

Senate Bill 1535

Sponsored by Senator DINGFELDER; Senators MONNES ANDERSON, STEINER HAYWARD (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**.

Authorizes affordable housing covenants contained in recorded master form instrument to be incorporated by reference in short form instrument recorded for real property transaction.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to use of master form instruments; creating new provisions; amending ORS 93.780, 93.790,
3 93.800 and 93.802; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2012 Act and ORS 93.802 are added to and made a part of**
6 **ORS 93.780 to 93.800.**

7 **SECTION 2. As used in ORS 93.780 to 93.800:**

8 (1) **"Master form instrument" means an instrument containing a form or forms of**
9 **covenants, conditions, obligations, powers and other clauses of a mortgage, a trust deed or**
10 **an instrument creating affordable housing covenants.**

11 (2) **"Short form instrument" means a short form mortgage, a short form trust deed or**
12 **any instrument that documents a real estate transaction that incorporates by reference and**
13 **applies all or any affordable housing covenants created in a recorded master form instru-**
14 **ment into the transaction.**

15 **SECTION 3. ORS 93.780 is amended to read:**

16 93.780. [*An instrument containing a form or forms of covenants, conditions, obligations, powers and*
17 *other clauses of a mortgage or a trust deed may be recorded in any county. The county clerk,*] Upon
18 request of any person and on tender of the required fee, **the county clerk** shall record [*the instru-*
19 *ment. The instrument shall be entitled "Master Form" and recorded*] **a master form instrument** in
20 the name of the [*entity or*] person causing it to be recorded.

21 **SECTION 4. ORS 93.790 is amended to read:**

22 93.790. (1) After [*the*] **a master form instrument** is recorded pursuant to ORS 93.780, [*any pro-*
23 *visions of such instrument may be incorporated by reference in any mortgage or trust deed of real es-*
24 *tate situated within this state, if the reference in the mortgage or trust deed states that*] **subject to**
25 **subsection (3) of this section, the person that caused the master form instrument to be re-**
26 **corded may cause all or any of the provisions of the master form instrument to apply to real**
27 **estate situated within the county in which the master form instrument was recorded by in-**
28 **corporating all or any of the provisions of the master form instrument by reference in a**
29 **short form instrument, if the reference in the short form instrument states:**

30 (a) **That** the master form instrument was recorded in the county in which the [*mortgage or trust*
31 *deed*] **short form instrument** is offered for record;

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) The date when and the book and page or pages where the master form instrument was re-
2 corded; and

3 (c) **That** a copy of the master form instrument was furnished to the party executing [*the mort-*
4 *gage or trust deed at or before the time of its execution*] **the short form instrument at or before**
5 **the time the party executes the short form instrument.**

6 (2) The recording of [*any mortgage or trust deed which has incorporated*] **a short form instru-**
7 **ment that incorporates** by reference any provision of a master form instrument recorded as pro-
8 vided in ORS 93.780 has like effect as if the incorporated provisions were set forth fully in the
9 [*mortgage or trust deed*] **short form instrument.**

10 [(3) *In the event any instrument recorded as provided in subsections (1) and (2) of this section*
11 *should deviate in any respect from a recorded master form, that portion that deviates from the master*
12 *form shall not be deemed notice to third parties.*]

13 **(3) If a short form instrument recorded as provided in this section deviates in any re-**
14 **spect from a recorded master form instrument and fails to describe the deviation as required**
15 **by ORS 93.802 (4), the portion of the short term instrument that deviates from the master**
16 **form instrument is deemed not to be notice to third parties.**

17 **SECTION 5.** ORS 93.800 is amended to read:

18 93.800. (1) [No] **A county clerk [shall] may not** record matter accompanying a [*mortgage or trust*
19 *deed*] **short form instrument** presented for recording if [*such*] **the** matter:

20 (a) Purports to be copied or reproduced from a master form instrument recorded and identified
21 as required by ORS 93.780;

22 (b) Is preceded by the words “do not record” or “not to be recorded”; and

23 (c) Is separated from the [*mortgage or trust deed*] **short form instrument** so that it will not
24 appear on a photographic reproduction of any page containing a part of the [*mortgage or trust*
25 *deed*] **short form instrument.**

26 (2) Notwithstanding any law to the contrary, [*no recorder is liable for failing to record matter the*
27 *recorder is prohibited from recording by subsection (1) of this section*] **a county clerk is not liable**
28 **for refusing to record matter the county clerk is prohibited by this section from recording.**

29 **SECTION 6.** ORS 93.802 is amended to read:

30 93.802. (1) After a master form instrument is recorded in a county under ORS 93.780 [*and*
31 *93.790*] **to 93.800**, an instrument entitled “Short Form Mortgage,” [*or*] “Short Form Trust Deed” **or**
32 **“Short Form Instrument Creating Affordable Housing Covenants”** may be recorded.

33 (2) The short form instrument [*shall*] **must** contain the title of the **short form** instrument, the
34 names of all parties involved in the encumbrance of the real property described in the **short form**
35 instrument, the legal description of the property that is encumbered by the **short form** instrument,
36 the amount of the encumbrance, the date on which the **short form** instrument was executed and
37 any other information required by law for recording the **short form** instrument.

38 (3) Any provision of the master form instrument recorded under ORS 93.780 **to 93.800** may be
39 incorporated in [*a*] **the** short form instrument by reference to:

40 (a) The date when and the book and page or fee number where the master form instrument was
41 recorded; and

42 (b) Any specific provision of the master form instrument that applies to the short form instru-
43 ment.

44 (4) A short form instrument recorded under this section [*shall*] **must** describe provisions in the
45 short form instrument that deviate in any respect from the **provisions of the** recorded master form

1 instrument.

2 (5) The person presenting a short form instrument for recording shall cause a complete copy of
3 the master form instrument to which reference is made in the short form instrument to be provided
4 or disclosed to each party involved in the encumbrance of the real property described in the short
5 form instrument.

6 **SECTION 7. This 2012 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
8 **on its passage.**

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