

D R A F T

SUMMARY

Requires purchaser of real property with intent to acquire redemption rights to include warning in deed transferring property.

Requires sheriff to include in notice of execution sale posted on website notice regarding certain rights of debtors.

Requires person filing complaint to foreclose residential trust deed to provide lien debtor with notice about sale of redemption rights. Revises notice required in nonjudicial foreclosure for consistency.

A BILL FOR AN ACT

Relating to real property; creating new provisions; and amending ORS 18.924, 86.756 and 88.010.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 18.960 to 18.985.

SECTION 2. If a person purchases real property with the intent of becoming a successor in interest to the right to redeem the property under ORS 18.963, the person shall include the following notice in the deed transferring the real property:

WARNING: If you sign this document, you are selling your property entirely. You are selling your rights to “surplus funds,” which is money you might get if your property sells for more than what is owed on it. You should be careful about this offer. Make sure you understand this document. If you have any questions, talk to a lawyer before signing.

1 **SECTION 3.** ORS 18.924 is amended to read:

2 18.924. (1) Before conducting an execution sale of real property, a sheriff
3 shall:

4 (a) Post notice of the sale on the website established under ORS 18.926
5 for at least 28 days; and

6 (b) Publish notice of the sale in a newspaper, as defined in ORS 193.010,
7 in the county where the real property is located once a week for four suc-
8 cessive weeks.

9 (2) The notice posted on the website and published in the newspaper un-
10 der subsection (1) of this section must include:

11 (a) The names of the parties subject to the writ of execution;

12 (b) The street address of the property or, if there is no street address, the
13 tax lot number of the property; and

14 (c) The date, time and place of the execution sale.

15 (3) In addition to the information listed in subsection (2) of this section,
16 the notice posted on the website under subsection (1) of this section must
17 include:

18 (a) The legal description of the property; and

19 (b) *[The following notice:]* **The notice to debtor and notice to pro-**
20 **spective bidders prescribed in subsections (4) and (5) of this section.**

21 **(4) The notice to debtor required by subsection (3) of this section**
22 **must be in substantially the following form:**

23
24 **NOTICE TO DEBTOR**
25

26 **You should be careful about offers to sell rights to excess funds.**

27 **You may have a right to excess funds remaining after payment of**
28 **costs and satisfaction of the judgment, as provided in ORS 18.950 (4).**

29 **If you transfer or sell your right to redemption, you might not have**
30 **the right to excess funds.**

1 **(5) The notice to prospective bidders required by subsection (3) of**
2 **this section must be in substantially the following form:**

4 **NOTICE TO PROSPECTIVE BIDDERS**

5
6 Before bidding at the sale, a prospective bidder should independently in-
7 vestigate:

- 8 (a) The priority of the lien or interest of the judgment creditor;
- 9 (b) Land use laws and regulations applicable to the property;
- 10 (c) Approved uses for the property;
- 11 (d) Limits on farming or forest practices on the property;
- 12 (e) Rights of neighboring property owners; and
- 13 (f) Environmental laws and regulations that affect the property.

14
15 ~~[(4)]~~ **(6)** In addition to the information listed in subsection (2) of this
16 section, a notice published in the newspaper under subsection (1) of this
17 section must include instructions for locating the information posted on the
18 website under subsection (1) of this section.

19 ~~[(5)]~~ **(7)** The sheriff is not required to post or publish the notice of sale
20 of real property under this section until the judgment creditor provides the
21 sheriff with all of the information required under subsections (2) and (3) of
22 this section.

23 ~~[(6)]~~ **(8)** Before any execution sale of real property, the sheriff shall:

24 (a) Mail copies of the notice of sale posted on the website under sub-
25 section (1) of this section by first class mail and by certified mail, return
26 receipt requested, to the judgment debtor at the address provided in the in-
27 structions to the sheriff;

28 (b) Mail a copy of the notice of sale posted on the website under sub-
29 section (1) of this section by first class mail to any attorney for the judgment
30 debtor identified in the instructions at the address provided in the in-
31 structions; and

1 (c) Mail a copy of the notice of sale posted on the website under sub-
2 section (1) of this section by first class mail to any other person listed in the
3 instructions pursuant to ORS 18.918 at the address provided in the in-
4 structions.

