

# House Bill 2459

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Debtor-Creditor Law Section)

## 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**.

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

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

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

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

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

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

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

**(B) A trustee in a bankruptcy proceeding, a receiver or another custodian that a court appoints to administer real property in this state that is subject to an encumbrance;**

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

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

**(E) An attorney who acts on behalf of a person identified in subparagraphs (A) to (D) of this paragraph.**

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

**(2) "Encumbrance" means:**

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

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

**(3) "Encumbrance holder" means a person that holds or claims to hold an encumbrance**

**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 to which real property in this state is subject, including but not limited to:

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

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

4 (c) A vendor in a land sale contract;

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

6 or

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

9 (4) "Land sale contract" has the meaning given that term in ORS 18.960.

10 (5) "Lien information statement" means a written document that shows:

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

13 (b) The interest rate that applies to the principal balance of the obligation;

14 (c) The total amount of interest that has accrued and remains unpaid as of the date on  
15 the document;

16 (d) A description and the amount of all costs, expenses, advances or other sums, if any,  
17 that the encumbrance secures or that may be included in the unpaid balance of a land sale  
18 contract, together with the interest rate that applies to the costs, expenses, advances or  
19 other sums if the interest rate differs from the interest rate that applies to the principal  
20 balance of the obligation and the date to which interest on the costs, expenses, advances and  
21 other sums has been paid;

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

25 (f) Any amounts the encumbrance holder has in an escrow account, as defined in ORS  
26 86.205;

27 (g) The name, address, telephone number and other contact information for an individual  
28 who can provide additional information on behalf of the encumbrance holder; and

29 (h) The name, address, telephone number and other contact information for the person  
30 to which the amounts set forth in the document must be paid, along with instructions for  
31 making electronic transfers, if applicable.

32 **SECTION 3.** (1) Except as provided in section 4 of this 2019 Act and notwithstanding any  
33 longer period set forth in the Oregon Rules of Civil Procedure, an encumbrance holder or the  
34 encumbrance holder's agent shall provide an authorized recipient with a complete and accu-  
35 rate lien information statement not later than 30 days after the encumbrance holder or the  
36 encumbrance holder's agent has received a request for a lien information statement.

37 (2) Subject to the conditions set forth in subsection (3) of this section, an authorized re-  
38 cipient may request a lien information statement at any time before an encumbrance has  
39 been recorded as satisfied, discharged, reconveyed or fulfilled.

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

43 (b) An authorized recipient may request within the 12-month period described in para-  
44 graph (a) of this subsection more than one lien information statement that applies to the  
45 same real property if the authorized recipient:

1 (A) Reasonably believes that the encumbrance holder has taken or intends to take an  
2 action to foreclose or otherwise enforce the encumbrance; or

3 (B) Requests the lien information statement for the purpose of closing a pending trans-  
4 action with respect to the real property to which the lien information statement applies.

5 (4) An encumbrance holder may require a person who requests a lien information state-  
6 ment to show evidence that the person is an authorized recipient or an agent of an author-  
7 ized recipient. Notwithstanding any longer period of time provided in the Oregon Rules of  
8 Civil Procedure for responding to a request for information in the circumstances described  
9 in this section, the encumbrance holder shall notify the person of the requirement within 14  
10 days after receiving the request and shall provide the lien information statement within 14  
11 days after receiving evidence that the person is an authorized recipient or an agent of an  
12 authorized recipient.

13 (5) An encumbrance holder may not charge more than \$15 to process a request for a lien  
14 information statement and may not charge any amount for a lien information statement if  
15 the encumbrance holder has taken an action to foreclose or otherwise enforce the  
16 encumbrance.

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

19 \_\_\_\_\_

20  
21 **REQUEST FOR LIEN INFORMATION STATEMENT**

22  
23 **DATE OF REQUEST:** \_\_\_\_\_

24  
25 **TO: (Name and address of encumbrance holder)**

26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

29  
30 **FROM: (Name, address and telephone number of requester)**

31 \_\_\_\_\_  
32 \_\_\_\_\_  
33 \_\_\_\_\_

34  
35 **PROPERTY ADDRESS:**

36 \_\_\_\_\_  
37 \_\_\_\_\_  
38 \_\_\_\_\_

39  
40 **LEGAL DESCRIPTION:** \_\_\_\_\_

41  
42 **PROPERTY OWNERS:** \_\_\_\_\_

43  
44 **RECORDING INFORMATION FOR ENCUMBRANCE:** \_\_\_\_\_

45

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

7  
8 You must include in the lien information statement:

9  
10 (1) The amount of the unpaid principal balance of the obligation that the encumbrance se-  
11 cures as of the date on which you prepare and send the lien information statement.

12  
13 (2) The interest rate that applies to the principal balance of the obligation.

14  
15 (3) The total amount of all interest that has accrued and remains unpaid as of the date on  
16 which you prepare and send the lien information statement.

17  
18 (4) A description of and the amount of all costs, expenses, advances or other sums, if any,  
19 that the encumbrance secures or, if the property is the subject of a land sale contract, any  
20 costs, expenses, advances or other sums that can be included in the unpaid balance of the  
21 land sale contract.

22  
23 (5) The interest rate that applies to the costs, expenses, advances or other sums shown in  
24 (4) above, if the interest rate differs from the interest rate that applies to the principal bal-  
25 ance of the obligation.

26  
27 (6) The date to which interest on the costs, expenses, advances or other sums shown in (4)  
28 has been paid.

