

Enrolled Senate Bill 368

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)

CHAPTER

AN ACT

Relating to money awards in judicial foreclosures; creating new provisions; amending ORS 18.862, 18.936, 86.797, 88.010 and 88.060; and declaring an emergency.

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

SECTION 1. ORS 18.862 is amended to read:

18.862. (1) A writ of execution must be directed to a sheriff and must contain the name of the court, the names of the parties to the action and the case number for the action. The writ must contain a mailing address for the judgment creditor. The writ must describe the judgment and, if the writ of execution is issued for application of property of the judgment debtor against a money award **or a declaration of the amount of the debt that a lien secures in a foreclosure suit**, the writ must state the amount owing on the money award **or the amount in the declaration**, including interest, as of the date that the request for issuance of the writ is mailed or delivered to the court administrator. The writ must also state the amount of interest accruing on the money award **or the debt** each day.

(2) If *[the]* a judgment requires that specific real or personal property of the judgment debtor be sold, the writ must particularly describe the property and direct the sheriff to sell the specified property. **The sheriff shall deliver the proceeds of the sale as provided in ORS 18.950.**

(3) If *[the]* a judgment requires *[the delivery of the]* **delivering** possession of real or personal property, the writ must direct the sheriff to deliver the possession of the property. The writ must particularly describe the property and specify the party to whom the property is to be delivered.

(4) Real property identified *[pursuant to]* **in accordance with** this section must be described using a legal description and a street address, if any.

SECTION 2. ORS 18.936 is amended to read:

18.936. (1) *[The]* **A** judgment creditor *[who]* **that** requested issuance of *[the]* **a** writ of execution may make oral bids for property to be sold at an execution sale. If the oral bid of the judgment creditor is the highest bid, the judgment creditor need not make any payment to the sheriff other than for:

- (a) Any unpaid sheriff's fees for the execution sale;
- (b) The amount of an exemption *[claimed by]* **that** the debtor **claims and** that the judgment creditor agrees to or that a court has determined applies to the property; and
- (c) Any amount *[bid by]* **that** the judgment creditor **bids** that:

(A) Exceeds the full amount, **calculated as of the date of the execution sale, that is owing on the money award**[, *calculated as of the date that the sale is to be conducted*], **for a judgment that includes a money award**, plus the costs of the sale as described in ORS 18.950 (2) that [*have been paid by the judgment creditor.*] **the judgment creditor paid; or**

(B) **Exceeds the amount declared in the judgment, calculated as of the date of the execution sale, for a judgment that directs the sale of specific real or personal property, plus the costs of the sale as described in ORS 18.950 (2) that the judgment creditor paid.**

(2)(a) [*The*] A judgment creditor [*who*] **that** requested issuance of [*the*] a writ of execution may submit a written bid for property to be sold in an execution sale before the sale is conducted.

(b) A bid under **paragraph (a)** of this subsection may not be for more than:

(A) The full amount [*owing on the money award*], calculated as of the date [*that the sale is to be conducted,*] **of the execution sale, that is owing on the money award, for a judgment that includes a money award**, plus the costs of the sale that [*are recoverable by*] the judgment creditor [*as described*] **may recover as provided in ORS 18.950 (2)**[.]; **or**

(B) **The amount declared in the judgment, calculated as of the date of the execution sale, for a judgment that directs the sale of specific real or personal property, plus the costs of the sale that the judgment creditor may recover as provided in ORS 18.950 (2).**

(c) **The sheriff must receive** a bid under this subsection [*must be received by the sheriff*] not less than 48 hours before the sale is conducted. The sheriff may rely on the judgment creditor's calculation of the amount due under the money award **or the amount declared in the judgment** and for the costs of sale. **The sheriff** [, *and*] is not required to make a separate calculation. If the written bid of the judgment creditor is the highest bid, the judgment creditor need not make any payment to the sheriff other than for:

[*a*] (A) Any unpaid sheriff's fees for the execution sale; and

[*b*] (B) The amount of an exemption [*claimed by*] **that** the debtor **claims and** that the judgment creditor agrees to or that a court has determined applies to the property.

(3) A judgment creditor [*who*] **that** makes a bid under subsection (2) of this section may instruct the sheriff to accept any bid that matches the amount **of the judgment creditor's bid** [*of the bid made by the judgment creditor*].

(4) A written bid under subsection (2) of this section is irrevocable, but the judgment creditor [*who*] **that** submits the written bid may make an oral bid at the time of the sale that is higher than the written bid.

(5) A judgment creditor [*who*] **that** makes a bid under this section must notify the sheriff of any amounts included in the bid that are attributable to costs of sale under ORS 18.950 (2).

SECTION 3. ORS 86.797 is amended to read:

86.797. (1) If, under ORS 86.705 to 86.815, a trustee sells property covered by a trust deed, the trustee's sale forecloses and terminates the interest in the property that belongs to a person to which notice of the sale was given under ORS 86.764 and 86.774 or to a person that claims an interest by, through or under the person to which notice was given. A person whose interest the trustee's sale foreclosed and terminated may not redeem the property from the purchaser at the trustee's sale. A failure to give notice to a person entitled to notice does not affect the validity of the sale as to persons that were notified.

(2) Except in accordance with subsection (4) of this section, **an action for a deficiency may not be brought** after a trustee's sale under ORS 86.705 to 86.815[,] or after a judicial foreclosure of a residential trust deed, [*an action for a deficiency may not be brought or a judgment entered*] **and a judgment to foreclose a residential trust deed under ORS 88.010 may not include a money award for the amount of the debt** against the grantor, the grantor's successor in interest or another person obligated on:

(a) The note, bond or other obligation secured by the trust deed for the property that was subject to the trustee's sale or the judicial foreclosure; or

(b) Any other note, bond or other obligation secured by a residential trust deed for, or mortgage on, the property that was subject to the trustee's sale or the judicial foreclosure when the debt, of which the note, bond or other obligation is evidence:

(A) Was created on the same day as, and used as part of the same purchase or repurchase transaction as, the note, bond or other obligation secured by the foreclosed residential trust deed; and

(B) Is owed to or was originated by the beneficiary or an affiliate of the beneficiary in the residential trust deed that was subject to the trustee's sale or the foreclosure.

