

# House Bill 2477

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Sheriffs' Association)

## 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 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

1  
2 Relating to real property; creating new provisions; and amending ORS 18.924, 86.756 and 88.010.

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

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

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

8  
9  
10 **WARNING: If you sign this document, you are selling your property entirely. You are selling**  
11 **your rights to "surplus funds," which is money you might get if your property sells for more**  
12 **than what is owed on it. You should be careful about this offer. Make sure you understand**  
13 **this document. If you have any questions, talk to a lawyer before signing.**  
14

15  
16 **SECTION 3. ORS 18.924 is amended to read:**

17 18.924. (1) Before conducting an execution sale of real property, a sheriff shall:

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

19 (b) Publish notice of the sale in a newspaper, as defined in ORS 193.010, in the county where  
20 the real property is located once a week for four successive weeks.

21 (2) The notice posted on the website and published in the newspaper under subsection (1) of this  
22 section must include:

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

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

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

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

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

2 (b) *[The following notice:]* **The notice to debtor and notice to prospective bidders prescribed**  
3 **in subsections (4) and (5) of this section.**

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

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7  
8 **NOTICE TO DEBTOR**

9  
10 **You should be careful about offers to sell rights to excess funds.**

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

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

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16  
17 **(5) The notice to prospective bidders required by subsection (3) of this section must be**  
18 **in substantially the following form:**

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20  
21 **NOTICE TO PROSPECTIVE BIDDERS**

22  
23 Before bidding at the sale, a prospective bidder should independently investigate:

- 24 (a) The priority of the lien or interest of the judgment creditor;
- 25 (b) Land use laws and regulations applicable to the property;
- 26 (c) Approved uses for the property;
- 27 (d) Limits on farming or forest practices on the property;
- 28 (e) Rights of neighboring property owners; and
- 29 (f) Environmental laws and regulations that affect the property.

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31  
32 *[(4)]* **(6)** In addition to the information listed in subsection (2) of this section, a notice published  
33 in the newspaper under subsection (1) of this section must include instructions for locating the in-  
34 formation posted on the website under subsection (1) of this section.

35 *[(5)]* **(7)** The sheriff is not required to post or publish the notice of sale of real property under  
36 this section until the judgment creditor provides the sheriff with all of the information required  
37 under subsections (2) and (3) of this section.

38 *[(6)]* **(8)** Before any execution sale of real property, the sheriff shall:

39 (a) Mail copies of the notice of sale posted on the website under subsection (1) of this section  
40 by first class mail and by certified mail, return receipt requested, to the judgment debtor at the  
41 address provided in the instructions to the sheriff;

42 (b) Mail a copy of the notice of sale posted on the website under subsection (1) of this section  
43 by first class mail to any attorney for the judgment debtor identified in the instructions at the ad-  
44 dress provided in the instructions; and

45 (c) Mail a copy of the notice of sale posted on the website under subsection (1) of this section

1 by first class mail to any other person listed in the instructions pursuant to ORS 18.918 at the ad-  
2 dress provided in the instructions.

3 [(7)] (9) The notices required by subsection [(6)] (8) of this section must be mailed not less than  
4 28 days before an execution sale is conducted.

5 [(8)] (10) Before any execution sale of real property for which the judgment creditor has pro-  
6 vided a street address under ORS 18.875 (3), the sheriff shall post the notice of the sale posted on  
7 the website under subsection (1) of this section in a conspicuous place on the property. The notice  
8 must be posted not more than seven days after the sheriff mails notices as required by subsection  
9 [(6)] (8) of this section.

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

11 88.010. (1)(a) Except as otherwise provided by law, a lien upon real or personal property, other  
12 than that of a judgment, whether created by mortgage or otherwise, must be foreclosed, and the  
13 property adjudged to be sold to satisfy the debt the lien secures, by bringing suit. A judgment in the  
14 suit must include a declaration of the amount of the debt that the lien secures.

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

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

23 **(2)(a) Before filing a complaint in a suit to foreclose a residential trust deed under this**  
24 **section, the person bringing the suit shall give notice under this section to the lien debtors,**  
25 **and the complaint must include as an attachment a copy of the notice. The notice must be**  
26 **in substantially the following form and printed in at least 14-point type:**

27 \_\_\_\_\_  
28  
29 **WARNING: You may get offers from people who tell you they can help you keep your prop-**  
30 **erty. You may get offers from people who want to buy your “redemption rights” or “all**  
31 **rights under ORS chapter 18.” You should be careful about those offers. Make sure you un-**  
32 **derstand any papers you are asked to sign. If you have any questions, talk to a lawyer or**  
33 **one of the organizations mentioned below before signing.**

