

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 11**

1 In line 2 of the printed bill, after “redemption;” delete the rest of the line
2 and insert “creating new provisions; and amending ORS 18.924 and 88.010.”.

3 Delete lines 4 through 21 and insert:

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

6 **“SECTION 2. (1) If a person purchases residential real property af-**
7 **ter a complaint has been filed to foreclose a lien on the real property**
8 **and before the end of the redemption period provided under ORS**
9 **18.964, the purchaser shall provide the following notice in clear and**
10 **conspicuous type, 14-point or larger, to the seller before purchasing**
11 **the real property:**

12 “ _____

13

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

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“(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.

“SECTION 3. ORS 18.924 is amended to read:

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

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

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

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

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

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

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

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

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

“(b) [*The following notice:*] **The notice to debtor and notice to pro-**

1 **spective bidders prescribed in subsections (4) and (5) of this section.**

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

4 “ _____

5

6 **NOTICE TO DEBTOR**

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

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

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

12 “ _____

13

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

16 “ _____

17

18 **NOTICE TO PROSPECTIVE BIDDERS**

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20 **Before bidding at the sale, a prospective bidder should independently in-**
21 **vestigate:**

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

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

24 **(c) Approved uses for the property;**

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

26 **(e) Rights of neighboring property owners; and**

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

28 “ _____

29

30 **“[(4)] (6) In addition to the information listed in subsection (2) of this**

1 section, a notice published in the newspaper under subsection (1) of this
2 section must include instructions for locating the information posted on the
3 website under subsection (1) of this section.

4 “[5] (7) The sheriff is not required to post or publish the notice of sale
5 of real property under this section until the judgment creditor provides the
6 sheriff with all of the information required under subsections (2) and (3) of
7 this section.

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

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

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

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

21 “[7] (9) The notices required by subsection [(6)] (8) of this section must
22 be mailed not less than 28 days before an execution sale is conducted.

23 “[8] (10) Before any execution sale of real property for which the judg-
24 ment creditor has provided a street address under ORS 18.875 (3), the sheriff
25 shall post the notice of the sale posted on the website under subsection (1)
26 of this section in a conspicuous place on the property. The notice must be
27 posted not more than seven days after the sheriff mails notices as required
28 by subsection [(6)] (8) of this section.

29 **“SECTION 4.** ORS 88.010 is amended to read:

30 “88.010. (1)(a) Except as otherwise provided by law, a lien upon real or

1 personal property, other than that of a judgment, whether created by mort-
2 gage or otherwise, must be foreclosed, and the property adjudged to be sold
3 to satisfy the debt the lien secures, by bringing suit. A judgment in the suit
4 must include a declaration of the amount of the debt that the lien secures.

5 “(b) Except as provided in ORS 86.797 or 88.103 or other applicable law,
6 if the lien debtor or another person, as principal or otherwise, has given a
7 promissory note or other personal obligation to pay the debt and if the
8 plaintiff in the complaint asks the court for a money award in the judgment,
9 the court shall include in the judgment a money award against the lien
10 debtor or other person for the amount of the debt.

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

14 “(2)(a) **A complaint in a suit to foreclose a residential trust deed on**
15 **the lien debtor must include as an attachment a copy of a notice to**
16 **lien debtors, in substantially the following form and printed in at least**
17 **14-point type:**

18 “ _____

19

20 **WARNING: You may get offers from people who tell you they can help**
21 **you keep your property. You may get offers from people who want to**
22 **buy your ‘redemption rights’ or ‘all rights under ORS chapter 18.’ You**
23 **should be careful about those offers, as a sale of your rights to a**
24 **property in foreclosure may include your right to claim any surplus**
25 **funds arising from the foreclosure sale. Make sure you understand any**
26 **papers you are asked to sign. If you have any questions, talk to a**
27 **lawyer or one of the organizations mentioned below before signing.**

28

29 **There are government agencies and nonprofit organizations that can**
30 **give you information about foreclosure and help you decide what to**

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

9 “ _____

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

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

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

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

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

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

27 “(b)(A) A court on the court’s own motion or in response to a motion from
28 a defendant may dismiss without prejudice a suit that a person brings under
29 this section to foreclose a residential trust deed, or may stay proceedings on
30 the suit, if the person:

1 “(i) Fails to file with the court the certificate described in paragraph
2 (a)(A) of this subsection or the affidavit described in paragraph (a)(B) or (D)
3 of this subsection; or

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

6 “(B) The court may release a stay the court granted under subparagraph
7 (A) of this paragraph if the person files with the court the certificate de-
8 scribed in paragraph (a)(A) of this subsection or the affidavit described in
9 paragraph (a)(B) or (D) of this subsection.

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

13 **“SECTION 5. (1) Section 2 of this 2019 Act applies to purchases of**
14 **residential real property occurring on or after the effective date of this**
15 **2019 Act.**

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

18 **“(3) The amendments to ORS 88.010 by section 4 of this 2019 Act**
19 **apply to complaints filed on or after the effective date of this 2019**
20 **Act.”.**

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