

# House Bill 3499

Sponsored by Representative WHITSETT; Representatives GILLIAM, SMITH, WHISNANT, Senator ROBLAN

## 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**.

Prohibits beneficiary or trustee, or beneficiary's or trustee's agent, from selling or offering for sale real property acquired as result of foreclosing residential trust deed unless beneficiary or trustee, or beneficiary's or trustee's agent, tests real property for contamination from methamphetamine manufacturing and discloses test results in writing to prospective purchaser.

Permits purchaser that discovers that beneficiary or trustee, or beneficiary's or trustee's agent, has not conducted test or has misrepresented results to rescind sale of real property without cost or penalty to purchaser or to bring action to recover damages.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to required disclosures in connection with sales of real property; creating new provisions;  
3 amending ORS 105.470 and 105.480; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 105.462 to**  
6 **105.490.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Beneficiary" has the meaning given that term in ORS 86.705.

9 (b) "Trustee" has the meaning given that term in ORS 86.705.

10 (2) A beneficiary or trustee, or an agent of a beneficiary or trustee, may not sell or offer  
11 for sale at a trustee's sale or execution sale real property that the trustee or beneficiary has  
12 acquired as a result of foreclosing a residential trust deed or a mortgage on residential  
13 property, unless the beneficiary or trustee or the agent of the beneficiary or trustee has:

14 (a) Thoroughly tested the property for contamination from methamphetamine manufact-  
15 turing; and

16 (b) Fully disclosed in writing to a prospective purchaser at the trustee's sale or execution  
17 sale the results of the testing that the beneficiary or trustee or beneficiary's or trustee's  
18 agent conducted in accordance with paragraph (a) of this subsection. The disclosure must  
19 consist of a complete report of the results of the testing and a summary in plain language  
20 that states whether the property has been used as an illegal drug manufacturing site.

21 (3) A purchaser at a trustee's sale or an execution sale that did not receive the written  
22 disclosure described in subsection (2) of this section or that discovers that the beneficiary  
23 or trustee or beneficiary's or trustee's agent failed to conduct a test or fraudulently or  
24 negligently misrepresented the results of the test may, at the purchaser's option:

25 (a) Rescind the sale of the property within 30 days after the date of the sale at no cost  
26 or penalty to the purchaser; or

27 (b) Bring an action in a circuit court of this state within two years after discovering the

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 **beneficiary's or trustee's failure to conduct the test required under subsection (2)(a) of this**  
 2 **section or the beneficiary's or trustee's fraudulent or negligent misrepresentation of the**  
 3 **results of the test. The purchaser may recover the purchaser's actual and consequential**  
 4 **damages that arise from the beneficiary's or trustee's failure or misrepresentation.**

5 **SECTION 3.** ORS 105.470 is amended to read:

6 105.470. ORS 105.462 to 105.490, 696.301 and 696.870 do not apply to:

7 (1) The first sale of a dwelling **that was** never occupied, provided that the seller provides the  
 8 buyer with the following statement on or before the date the buyer is legally obligated to purchase  
 9 the subject real property: "THIS HOME WAS CONSTRUCTED OR INSTALLED UNDER BUILD-  
 10 ING OR INSTALLATION PERMIT(S) #\_\_\_\_\_, ISSUED BY \_\_\_\_\_."

11 (2) **Except as provided in section 1 of this 2013 Act,** sales by financial institutions that ac-  
 12 quired the property as custodian, agent or trustee, or by foreclosure or deed in lieu of foreclosure.

13 (3) The following sellers, if appointed by a court:

- 14 (a) Receivers;
- 15 (b) Personal representatives;
- 16 (c) Trustees;
- 17 (d) Conservators; or
- 18 (e) Guardians.

19 (4) Sales or transfers by governmental agencies.

20 **SECTION 4.** ORS 105.480 is amended to read:

21 105.480. (1) **Except as provided in this section,** the representations contained in a seller's  
 22 property disclosure statement and in any amendment to the disclosure statement are the represen-  
 23 tations of the seller only. The representations of the seller are not representations of:

24 (a) A financial institution that may have made or that may make a loan pertaining to the  
 25 property covered by a seller's property disclosure statement, or that may have or take a security  
 26 interest in the property covered by a seller's property disclosure statement, **unless the financial**  
 27 **institution is the seller or will receive the proceeds of a sale of real property that the fi-**  
 28 **ancial institution acquired as custodian, agent or trustee or by foreclosure or deed in lieu**  
 29 **of foreclosure, in which case representations made in the written disclosure described in**  
 30 **section 1 of this 2013 Act are the representations of the financial institution.**

31 (b) A real estate licensee engaged by the seller or buyer.

32 (2)(a) *[Neither]* **Except as provided in paragraph (b) of this subsection,** a financial institution  
 33 *[nor]* **or** a real estate licensee is **not** bound by *[or has]* **and does not have** any liability *[with respect*  
 34 *to]* **for** any representation, misrepresentation, omission, error or inaccuracy contained in the seller's  
 35 property disclosure statement required by ORS 105.465 or any amendment to the disclosure state-  
 36 ment.

37 **(b) A financial institution that is a seller or will receive the proceeds of a sale of real**  
 38 **property that the financial institution acquired as custodian, agent or trustee or by foreclo-**  
 39 **sure or deed in lieu of foreclosure is liable for any representation, misrepresentation, omis-**  
 40 **sion, error or inaccuracy contained in the written disclosure described in section 1 of this**  
 41 **2013 Act.**

42 **SECTION 5.** Section 2 of this 2013 Act and the amendments to ORS 105.470 and 105.480  
 43 **by sections 3 and 4 of this 2013 Act become operative 91 days after the effective date of this**  
 44 **2013 Act.**

45 **SECTION 6.** Section 2 of this 2013 Act and the amendments to ORS 105.470 and 105.480

1 by sections 3 and 4 of this 2013 Act apply to sales of real property that occur on or after the  
2 operative date specified in section 5 of this 2013 Act.

3 **SECTION 7.** This 2013 Act being necessary for the immediate preservation of the public  
4 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
5 on its passage.  
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