

A-Engrossed Senate Bill 11

Ordered by the Senate April 10
Including Senate Amendments dated April 10

Sponsored by Senators MONNES ANDERSON, GELSER (Pre-session filed.)

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.

Requires person who purchases residential real property after foreclosure complaint has been filed and before end of redemption period to provide notice to seller regarding relinquishment of interests in property and rights to surplus funds.

Requires sheriff, before conducting execution sale of real property, to provide on website certain notice to debtor regarding offers to sell rights to surplus funds.

Requires complaint in suit to foreclose residential trust deed to include notice to lien debtor regarding sales of redemption rights.

[Prohibits transferring right to redeem property to successor in interest by sale.]

A BILL FOR AN ACT

Relating to rights of redemption; creating new provisions; and amending ORS 18.924 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. (1) If a person purchases residential real property after a complaint has been filed to foreclose a lien on the real property and before the end of the redemption period provided under ORS 18.964, the purchaser shall provide the following notice in clear and conspicuous type, 14-point or larger, to the seller before purchasing the real property:

WARNING: You should be careful about this kind of transfer of property. Make sure you understand the documents that you sign. You may still own interests in this property. If you sign the deed to transfer this property, you may be giving up all of your interests in this property, such as redemption rights and rights to "surplus funds." "Surplus funds" are any extra money if the property is sold at the sheriff's execution sale for more than what is owed on the property. If you have questions, talk to a lawyer before signing.

(2) At or before the time of recording the deed transferring the real property purchased after a complaint has been filed to foreclose a lien on the real property and before the end of the redemption period provided under ORS 18.964, the purchaser shall file for recording in the official record of the county or counties in which the property described in the deed is situated an affidavit stating that the person complied with the notice requirement under subsection (1) of this section. The affidavit may be affixed to the deed transferring the real property.

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

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

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

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

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

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

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

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

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

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

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

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

20 **NOTICE TO DEBTOR**

21 **You should be careful about offers to sell rights to surplus funds.**

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

24 **If you transfer or sell your right to redemption, you might not have the right to surplus
25 funds.**

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

31 **NOTICE TO PROSPECTIVE BIDDERS**

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

33 (a) The priority of the lien or interest of the judgment creditor;

34 (b) Land use laws and regulations applicable to the property;

35 (c) Approved uses for the property;

36 (d) Limits on farming or forest practices on the property;

37 (e) Rights of neighboring property owners; and

38 (f) Environmental laws and regulations that affect the property.

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42
43 *[(4)]* **(6)** In addition to the information listed in subsection (2) of this section, a notice published
44 in the newspaper under subsection (1) of this section must include instructions for locating the in-
45 formation posted on the website under subsection (1) of this section.

1 [(5)] (7) The sheriff is not required to post or publish the notice of sale of real property under
2 this section until the judgment creditor provides the sheriff with all of the information required
3 under subsections (2) and (3) of this section.

4 [(6)] (8) Before any execution sale of real property, the sheriff shall:

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

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

11 (c) Mail a copy of the notice of sale posted on the website under subsection (1) of this section
12 by first class mail to any other person listed in the instructions pursuant to ORS 18.918 at the ad-
13 dress provided in the instructions.

14 [(7)] (9) The notices required by subsection [(6)] (8) of this section must be mailed not less than
15 28 days before an execution sale is conducted.

16 [(8)] (10) Before any execution sale of real property for which the judgment creditor has pro-
17 vided a street address under ORS 18.875 (3), the sheriff shall post the notice of the sale posted on
18 the website under subsection (1) of this section in a conspicuous place on the property. The notice
19 must be posted not more than seven days after the sheriff mails notices as required by subsection
20 [(6)] (8) of this section.

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

22 88.010. (1)(a) Except as otherwise provided by law, a lien upon real or personal property, other
23 than that of a judgment, whether created by mortgage or otherwise, must be foreclosed, and the
24 property adjudged to be sold to satisfy the debt the lien secures, by bringing suit. A judgment in the
25 suit must include a declaration of the amount of the debt that the lien secures.

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

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

34 (2)(a) **A complaint in a suit to foreclose a residential trust deed on the lien debtor must**
35 **include as an attachment a copy of a notice to lien debtors, in substantially the following**
36 **form and printed in at least 14-point type:**

37 _____
38
39 **WARNING: You may get offers from people who tell you they can help you keep your prop-**
40 **erty. You may get offers from people who want to buy your “redemption rights” or “all**
41 **rights under ORS chapter 18.” You should be careful about those offers, as a sale of your**
42 **rights to a property in foreclosure may include your right to claim any surplus funds arising**
43 **from the foreclosure sale. Make sure you understand any papers you are asked to sign. If**
44 **you have any questions, talk to a lawyer or one of the organizations mentioned below before**
45 **signing.**

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

9 _____
10
11 **(b) The person filing the complaint shall insert in the notice under this subsection the**
12 **resource telephone contact numbers and website addresses prescribed by the Department of**
13 **Consumer and Business Services by rule under ORS 86.756.**

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

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

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

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

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

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

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

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

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

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

37 **SECTION 5. (1) Section 2 of this 2019 Act applies to purchases of residential real property**
38 **occurring on or after the effective date of this 2019 Act.**

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

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