercised an option to purchase the dwelling unit
 9 is not a purchaser for purposes of this subsection.

10 (3) Occupancy by a member of a fraternal or social organization in the portion of a structure
 11 operated for the benefit of the organization.

12 (4) Transient occupancy in a hotel or motel.

13 (5) Occupancy by a squatter.

14 (6) Vacation occupancy.

15 (7) Occupancy by an employee of a landlord whose right to occupancy is conditional upon em-
 16 ployment in and about the premises. However, the occupancy by an employee as described in this
 17 subsection may be terminated only pursuant to ORS 91.120.

18 (8) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a co-
 19 operative.

20 (9) Occupancy under a rental agreement covering premises used by the occupant primarily for
 21 agricultural purposes.

22 **(10) Except as provided in section 2 of this 2011 Act, occupancy in accordance with sec-**
 23 **tion 2 of this 2011 Act by a grantor under a trust deed during a period in which a trustee's**
 24 **sale of a residential unit that is subject to foreclosure under ORS 86.735 is pending.**

25 **SECTION 4.** ORS 105.115 is amended to read:

26 105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes
 27 of unlawful holding by force within the meaning of ORS 105.110, 105.123 and 105.126:

28 (a) When the tenant or person in possession of any premises fails or refuses to pay rent within
 29 10 days after the rent is due under the lease or agreement under which the tenant or person in
 30 possession holds, or to deliver possession of the premises after being in default on payment of rent
 31 for 10 days.

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

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

41 (d) When the person in possession of a premises remains in possession after the time when a
 42 purchaser of the premises is entitled to possession in accordance with the provisions of ORS 18.946
 43 or 86.755 **or section 2 of this 2011 Act.**

44 (e) When the person in possession of a premises remains in possession after the time when a
 45 deed given in lieu of foreclosure entitles the transferee named in the deed to possession of the

1 premises.

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

6 (g) When the person in possession of a premises remains in possession after the expiration of a
7 valid notice terminating the person's right to occupy the premises pursuant to ORS 91.120, 91.130
8 or 105.117.

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

10 (a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and
11 105.123:

12 (A) When the tenant or person in possession of any premises fails or refuses to pay rent within
13 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.394.

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

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

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

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

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

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

28 **SECTION 5. (1) Section 2 of this 2011 Act applies to a beneficiary and a trustee that have**
29 **scheduled a trustee's sale to occur on or after the effective date of this 2011 Act and to a**
30 **grantor that remains in possession of a residential unit while a trustee's sale is pending on**
31 **or after the effective date of this 2011 Act.**

32 **(2) The amendments to ORS 90.110 and 105.115 by sections 3 and 4 of this 2011 Act apply**
33 **to an agreement made on or after the effective date of this 2011 Act that permits a grantor**
34 **to remain in possession of a residential unit while a trustee's sale of the residential unit is**
35 **pending.**

36 **SECTION 6. This 2011 Act being necessary for the immediate preservation of the public**
37 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
38 **on its passage.**