

B-Engrossed
Senate Bill 382

Ordered by the House June 1
Including Senate Amendments dated May 3 and House Amendments dated
June 1

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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.

Requires lien claimants to send required notice of lien claim only to mortgagees that comply with requirement to record name and address with county clerk.
[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to notices required for construction lien claimants; creating new provisions; and amending
3 ORS 87.005, 87.018 and 205.234.

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

5 **SECTION 1.** ORS 87.005 is amended to read:

6 87.005. As used in ORS 87.001 to 87.060 and 87.075 to 87.093:

7 (1) "Commencement of the improvement" means the first actual preparation or construction
8 upon the site or the first delivery to the site of materials of such substantial character as to notify
9 interested persons that preparation or construction upon the site has begun or is about to begin.

10 (2) "Construction" *[includes creation]* **means creating** or making *[of]* an improvement*[, and]* **or**
11 **performing an** alteration, partial construction *[and repairs]* **or repair** *[done]* in and upon an im-
12 provement.

13 (3) "Construction agent" *[includes]* **means** a contractor, architect, builder or other person hav-
14 ing charge of construction or preparation.

15 (4) "Contractor" means a person *[who]* **that** contracts on predetermined terms to be responsible
16 for *[the performance of]* **performing** all or part of a job of preparation or construction in accordance
17 with established specifications or plans, retaining control of **the** means, method and manner of ac-
18 complishing the desired result, and *[who]* **that** provides:

19 (a) Labor at the site; or

20 (b) Materials, supplies and labor at the site.

21 (5) "Improvement" *[includes any]* **means a** building, wharf, bridge, ditch, flume, reservoir, well,
22 tunnel, fence, street, sidewalk, machinery, aqueduct *[and all]* **or** other *[structures and superstruc-*
23 *tures, whenever it can be made applicable thereto]* **structure or superstructure.**

24 *[(6) "Mortgagee" means a person who has a valid subsisting mortgage of record or trust deed of*
25 *record securing a loan upon land or an improvement.]*

26 **(6) "Mortgagee" means a person:**

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 (a)(A) Whose name and address appear as mortgagee or beneficiary in a mortgage of
2 record or a trust deed of record that is recorded under ORS 205.234 with the county clerk
3 of the county within which the property or improvement is located; and

4 (B) That has a valid subsisting mortgage of record or trust deed of record that secures
5 a loan upon land or upon an improvement; or

6 (b)(A) Whose name and address appear as the assignee of the mortgagee or beneficiary
7 in an assignment of mortgage of record or a trust deed of record that is recorded under ORS
8 205.234 with the county clerk of the county within which the property or improvement is
9 located; and

10 (B) That has a valid subsisting mortgage of record or trust deed of record that secures
11 a loan upon land or upon an improvement.

12 (7) "Original contractor" means a contractor [*who*] **that** has a contractual relationship with the
13 owner.

14 (8) "Owner" means:

15 (a) A person [*who*] **that** is or claims to be the owner in fee or a lesser estate of the land on
16 which preparation or construction is performed;

17 (b) A person [*who has*] **that** entered into a contract [*for the*] **to** purchase [*of*] an interest in the
18 land or improvement [*thereon*] sought to be charged with a lien created under ORS 87.010; or

19 (c) A person [*to whom*] **that has** a valid [*subsisting*] lease on land or an improvement [*is*
20 *made,*] and [*who*] **that** possesses an interest in the land or improvement by reason of [*that*] **the** lease.

21 (9) "Preparation" [*includes*] **means** excavating, surveying, landscaping, [*demolition and*
22 *detachment of*] **demolishing or detaching** existing structures[,] **or** leveling, filling in[, *and other*
23 *preparation of*] **or otherwise making** land **ready** for construction.

24 (10) "Site" means the land on which construction or preparation is performed.

25 (11) "Subcontractor" means a contractor [*who*] **that** has no direct contractual relationship with
26 the owner.

27 **SECTION 2.** ORS 87.018 is amended to read:

28 87.018. (1) Except as provided in ORS 87.093, all notices required under ORS 87.001 to 87.060
29 and 87.075 to 87.093 [*shall*] **must** be in writing and **be** delivered in person or [*delivered*] by regis-
30 tered or certified mail.

31 (2) **A notice that must be given under ORS 87.001 to 87.060 or 87.075 to 87.093 to a**
32 **mortgagee must be delivered to the mortgagee only if the name and address of the**
33 **mortgagee appear in a mortgage of record or a trust deed of record as required under ORS**
34 **205.234 (1)(b) or in the instrument that assigns a mortgage or trust deed as required under**
35 **ORS 205.234 (1)(g).**

36 **SECTION 3.** ORS 205.234 is amended to read:

37 205.234. (1) When [*any*] **an** instrument is presented to a county clerk for recording, the first page
38 of the instrument [*shall*] **must** contain at least:

39 (a) The names of the transactions as required in ORS 205.236;

40 (b) The names **and addresses** of the persons described in ORS 205.125 (1)(a) and (b) and 205.160;

41 (c) [*The person and address (for mailing purposes only) to whom*] **The person to whom and, for**
42 **mailing purposes only, the address to which** the instrument will be delivered as provided in ORS
43 205.180;

44 (d) For instruments [*conveying or contracting*] **that convey or contract** to convey fee title to
45 [*any*] real estate and [*all*] **for** memoranda of [*such*] **the** instruments, the true and actual consider-

1 ation paid for *[such]* **the** transfer as required by ORS 93.030;

2 (e) For instruments *[conveying or contracting]* **that convey or contract** to convey fee title to
3 *[any]* real estate, the tax statement information required by ORS 93.260;

4 (f) For instruments recorded in the County Clerk Lien Record, the information described in ORS
5 205.125 (1)(c) and (e); and

6 (g) For instruments *[assigning]* **that assign** a mortgage or trust deed, the name and address of
7 the assignee mortgagee or assignee trust deed beneficiary.

8 (2) Notwithstanding ORS 205.327, if an instrument presented for recording does not contain the
9 information required by subsection (1) of this section, a cover sheet may be prepared that contains
10 the required information. *[The cover sheet shall be prepared by]* The person *[presenting]* **that pre-**
11 **sents** the instrument for recording **shall prepare the cover sheet.** The cover sheet may be at-
12 tached to the instrument and *[shall]* **must** be recorded as a part of the instrument. Any errors in
13 the cover sheet *[shall]* **do** not affect the transactions contained in the instrument *[itself]*. The cover
14 sheet need not be separately signed or acknowledged.

15 **SECTION 4. (1) The amendments to ORS 87.005, 87.018 and 205.234 by sections 1, 2 and 3**
16 **of this 2011 Act apply to mortgages and trust deeds that are recorded on or after the effec-**
17 **tive date of this 2011 Act.**

18 **(2) The amendments to ORS 87.005 and 87.018 by sections 1 and 2 of this 2011 Act apply**
19 **to assignments of mortgages and trust deeds that are recorded on or after January 1, 2008.**

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