

D R A F T

SUMMARY

Provides procedure for certain persons that hold interest in real property to request and obtain lien information statement that shows amounts necessary to satisfy encumbrance against real property from other person that holds encumbrance.

Requires encumbrance holder to respond to request for lien information statement within 30 days after receiving request. Permits encumbrance holder to require evidence that person requesting lien information statement is authorized recipient. Specifies model form for request and information that lien information statement must include.

Provides remedies for encumbrance holder's failure to provide lien information statement or to postpone action or proceeding to enforce encumbrance to allow reasonable time for authorized recipient to satisfy encumbrance.

Permits authorized recipient to treat lien information statement as payoff statement for purposes of satisfying obligation that encumbrance secures.

A BILL FOR AN ACT

1
2 Relating to lien information statements for real property that is subject to
3 an encumbrance.

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

5 **SECTION 1. Sections 2 to 7 of this 2019 Act are added to and made**
6 **a part of ORS chapter 105.**

7 **SECTION 2. As used in sections 2 to 7 of this 2019 Act:**

8 **(1)(a) "Authorized recipient" means:**

9 **(A) A person that holds an interest in real property in this state**
10 **that is recorded and that is subject to an encumbrance;**

11 **(B) A trustee in a bankruptcy proceeding, a receiver or another**

1 **custodian that a court appoints to administer real property in this**
2 **state that is subject to an encumbrance;**

3 **(C) A trustee in a trust deed that encumbers real property in this**
4 **state with respect to which a person requests a lien information**
5 **statement;**

6 **(D) An escrow agent, as defined in ORS 696.505, that is involved in**
7 **a transaction concerning real property in this state that is subject to**
8 **an encumbrance; or**

9 **(E) An attorney who acts on behalf of a person identified in sub-**
10 **paragraphs (A) to (D) of this paragraph.**

11 **(b) “Authorized recipient” does not include a tenant or lessee of real**
12 **property that is subject to an encumbrance unless the tenant or lessee**
13 **has an option to purchase the real property and the option is recorded.**

14 **(2) “Encumbrance” means:**

15 **(a) A claim, lien, charge or other liability that is attached to and**
16 **is binding upon real property in this state as security for payment of**
17 **a monetary obligation; or**

18 **(b) A reservation of title to real property in this state under a land**
19 **sale contract.**

20 **(3) “Encumbrance holder” means a person that holds or claims to**
21 **hold an encumbrance to which real property in this state is subject,**
22 **including but not limited to:**

23 **(a) A mortgagee, as defined in ORS 87.005;**

24 **(b) A beneficiary, as defined in ORS 86.705;**

25 **(c) A vendor in a land sale contract;**

26 **(d) A person that holds a statutory or judicial lien to which the real**
27 **property is subject; or**

28 **(e) Any person that is an assignee of or a successor in interest to**
29 **a person listed in paragraphs (a) to (d) of this subsection.**

30 **(4) “Land sale contract” has the meaning given that term in ORS**
31 **18.960.**

1 **(5) “Lien information statement” means a written document that**
2 **shows:**

3 **(a) The amount of the unpaid principal balance of the obligation**
4 **that the encumbrance secures, as of the date on the document;**

5 **(b) The interest rate that applies to the principal balance of the**
6 **obligation;**

7 **(c) The total amount of interest that has accrued and remains un-**
8 **paid as of the date on the document;**

9 **(d) A description and the amount of all costs, expenses, advances**
10 **or other sums, if any, that the encumbrance secures or that may be**
11 **included in the unpaid balance of a land sale contract, together with**
12 **the interest rate that applies to the costs, expenses, advances or other**
13 **sums if the interest rate differs from the interest rate that applies to**
14 **the principal balance of the obligation and the date to which interest**
15 **on the costs, expenses, advances and other sums has been paid;**

16 **(e) Any amounts that may be added to the amounts described in**
17 **paragraphs (a), (c) and (d) of this subsection within 30 days after the**
18 **date of the document or a good faith estimate of any amounts that**
19 **may be added but are unknown;**

20 **(f) Any amounts the encumbrance holder has in an escrow account,**
21 **as defined in ORS 86.205;**

22 **(g) The name, address, telephone number and other contact infor-**
23 **mation for an individual who can provide additional information on**
24 **behalf of the encumbrance holder; and**