29  
30 (7) Any amounts that might be added to the amounts described in (1), (3) and (4) within 30  
31 days after the date on which you prepare and send the lien information statement. If you  
32 do not know what those amounts might be, please provide a good faith estimate of those  
33 amounts.

34  
35 (8) The amounts you hold in an escrow account for the purpose of paying property taxes,  
36 insurance or other charges for the property.

37  
38 (9) The name, address, telephone number and other contact information for a person that  
39 can provide additional information to the requester on your behalf.

40  
41 (10) The name, address, telephone number and other contact information for a person that  
42 accepts payments on your behalf, along with any applicable electronic transfer instructions.

43  
44 Attached to this request is documentation that shows that the requester is an authorized  
45 recipient of the lien information statement.

1 A processing fee of \$\_\_\_\_\_ accompanies this request.  
2 \_\_\_\_\_  
3

4 (2) Unless an authorized recipient owns a fee interest in the real property that is subject  
5 to an encumbrance, the authorized recipient shall send a copy of the request for a lien in-  
6 formation statement to any person that, with respect to the property, is a mortgagor,  
7 grantor, purchaser, lien debtor or owner. The authorized recipient shall send the copy to the  
8 other person by first class mail addressed to the last address the authorized recipient has  
9 for the other person in the authorized recipient's records. The mailing does not need to in-  
10 clude evidence that the sender is an authorized recipient.

11 (3) Promptly after receiving a request for a lien information statement from an author-  
12 ized recipient, an encumbrance holder shall postpone or request a postponement of a sale,  
13 forfeiture, judicial proceeding, execution or other step or process involved in an action to  
14 foreclose or otherwise enforce an encumbrance, as appropriate, to allow the authorized re-  
15 cipient within a reasonable time to tender full payment to satisfy the encumbrance. A court  
16 may not refuse to postpone a proceeding or extend a deadline in response to a request from  
17 the encumbrance holder unless the court makes written findings of fact, supported by sub-  
18 stantial evidence, that justify the court's refusal.

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

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

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

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

29 (b) An authorized recipient's notification under paragraph (a) of this subsection must  
30 include:

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

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

33 (C) A description or documentation of the nature of the interest in the real property that  
34 the authorized recipient holds.

35 (5) If an encumbrance holder, in compliance with subsection (3) of this section, postpones  
36 a sale, forfeiture, judicial proceeding, execution or other step or process involved in an action  
37 to foreclose or otherwise enforce an encumbrance, the postponement controls over any  
38 contrary provision of law that governs sales, forfeitures, judicial proceedings, executions or  
39 other steps or processes involved in an action to foreclose or enforce an encumbrance on  
40 real property in this state.

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

43 (A) Petition the court in which an action to foreclose or enforce an encumbrance on real  
44 property is pending for an order to compel the encumbrance holder to provide the lien in-  
45 formation statement and to stay or otherwise prevent for a reasonable time a sale, forfeiture

1 or transfer of the real property to allow the authorized recipient to satisfy the encumbrance.

2 (B) Bring an action in a circuit court with jurisdiction over the real property that is  
 3 subject to the encumbrance to compel the encumbrance holder to provide the lien informa-  
 4 tion statement and to stay or otherwise prevent for a reasonable time a sale, forfeiture or  
 5 transfer of the real property to allow the authorized recipient to satisfy the encumbrance.

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

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

12 (2) Filing a motion, petition or action under subsection (1) of this section operates as an  
 13 injunction against the sale, forfeiture or transfer of the real property without a need for a  
 14 court order, except that a court may order otherwise. An authorized recipient need not  
 15 provide a bond or other security in connection with the motion, petition or action unless,  
 16 after a hearing, the court orders otherwise.

17 (3) An authorized recipient may recover actual damages, costs and reasonable attorney  
 18 fees from an encumbrance holder if a court finds that the encumbrance holder did not have  
 19 just cause or excuse for a failure to provide a lien information statement or to postpone or  
 20 request a postponement of a sale, forfeiture, judicial proceeding, execution or other step or  
 21 process involved in an action to foreclose or otherwise enforce an encumbrance.

22 (4) An encumbrance holder may recover actual damages, costs and reasonable attorney  
 23 fees from an authorized recipient if a court finds that the authorized recipient's request for  
 24 a lien information statement is frivolous.

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

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

32 (2) A court may determine the validity of the amounts shown in a lien information  
 33 statement in a summary proceeding and may order the encumbrance holder to remit to the  
 34 authorized recipient any amounts the authorized recipient paid in excess of the amounts the  
 35 court determines are valid. If the encumbrance holder, without just cause or excuse, fails  
 36 to provide the documents required to substantiate the amounts shown in the lien information  
 37 statement, the authorized recipient may recover actual damages, costs and reasonable at-  
 38 torney fees from the encumbrance holder.

39 **SECTION 7.** (1) An authorized recipient, for the purposes of satisfying an obligation, may  
 40 treat a lien information statement as a payoff statement, as defined in ORS 86.157, if the  
 41 authorized recipient pays or tenders to the encumbrance holder the amounts specified in the  
 42 lien information statement within 30 days after the encumbrance holder provides the lien  
 43 information statement.

44 (2) An encumbrance holder that receives payment of the amounts shown in a lien infor-  
 45 mation statement shall within 30 days after receiving the payment execute and record in the

1 **real property records of the county in which the real property that was subject to the**  
2 **encumbrance is situated or file with a court with jurisdiction over the real property, as ap-**  
3 **propriate, any document that is necessary to show that the obligation described in the lien**  
4 **information statement has been satisfied, discharged or fulfilled and that the encumbrance**  
5 **holder has reconveyed any title or deed the encumbrance holder held or reserved.**

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