

Senate Bill 368

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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 **as introduced**.

Requires sheriff to deliver proceeds of execution sale to court administrator.

Permits judgment creditor in foreclosure suit to bid for foreclosed property at foreclosure sale by paying, among other fees and costs, amount that exceeds full amount of money award if judgment includes money award, or amount declared in judgment for judgment that does not include money award. Specifies that judgment creditor's bid for foreclosed property may not exceed full amount owing on money award in judgment that includes money award or amount declared in judgment for judgment that does not include money award.

Provides that judgment to foreclose residential trust deed may not include money award for amount of debt against grantor, successor in interest or another person obligated on note, bond or other obligation in specified circumstances.

Requires judgment in suit to foreclose lien to include declaration of amount of debt lien secures and, if plaintiff requests in complaint, money award against lien debtor.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to money awards in judicial foreclosures; creating new provisions; amending ORS 18.862,
3 18.936, 86.797, 88.010 and 88.060; and declaring an emergency.

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

5 **SECTION 1.** ORS 18.862 is amended to read:

6 18.862. (1) A writ of execution must be directed to a sheriff and must contain the name of the
7 court, the names of the parties to the action and the case number for the action. The writ must
8 contain a mailing address for the judgment creditor. The writ must describe the judgment and, if the
9 writ of execution is issued for application of property of the judgment debtor against a money award
10 **or a declaration of the amount of the debt that a lien secures in a foreclosure suit**, the writ
11 must state the amount owing on the money award **or the amount in the declaration**, including
12 interest, as of the date that the request for issuance of the writ is mailed or delivered to the court
13 administrator. The writ must also state the amount of interest accruing on the money award **or the**
14 **debt** each day.

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

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

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

23 **SECTION 2.** ORS 18.936 is amended to read:

24 18.936. (1) [*The*] **A** judgment creditor [*who*] **that** requested issuance of [*the*] a writ of execution

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 may make oral bids for property to be sold at an execution sale. If the oral bid of the judgment
 2 creditor is the highest bid, the judgment creditor need not make any payment to the sheriff other
 3 than for:

4 (a) Any unpaid sheriff's fees for the execution sale;

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

7 (c) Any amount [*bid by*] **that** the judgment creditor **bids** that:

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

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

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

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

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

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

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

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

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

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

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

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

41 **SECTION 3.** ORS 86.797 is amended to read:

42 86.797. (1) If, under ORS 86.705 to 86.815, a trustee sells property covered by a trust deed, the
 43 trustee's sale forecloses and terminates the interest in the property that belongs to a person to
 44 which notice of the sale was given under ORS 86.764 and 86.774 or to a person that claims an in-
 45 terest by, through or under the person to which notice was given. A person whose interest the

1 trustee's sale foreclosed and terminated may not redeem the property from the purchaser at the
 2 trustee's sale. A failure to give notice to a person entitled to notice does not affect the validity of
 3 the sale as to persons that were notified.

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

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

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

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

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

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

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

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

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

31 (4) This section does not preclude:

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

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

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

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

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

40 **SECTION 4.** ORS 88.010 is amended to read:

41 88.010. (1)(a) Except as otherwise provided by law, a lien upon real or personal property, other
 42 than that of a judgment, whether created by mortgage or otherwise, must be foreclosed, and the
 43 property adjudged to be sold to satisfy the debt the lien secures, by bringing suit. **A judgment in**
 44 **the suit must include a declaration of the amount of the debt that the lien secures.**

45 (b) Except as provided in ORS **86.797** or 88.103 **or other applicable law,** [*in addition to the*

1 *judgment of foreclosure and sale,*] if the lien debtor or another person, as principal or otherwise, has
 2 given a promissory note or other personal obligation [*for the payment of the debt, the court also shall*
 3 *enter a judgment*] **to pay the debt and if the plaintiff in the complaint asks the court for a**
 4 **money award in the judgment, the court shall include in the judgment a money award**
 5 **against the lien debtor or other person** for the amount of the debt [*against the lien debtor or other*
 6 *person*].

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

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

12 (A) A valid and unexpired certificate of compliance that a service provider issued to a benefi-
 13 ciary under ORS 86.736;

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

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

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

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

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

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

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

29 **SECTION 5.** ORS 88.060 is amended to read:

30 88.060. (1) [*The*] **A judgment of foreclosure and sale** may be enforced by execution [*as an or-*
 31 *inary judgment for the recovery of money, except*] as **provided** in this section [*otherwise provided*].

32 [(1)] (2) [*When*] **If** a judgment of foreclosure and sale is given, an execution may issue [*thereon*]
 33 against the property adjudged to be sold. If the judgment is in favor of the plaintiff only, the exe-
 34 cution may issue as in ordinary cases, but if [*it*] **the judgment** is in favor of different persons[,] not
 35 united in interest, [*it*] **the execution** shall issue upon the joint request of [*such*] **the persons** or upon
 36 the order of the court or judge [*thereof*] on the motion of [*any of them*] **the persons**.

37 [(2)] (3) [*When*] **If** the judgment [*is also*] **includes a money award** against the defendants or any
 38 one of [*them*] **the defendants** in person, and the [*proceeds of the sale*] **net sale proceeds** of the
 39 property upon which the lien is foreclosed are [*not sufficient*] **insufficient** to satisfy the [*judgment*]
 40 **money award** as to the sum remaining unsatisfied, the judgment may be enforced by execution as
 41 in ordinary cases. [*When in such case*] **If** the judgment is in favor of different persons not united in
 42 interest, [*it shall be deemed*] **the judgment is** a separate judgment as to [*such*] **the persons**[,] and
 43 may be enforced accordingly.

44 **SECTION 6.** The amendments to ORS 18.862, 18.936, 86.797, 88.010 and 88.060 by sections
 45 1 to 5 of this 2015 Act apply to foreclosure suits that commence or that are pending on or

1 after the effective date of this 2015 Act.

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

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