[(3) Notwithstanding ORS 88.103, in a judicial foreclosure of a trust deed that is not a residential trust deed the judgment must provide that if the sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount by which the unpaid balance of the obligation secured by the trust deed exceeds the net sale proceeds payable to the beneficiary.]

(3) Notwithstanding ORS 88.103, if a judicial foreclosure of a trust deed that is not a residential trust deed results in a judgment that includes a money award, the judgment must provide that execution may issue for the amount by which the unpaid balance of the money award exceeds the net sale proceeds that are payable to the judgment creditor from the sale of the property that is subject to the foreclosure if:

(a) The net sale proceeds are insufficient to satisfy the money award; and

(b) The plaintiff requests the provision in the complaint.

(4) This section does not preclude:

(a) An action that forecloses, judicially or nonjudicially:

(A) Other property covered by the trust deed that is the subject of the foreclosure; or

(B) Another trust deed, mortgage, security agreement, consensual or nonconsensual security interest or lien that covers other real or personal property that is also used as security for the note, bond or other obligation that is secured by the trust deed for the property that was sold.

(b) An action against a guarantor for a deficiency that remains after a judicial foreclosure.

(5) A guarantor of an obligation secured by a residential trust deed may not recover a deficiency from the grantor or a successor in interest of the grantor.

SECTION 4. ORS 88.010 is amended to read:

88.010. (1)(a) Except as otherwise provided by law, a lien upon real or personal property, other than that of a judgment, whether created by mortgage or otherwise, must be foreclosed, and the property adjudged to be sold to satisfy the debt the lien secures, by bringing suit. **A judgment in the suit must include a declaration of the amount of the debt that the lien secures.**

(b) Except as provided in ORS **86.797** or 88.103 or other applicable law, *[in addition to the judgment of foreclosure and sale,]* if the lien debtor or another person, as principal or otherwise, has given a promissory note or other personal obligation *[for the payment of the debt, the court also shall enter a judgment]* **to pay the debt and if the plaintiff in the complaint asks the court for a money award in the judgment, the court shall include in the judgment a money award against the lien debtor or other person** for the amount of the debt *[against the lien debtor or other person]*.

(c) The provisions of this chapter as to liens upon personal property do not exclude a person that has a lien from any other remedy or right that the person otherwise has with respect to the property.

(2)(a) A complaint in a suit to foreclose a residential trust deed under this section must include as an attachment a true copy of:

(A) A valid and unexpired certificate of compliance that a service provider issued to a beneficiary under ORS 86.736;

(B) The affidavit the person submitted under ORS 86.726 (1)(b), provided that the exemption the person claimed in the affidavit has not expired; or

(C) The notice the beneficiary received under ORS 86.736 (1)(c).

(b)(A) A court on the court's own motion or in response to a motion from a defendant may dismiss without prejudice a suit that a person brings under this section to foreclose a residential trust deed, or may stay proceedings on the suit, if the person:

(i) Fails to file with the court the certificate described in paragraph (a)(A) of this subsection or the affidavit described in paragraph (a)(B) of this subsection; or

(ii) Files with the court the notice described in paragraph (a)(C) of this subsection.

(B) The court may release a stay the court granted under subparagraph (A) of this paragraph if the person files with the court the certificate described in paragraph (a)(A) of this subsection or the affidavit described in paragraph (a)(B) of this subsection.

(C) The court may award a defendant that prevails on a motion under this paragraph reasonable costs and attorney fees associated with bringing the motion and any other relief the court deems proper.

SECTION 5. ORS 88.060 is amended to read:

88.060. (1) *[The]* **A judgment of foreclosure and sale** may be enforced by execution *[as an ordinary judgment for the recovery of money, except]* as **provided** in this section *[otherwise provided:].*

[(1)] (2) *[When]* **If** a judgment of foreclosure and sale is given, an execution may issue *[thereon]* against the property adjudged to be sold. If the judgment is in favor of the plaintiff only, the execution may issue as in ordinary cases, but if *[it]* **the judgment** is in favor of different persons[,] not united in interest, *[it]* **the execution** shall issue upon the joint request of *[such]* **the persons** or upon the order of the court or judge *[thereof]* on the motion of *[any of them]* **the persons**.

[(2)] (3) *[When]* **If** the judgment *[is also]* **includes a money award** against the defendants or any one of *[them]* **the defendants** in person, and the *[proceeds of the sale]* **net sale proceeds** of the property upon which the lien is foreclosed are *[not sufficient]* **insufficient** to satisfy the *[judgment]* **money award** as to the sum remaining unsatisfied, the judgment may be enforced by execution as in ordinary cases. *[When in such case]* **If** the judgment is in favor of different persons not united in interest, *[it shall be deemed]* **the judgment is** a separate judgment as to *[such]* **the persons**[,] and may be enforced accordingly.

SECTION 6. **The amendments to ORS 18.862, 18.936, 86.797, 88.010 and 88.060 by sections 1 to 5 of this 2015 Act apply to foreclosure suits that commence or that are pending on or after the effective date of this 2015 Act.**

SECTION 7. **This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

Passed by Senate February 12, 2015

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 28, 2015

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

.....
Jeanne P. Atkins, Secretary of State