34  
35 **There are government agencies and nonprofit organizations that can give you information**  
36 **about foreclosure and help you decide what to do. For the name and telephone number of**  
37 **an organization near you, please call the statewide telephone contact number at**  
38 **\_\_\_\_\_.** You may also wish to talk to a lawyer. If you need help finding a lawyer, you  
39 **may call the Oregon State Bar’s Lawyer Referral Service at \_\_\_\_\_ or toll-free in**  
40 **Oregon at \_\_\_\_\_ or you may visit its website at: \_\_\_\_\_.** Legal assistance  
41 **may be available if you have a low income and meet federal poverty guidelines. For more**  
42 **information and a directory of legal aid programs, go to \_\_\_\_\_.**

43 \_\_\_\_\_  
44  
45 (b) The person filing the complaint shall insert in the notice under this subsection the

1 **resource telephone contact numbers and website addresses prescribed by the Department of**  
2 **Consumer and Business Services by rule under ORS 86.756.**

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

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

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

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

10 (D) A signed affidavit from the Director of Veterans' Affairs that states that the Department of  
11 Veterans' Affairs, in the department's capacity as a beneficiary of loans made under ORS 407.125,  
12 is exempt from the requirement under ORS 86.726 to request or participate in a resolution confer-  
13 ence with a grantor.

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

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

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

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

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

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

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

33 \_\_\_\_\_

34  
35 NOTICE:

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

39  
40 This notice is about your mortgage loan on your property at \_\_\_\_\_ (address).

41  
42 Your lender has decided to sell this property because the money due on your mortgage loan has not  
43 been paid on time or because you have failed to fulfill some other obligation to your lender. This  
44 is sometimes called "foreclosure."  
45

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

4  
5 By law, your lender has to provide you with details about the amount you owe, if you ask. You may  
6 call \_\_\_\_\_ (telephone number) to find out the exact amount you must pay to bring your  
7 mortgage loan current and to get other details about the amount you owe. You may also get these  
8 details by sending a request by certified mail to: \_\_\_\_\_.

9  
10 THIS IS WHEN AND WHERE  
11 YOUR PROPERTY WILL BE SOLD  
12 IF YOU DO NOT TAKE ACTION:

13  
14 Date and time: \_\_\_\_\_, 2\_\_\_\_\_ at \_\_\_\_\_

15  
16 Place: \_\_\_\_\_

17  
18 THIS IS WHAT YOU CAN DO  
19 TO STOP THE SALE:

- 20  
21 1. You can pay the amount past due or correct any other default, up to five days before the sale.  
22 2. You can refinance or otherwise pay off the loan in full anytime before the sale.  
23 3. You can call \_\_\_\_\_ (name) at \_\_\_\_\_ (telephone number) to find out if your  
24 lender is willing to give you more time or change the terms of your loan.  
25 4. You can sell your home, provided the sale price is enough to pay what you owe.

26  
27 There are government agencies and nonprofit organizations that can give you information about  
28 foreclosure and help you decide what to do. For the name and telephone number of an organization  
29 near you, please call the statewide telephone contact number at \_\_\_\_\_. You may also  
30 wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's  
31 Lawyer Referral Service at \_\_\_\_\_ or toll-free in Oregon at \_\_\_\_\_ or you may  
32 visit its website at: \_\_\_\_\_. Legal assistance may be available if you have a low income  
33 and meet federal poverty guidelines. For more information and a directory of legal aid programs,  
34 go to \_\_\_\_\_.

35  
36  
37 WARNING: You may get offers from people who tell you they can help you keep your property.  
38 **You may get offers from people who want to buy your "redemption rights" or "all rights**  
39 **under ORS chapter 18."** You should be careful about those offers. Make sure you understand any  
40 papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations  
41 mentioned above before signing.

42  
43 DATED: \_\_\_\_\_, 2\_\_\_\_\_

44  
45 Trustee name: \_\_\_\_\_ (print)

1 Trustee signature: \_\_\_\_\_

2

3 Trustee telephone number: \_\_\_\_\_

4

5

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

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

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

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

15 (A) A telephone number that will allow the grantor access during regular business hours to  
16 details regarding the grantor’s loan delinquency and repayment information; and

17 (B) A telephone number that will allow the grantor access during regular business hours to  
18 person-to-person consultation with an individual authorized by the beneficiary to discuss the  
19 grantor’s payment and loan term negotiation and modification options.

20 (4) Telephone numbers described in subsection (3) of this section must be toll-free numbers un-  
21 less the beneficiary:

22 (a) Made the loan with the beneficiary’s own money;

23 (b) Made the loan for the beneficiary’s own investment; and

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

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

29 **SECTION 6. (1) Section 2 of this 2019 Act applies to deeds recorded on or after the ef-**  
30 **fective date of this 2019 Act.**

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

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

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

37

\_\_\_\_\_