25 **(h) The name, address, telephone number and other contact infor-**
26 **mation for the person to which the amounts set forth in the document**
27 **must be paid, along with instructions for making electronic transfers,**
28 **if applicable.**

29 **SECTION 3. (1) Except as provided in section 4 of this 2019 Act and**
30 **notwithstanding any longer period set forth in the Oregon Rules of**
31 **Civil Procedure, an encumbrance holder or the encumbrance holder’s**

1 **agent shall provide an authorized recipient with a complete and accu-**
2 **rate lien information statement not later than 30 days after the**
3 **encumbrance holder or the encumbrance holder's agent has received**
4 **a request for a lien information statement.**

5 **(2) Subject to the conditions set forth in subsection (3) of this sec-**
6 **tion, an authorized recipient may request a lien information statement**
7 **at any time before an encumbrance has been recorded as satisfied,**
8 **discharged, reconveyed or fulfilled.**

9 **(3)(a) Except as provided in paragraph (b) of this subsection, an**
10 **authorized recipient may not request of an encumbrance holder during**
11 **any 12-month period more than one lien information statement for**
12 **real property to which the lien information statement applies.**

13 **(b) An authorized recipient may request within the 12-month period**
14 **described in paragraph (a) of this subsection more than one lien in-**
15 **formation statement that applies to the same real property if the au-**
16 **thorized recipient:**

17 **(A) Reasonably believes that the encumbrance holder has taken or**
18 **intends to take an action to foreclose or otherwise enforce the**
19 **encumbrance; or**

20 **(B) Requests the lien information statement for the purpose of**
21 **closing a pending transaction with respect to the real property to**
22 **which the lien information statement applies.**

23 **(4) An encumbrance holder may require a person who requests a**
24 **lien information statement to show evidence that the person is an**
25 **authorized recipient or an agent of an authorized recipient. Notwith-**
26 **standing any longer period of time provided in the Oregon Rules of**
27 **Civil Procedure for responding to a request for information in the**
28 **circumstances described in this section, the encumbrance holder shall**
29 **notify the person of the requirement within 14 days after receiving the**
30 **request and shall provide the lien information statement within 14**
31 **days after receiving evidence that the person is an authorized recipient**

1 or an agent of an authorized recipient.

2 (5) An encumbrance holder may not charge more than \$15 to pro-
3 cess a request for a lien information statement and may not charge
4 any amount for a lien information statement if the encumbrance
5 holder has taken an action to foreclose or otherwise enforce the
6 encumbrance.

7 SECTION 4. (1) A request for a lien information statement must
8 be in substantially the following form:

9 _____

10 **REQUEST FOR LIEN INFORMATION STATEMENT**

11

12 **DATE OF REQUEST:** _____

13

14 **TO: (Name and address of encumbrance holder)**

15 _____

16 _____

17 _____

18

19 **FROM: (Name, address and telephone number of requester)**

20 _____

21 _____

22 _____

23

24 **PROPERTY ADDRESS:**

25 _____

26 _____

27 _____

28

29 **LEGAL DESCRIPTION:** _____

30

31 **PROPERTY OWNERS:** _____

1 **RECORDING INFORMATION FOR ENCUMBRANCE:**

2 _____

3

4 **You must provide a lien information statement in accordance with the**
5 **requirements of Oregon law within 30 days after you receive this re-**
6 **quest. A lien information statement must include the information**
7 **listed in the next paragraph for each obligation or encumbrance (lien,**
8 **charge or other claim) you hold, service, manage or otherwise control**
9 **with respect to the property identified above. If you hold more than**
10 **one encumbrance for the property, you must complete a separate lien**
11 **information statement for each encumbrance.**

12

13 **You must include in the lien information statement:**

14

15 **(1) The amount of the unpaid principal balance of the obligation that**
16 **the encumbrance secures as of the date on which you prepare and send**
17 **the lien information statement.**

18

19 **(2) The interest rate that applies to the principal balance of the obli-**
20 **gation.**

21

22 **(3) The total amount of all interest that has accrued and remains un-**
23 **paid as of the date on which you prepare and send the lien information**
24 **statement.**