5 [(7)] (9) The notices required by subsection [(6)] (8) of this section must
6 be mailed not less than 28 days before an execution sale is conducted.

7 [(8)] (10) Before any execution sale of real property for which the judg-
8 ment creditor has provided a street address under ORS 18.875 (3), the sheriff
9 shall post the notice of the sale posted on the website under subsection (1)
10 of this section in a conspicuous place on the property. The notice must be
11 posted not more than seven days after the sheriff mails notices as required
12 by subsection [(6)] (8) of this section.

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

14 88.010. (1)(a) Except as otherwise provided by law, a lien upon real or
15 personal property, other than that of a judgment, whether created by mort-
16 gage or otherwise, must be foreclosed, and the property adjudged to be sold
17 to satisfy the debt the lien secures, by bringing suit. A judgment in the suit
18 must include a declaration of the amount of the debt that the lien secures.

19 (b) Except as provided in ORS 86.797 or 88.103 or other applicable law,
20 if the lien debtor or another person, as principal or otherwise, has given a
21 promissory note or other personal obligation to pay the debt and if the
22 plaintiff in the complaint asks the court for a money award in the judgment,
23 the court shall include in the judgment a money award against the lien
24 debtor or other person for the amount of the debt.

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

28 **(2)(a) Before filing a complaint in a suit to foreclose a residential**
29 **trust deed under this section, the person bringing the suit shall give**
30 **notice under this section to the lien debtors, and the complaint must**
31 **include as an attachment a copy of the notice. The notice must be in**

1 substantially the following form and printed in at least 14-point type:

2 _____
3 **WARNING: You may get offers from people who tell you they can help**
4 **you keep your property. You may get offers from people who want to**
5 **buy your “redemption rights” or “all rights under ORS chapter 18.”**
6 **You should be careful about those offers. Make sure you understand**
7 **any papers you are asked to sign. If you have any questions, talk to**
8 **a lawyer or one of the organizations mentioned below before signing.**

9
10 **There are government agencies and nonprofit organizations that can**
11 **give you information about foreclosure and help you decide what to**
12 **do. For the name and telephone number of an organization near you,**
13 **please call the statewide telephone contact number at _____.**
14 **You may also wish to talk to a lawyer. If you need help finding a**
15 **lawyer, you may call the Oregon State Bar’s Lawyer Referral Service**
16 **at _____ or toll-free in Oregon at _____ or you may visit**
17 **its website at: _____. Legal assistance may be available if you**
18 **have a low income and meet federal poverty guidelines. For more in-**
19 **formation and a directory of legal aid programs, go to _____.**

20 _____
21 **(b) The person filing the complaint shall insert in the notice under**
22 **this subsection the resource telephone contact numbers and website**
23 **addresses prescribed by the Department of Consumer and Business**
24 **Services by rule under ORS 86.756.**

25 [(2)(a)] **(3)(a)** A complaint in a suit to foreclose a residential trust deed
26 under this section must include as an attachment a true copy of:

27 (A) A valid and unexpired certificate of compliance that a service pro-
28 vider issued to a beneficiary under ORS 86.736;

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

31 (C) The notice the beneficiary received under ORS 86.736 (1)(c); or

1 (D) A signed affidavit from the Director of Veterans' Affairs that states
2 that the Department of Veterans' Affairs, in the department's capacity as a
3 beneficiary of loans made under ORS 407.125, is exempt from the requirement
4 under ORS 86.726 to request or participate in a resolution conference with
5 a grantor.

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

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

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

15 (B) The court may release a stay the court granted under subparagraph
16 (A) of this paragraph if the person files with the court the certificate de-
17 scribed in paragraph (a)(A) of this subsection or the affidavit described in
18 paragraph (a)(B) or (D) of this subsection.

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

22 **SECTION 5.** ORS 86.756 is amended to read:

23 86.756. (1) If a notice of default is recorded for property that is subject
24 to a residential trust deed, the sender of a notice of sale under ORS 86.764
25 shall, on or before the date the notice of sale is served or mailed, give notice
26 under this section to the grantor by both first class and certified mail with
27 return receipt requested to all addresses on file with the sender for the
28 grantor, including post office boxes. Subject to any rules adopted under
29 subsection (2) of this section, the notice must be in substantially the fol-
30 lowing form and printed in at least 14-point type:

31

NOTICE:

YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at
_____ (address).

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called "foreclosure."

The amount you would have had to pay as of _____ (date) to bring your mortgage loan current was \$_____. The amount you must now pay to bring your loan current may have increased since that date.

By law, your lender has to provide you with details about the amount you owe, if you ask. You may call _____ (telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to get other details about the amount you owe. You may also get these details by sending a request by certified mail to: _____.

THIS IS WHEN AND WHERE
YOUR PROPERTY WILL BE SOLD
IF YOU DO NOT TAKE ACTION:

Date and time: _____, 2_____ at _____

Place: _____

THIS IS WHAT YOU CAN DO
TO STOP THE SALE:

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1. You can pay the amount past due or correct any other default, up to five days before the sale.
2. You can refinance or otherwise pay off the loan in full anytime before the sale.
3. You can call _____ (name) at _____ (telephone number) to find out if your lender is willing to give you more time or change the terms of your loan.
4. You can sell your home, provided the sale price is enough to pay what you owe.

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide telephone contact number at _____. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar’s Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may visit its website at: _____. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to _____.

WARNING: You may get offers from people who tell you they can help you keep your property. **You may get offers from people who want to buy your “redemption rights” or “all rights under ORS chapter 18.”** You should be careful about those offers. Make sure you understand any papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations mentioned above before signing.

1 DATED: _____, 2_____

2

3 Trustee name: _____ (print)

4

5 Trustee signature: _____

6

7 Trustee telephone number: _____

8

9 (2) The Department of Consumer and Business Services may adopt rules
10 prescribing the format, font size and other physical characteristics of the
11 notice form set forth in subsection (1) of this section. The department shall
12 adopt rules specifying the resource telephone contact numbers and website
13 addresses the sender is to insert in completing the notice.

14 (3) When filling blanks in the notice form set forth in subsection (1) of
15 this section, the sender of the notice shall include, stated in plain language:

16 (a) The amount of payment that was needed to bring the mortgage loan
17 current as of the date stated in the notice; and

18 (b) One or more telephone numbers consisting of:

19 (A) A telephone number that will allow the grantor access during regular
20 business hours to details regarding the grantor's loan delinquency and re-
21 payment information; and

22 (B) A telephone number that will allow the grantor access during regular
23 business hours to person-to-person consultation with an individual author-
24 ized by the beneficiary to discuss the grantor's payment and loan term ne-
25 gotiation and modification options.

26 (4) Telephone numbers described in subsection (3) of this section must be
27 toll-free numbers unless the beneficiary:

28 (a) Made the loan with the beneficiary's own money;

29 (b) Made the loan for the beneficiary's own investment; and

30 (c) Is not in the business of making loans secured by an interest in real
31 estate.

1 (5) If the sender giving notice under subsection (1) of this section has
2 actual knowledge that the grantor is not the occupant of the residential real
3 property, the sender shall also give notice to the occupant of the property
4 by both first class and certified mail with return receipt requested to all
5 addresses on file with the trustee for the occupant, including post office
6 boxes.

7 **SECTION 6. (1) Section 2 of this 2019 Act applies to deeds recorded**
8 **on or after the effective date of this 2019 Act.**

9 **(2) The amendments to ORS 18.924 by section 3 of this 2019 Act apply**
10 **to notices posted on or after the effective date of this 2019 Act.**

11 **(3) The amendments to ORS 88.010 by section 4 of this 2019 Act apply**
12 **to complaints filed on or after the effective date of this 2019 Act.**

13 **(4) The amendments to ORS 86.756 by section 5 of this 2019 Act apply**
14 **to notices mailed under ORS 86.756 on or after the effective date of this**
15 **2019 Act.**

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