25

26 **(4) A description of and the amount of all costs, expenses, advances**
27 **or other sums, if any, that the encumbrance secures or, if the property**
28 **is the subject of a land sale contract, any costs, expenses, advances**
29 **or other sums that can be included in the unpaid balance of the land**
30 **sale contract.**

31

1 **(5) The interest rate that applies to the costs, expenses, advances or**
2 **other sums shown in (4) above, if the interest rate differs from the**
3 **interest rate that applies to the principal balance of the obligation.**

4
5 **(6) The date to which interest on the costs, expenses, advances or**
6 **other sums shown in (4) has been paid.**

7
8 **(7) Any amounts that might be added to the amounts described in (1),**
9 **(3) and (4) within 30 days after the date on which you prepare and send**
10 **the lien information statement. If you do not know what those**
11 **amounts might be, please provide a good faith estimate of those**
12 **amounts.**

13
14 **(8) The amounts you hold in an escrow account for the purpose of**
15 **paying property taxes, insurance or other charges for the property.**

16
17 **(9) The name, address, telephone number and other contact informa-**
18 **tion for a person that can provide additional information to the re-**
19 **quester on your behalf.**

20
21 **(10) The name, address, telephone number and other contact informa-**
22 **tion for a person that accepts payments on your behalf, along with any**
23 **applicable electronic transfer instructions.**

24
25 **Attached to this request is documentation that shows that the re-**
26 **quester is an authorized recipient of the lien information statement.**

27
28 **A processing fee of \$_____ accompanies this request.**

29 _____
30 **(2) Unless an authorized recipient owns a fee interest in the real**
31 **property that is subject to an encumbrance, the authorized recipient**

1 shall send a copy of the request for a lien information statement to
2 any person that, with respect to the property, is a mortgagor, grantor,
3 purchaser, lien debtor or owner. The authorized recipient shall send
4 the copy to the other person by first class mail addressed to the last
5 address the authorized recipient has for the other person in the au-
6 thorized recipient's records. The mailing does not need to include evi-
7 dence that the sender is an authorized recipient.

8 (3) Promptly after receiving a request for a lien information state-
9 ment from an authorized recipient, an encumbrance holder shall
10 postpone or request a postponement of a sale, forfeiture, judicial pro-
11 ceeding, execution or other step or process involved in an action to
12 foreclose or otherwise enforce an encumbrance, as appropriate, to al-
13 low the authorized recipient within a reasonable time to tender full
14 payment to satisfy the encumbrance. A court may not refuse to post-
15 pone a proceeding or extend a deadline in response to a request from
16 the encumbrance holder unless the court makes written findings of
17 fact, supported by substantial evidence, that justify the court's re-
18 fusal.

19 (4)(a) Notwithstanding an encumbrance holder's obligations under
20 subsection (3) of this section, an authorized recipient may notify any
21 of the following persons that the authorized recipient, in accordance
22 with sections 2 to 7 of this 2019 Act, has requested a lien information
23 statement with respect to real property that is subject to an
24 encumbrance:

25 (A) A trustee that has commenced a foreclosure with respect to the
26 real property under ORS 86.752;

27 (B) A sheriff that has received a writ of execution with respect to
28 the real property under ORS chapter 18; or

29 (C) Another person that has responsibility for a foreclosure or
30 forfeiture of the real property.

31 (b) An authorized recipient's notification under paragraph (a) of

1 **this subsection must include:**

2 **(A) A copy of the request for the lien information statement;**

3 **(B) The date of the request for the lien information statement; and**

4 **(C) A description or documentation of the nature of the interest in**
5 **the real property that the authorized recipient holds.**

6 **(5) If an encumbrance holder, in compliance with subsection (3) of**
7 **this section, postpones a sale, forfeiture, judicial proceeding, execution**
8 **or other step or process involved in an action to foreclose or otherwise**
9 **enforce an encumbrance, the postponement controls over any contrary**
10 **provision of law that governs sales, forfeitures, judicial proceedings,**
11 **executions or other steps or processes involved in an action to fore-**
12 **close or enforce an encumbrance on real property in this state.**

13 **SECTION 5. (1)(a) If an encumbrance holder fails to provide a lien**
14 **information statement in accordance with section 4 of this 2019 Act,**
15 **an authorized recipient may:**

16 **(A) Petition the court in which an action to foreclose or enforce an**
17 **encumbrance on real property is pending for an order to compel the**
18 **encumbrance holder to provide the lien information statement and to**
19 **stay or otherwise prevent for a reasonable time a sale, forfeiture or**
20 **transfer of the real property to allow the authorized recipient to sat-**
21 **isfy the encumbrance.**

22 **(B) Bring an action in a circuit court with jurisdiction over the real**
23 **property that is subject to the encumbrance to compel the**
24 **encumbrance holder to provide the lien information statement and to**
25 **stay or otherwise prevent for a reasonable time a sale, forfeiture or**
26 **transfer of the real property to allow the authorized recipient to sat-**
27 **isfy the encumbrance.**

28 **(b) A court may not deny a petition, motion or other request under**
29 **paragraph (a) of this subsection to compel an encumbrance holder to**
30 **provide a lien information statement unless the court finds that the**
31 **petition, motion or other request is frivolous.**

1 (c) An authorized recipient is not subject to a filing fee for a motion
2 under paragraph (a)(A) of this subsection, but is subject to a fee as
3 provided in ORS 21.135 for an action under paragraph (a)(B) of this
4 subsection.

5 (2) Filing a motion, petition or action under subsection (1) of this
6 section operates as an injunction against the sale, forfeiture or trans-
7 fer of the real property without a need for a court order, except that
8 a court may order otherwise. An authorized recipient need not provide
9 a bond or other security in connection with the motion, petition or
10 action unless, after a hearing, the court orders otherwise.

11 (3) An authorized recipient may recover actual damages, costs and
12 reasonable attorney fees from an encumbrance holder if a court finds
13 that the encumbrance holder did not have just cause or excuse for a
14 failure to provide a lien information statement or to postpone or re-
15 quest a postponement of a sale, forfeiture, judicial proceeding, exe-
16 cution or other step or process involved in an action to foreclose or
17 otherwise enforce an encumbrance.

18 (4) An encumbrance holder may recover actual damages, costs and
19 reasonable attorney fees from an authorized recipient if a court finds
20 that the authorized recipient's request for a lien information state-
21 ment is frivolous.

22 (5) This section does not affect or impair rights that an authorized
23 recipient has under ORS 86.786, 86.789 or 105.605 or ORS chapter 37 or
24 other applicable law.

25 **SECTION 6.** (1) An authorized recipient that has received a lien
26 information statement and has satisfied the encumbrance that is the
27 subject of the lien information statement may petition a circuit court
28 with jurisdiction over the real property that was subject to the
29 encumbrance for an order to compel the encumbrance holder to pro-
30 vide documentation that substantiates the amounts shown in the lien
31 information statement.

1 **(2) A court may determine the validity of the amounts shown in a**
2 **lien information statement in a summary proceeding and may order**
3 **the encumbrance holder to remit to the authorized recipient any**
4 **amounts the authorized recipient paid in excess of the amounts the**
5 **court determines are valid. If the encumbrance holder, without just**
6 **cause or excuse, fails to provide the documents required to substanti-**
7 **ate the amounts shown in the lien information statement, the au-**
8 **thorized recipient may recover actual damages, costs and reasonable**
9 **attorney fees from the encumbrance holder.**

10 **SECTION 7.** (1) **An authorized recipient, for the purposes of satis-**
11 **fying an obligation, may treat a lien information statement as a payoff**
12 **statement, as defined in ORS 86.157, if the authorized recipient pays**
13 **or tenders to the encumbrance holder the amounts specified in the lien**
14 **information statement within 30 days after the encumbrance holder**
15 **provides the lien information statement.**

16 **(2) An encumbrance holder that receives payment of the amounts**
17 **shown in a lien information statement shall within 30 days after re-**
18 **ceiving the payment execute and record in the real property records**
19 **of the county in which the real property that was subject to the**
20 **encumbrance is situated or file with a court with jurisdiction over the**
21 **real property, as appropriate, any document that is necessary to show**
22 **that the obligation described in the lien information statement has**
23 **been satisfied, discharged or fulfilled and that the encumbrance holder**
24 **has reconveyed any title or deed the encumbrance holder held or re-**
25 **served.**

26